

**THE BEST INTEREST OF THE CHILD IN  
THE HARMFUL RELIGIOUS PRACTICE OF  
RITUAL SLAVERY IN WEST AFRICA**

**DVZ Craffert**

 **[orcid.org/0000-0002-2504-6190](https://orcid.org/0000-0002-2504-6190)**  
**LLB**

Mini-dissertation submitted in partial fulfilment of the requirements for the degree *Magister Legum* in Comparative Child Law at the North-West University

Supervisor: Prof HJ Lubbe  
Graduation: 23584610

## **ACKNOWLEDGMENTS**

To my supervisor, Professor Lubbe – words cannot even begin to express my gratitude. I will forever be grateful for your guidance, patience and unwarranted indulgence, especially during those times when it was most undeserved. I have committed you to memory not only as a brilliant academic whose knowledge about the law astounds me unceasingly, but especially as the enigmatic *Your Heiness* of our faculty. People often dream of changing the world, but I have no doubt in my mind that you actually will.

To my housemate, Jean-Marc, thank you for reminding me (unremittingly) of this dissertation and for providing me with sustenance when I forget to eat.

To my most-loving parents, I express to you my utmost appreciation and love. I am exceptionally privileged to have you; to have parents who will always place their own needs and desires second to their son's successes, or even the mere prospect thereof, is invaluable to me. I know the two of you prayed for the completion of this document.

To my fiancé, Nadia, your constant support, love, discipline-inducing talks and motivation instils in me the ambition to be better than I was the day before. Thank you for reminding me of my dreams whenever I am left without perspective, and for being strong when it is needed most. *So baie dankie vir alles – jy is ongelooflik*. Thank you for pretending to be interested whenever I speak of all things related to this topic and law in general.

Heavenly Father, in the end, it was You who planted the seeds of human rights in the hearts of us all. Human rights are the very core of Your Gospel and I believe that it should be the undertaking of every person who bears Your name. This document is dedicated to You, first and foremost, and may it someday be utilised to make our continent a better place, especially for those children You love so much.

This study reflects the legal and factual position as on 10 December 2019.

## **ABSTRACT**

Ritual slavery has been an extant concern in West Africa, and more specifically, Ghana, Togo and Benin since at least the 19<sup>th</sup> century and has exhibited its pervasiveness ever since. Although Africa is rife with what is presumed to be harmful religious and cultural practices, it is in the aforementioned countries where ritual slavery in the forms of *troxorvi*, *vidomegon* and *vudusi* is most prevalent and consequently necessitate address.

Fetish priests demand that the youngest child of a family is consecrated to the prior's shrine so as to conciliate the ancestral gods for a crime committed by a member of the latter. The consecrated child is usually a very young virgin girl who is exposed to the sexual proclivities of the fetish priests, has to labour at the shrine, bears the priest's children and has her autonomy, or at least sense thereof, entirely restricted.

The practice itself would cogently stand in direct contravention of most, if not all, international human rights jurisprudence – the best interest of the child principle being the primary thereof. Apart from its participants and proponents relying heavily on the importance of the practice for its own anthropological sake, they also legally justify ritual slavery under the veil of cultural relativism, religious rights and parental authority, all of which are important jurisprudential tenets particularly in Africa.

The Ghanaian, Togolese and Beninese governments have shown considerable indifference toward the suppression of the practice. Although *troxorvi* has been criminalised in Ghana, the state itself has chosen not to arrest or prosecute the contributors of the practice as a matter of principles based on the aforesaid competing rights. It is, however, of import to note that this is not to be considered a comparative study. The aforesaid three states are used as examples so as to reflect the factual and legal position of the practice in Africa.

The primary objective of this study is to critically evaluate the present incidence of ritual slavery with the best interest of the child, right to culture and religion and parental authority as gauge to establish the legality of the practice itself. The underlying supposition is that the practice is, in fact, unreservedly prohibited by international,

regional law, and domestically in Ghana, but continues to subsist due to legislative ambiguities and governmental complacency. The secondary objective is therefore to investigate which legal and judicial remedies exist to alleviate the effects and prominence of ritual slavery.

**KEY WORDS:** Ritual slavery; *trokosi*; *troxorvi*; *vudusi*; *vidomegon*; best interest of the child; paramountcy principle.

## OPSOMMING

Rituele slawerny word al sedert die 19de eeu 'n daadwerklike probleem in Wes-Afrika en veral Ghana, Togo en Benin geag te wees, en blyk steeds 'n blywende kammernis selfs vandag daar te stel. Alhoewel daar baie skadelike kulturele en geloofspraktyke in Afrika is, is dit in die bovermelde lande waar rituele slawerny in die vorme van *troxorvi*, *vidomegon* en *vudusi* algemeen verskyn.

Kultiese priesters eis dat die jongste kind van 'n gesin tot die eersgenoemde se altaar toegewy word om sodoende die voorvadergode gerus te stel oor misdade wat 'n ander lid van sodanige familie gepleeg het. Die ingewyde kind is gebruiklik 'n baie jong, vroulike maagd wat blootgestel word aan die seksuele voorkeure van die kultiese priester en kinderarbeid by die altaar. Sy moet voorts ook die bovermelde priester se kinders baar en haar outonomie word geheel en al beperk.

Die praktyk word redelikerwys geag teenstrydig met die regsleer van meeste internasionale menseregte bepalings te wees - die beste belang van die kind is die primêre beginsel in hierdie verband. Afgesien van die voorstanders van en deelnemers aan die gebruik se voorlegging dat rituele slawerny antropologiese gewig in hul samelewing dra, word die regverdiging van die gebruik geskoei op regbeginsels in Afrika soos kulturele relativisme, reg tot godsdiens en ouerlike gesag.

Die Ghanese, Togolese en Beninese regerings toon daadwerklike onverskilligheid in hul onderneming om die praktyk te onderdruk. Alhoewel *troxorvi* alreeds in Ghana gekriminaliseer is, het die staat nietemin self besluit om nie die bydraers van die praktyk in hegtenis te neem of te vervolg nie, en derhalwe die versuim geklassifiseer as 'n beginselsaak wat geskoei is op die bovermelde mededingende regte. Dit is nietemin belangrik om te meld dat sodanige studie nie 'n vergelykende studie konstrueer nie en dat die bovermelde drie state bloot as voorbeelde gebruik word ten einde die feitelike-sowel as regsposisie betreffende die praktyk te reflekteer

Die primêre doel van hierdie studie is om die wydverspreide teenwoordigheid van rituele slawerny te meet met die beste belang van die kind, die reg op kultuur sowel as godsdiens en ouerlike gesag as maatstawwe ten einde die wettigheid van die praktyk

krities te evalueer. Die onderliggende veronderstelling is dat die praktyk onvoorwaardelik deur internasionale sowel as plaaslike regsbesluit verbied word, maar dat dit wel voortbestaan weens die regering se onverskilligheid en dalk selfvoldoening. Die sekondêre doel is derhalwe om moontlike bestaande regsmiddele te ondersoek wat rituele slawerny moontlik sal kan stuit.

**SLEUTELWOORDE:** Rituele slawerny; beste belang van die kind beginsel; *trokosi*; *troxorvi*; *vudusi*; *vidomegon*

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## **LIST OF ABBREVIATIONS**

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
AHRLJ	African Human Rights Law Journal
AJICL	African Journal of International and Comparative Law
CHRAG	Commission on Human Rights and Administrative Justice
CHRAJ	Commission on Human Rights and Administrative Justice
CJLS	Covenant Journal of Language Studies
FESLM	Fetish Slaves Liberation Movement
FIDA	International Federation of Women Lawyers
GLRC	Ghana Law Reform Commission
GNCC	Ghana National Commission on Children
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IJCR	International Journal of Children's Rights
IJHSS	International Journal of Humanities and Social Sciences
IJLPF	International Journal of Law, Policy and the Family
ING	International Needs Ghana
JEP	Journal of Education and Practice
LCP	Law and Contemporary Problems
NCCE	National Council on Civic Education
NCWD	National Council on Women and Development
NEICLA	New England International and Comparative Law Annual
NGC	National Commission on Culture
NGO	Non-Governmental Organisation

NQHR	Netherlands Quarterly of Human Rights
SAPL	SA Public Law
UDHR	Universal Declaration of Human Rights
UGLJ	University of Ghana Law Journal
UNCRC	United Nations Convention on the Rights of the Child

## Chapter 1 Introduction

Ritual slavery or, as it is colloquially known, *trokosi* in Ghana, *vidomegon* in Benin, and *vudusi* in Togo, is a social control system which is prevalent amongst religious groups in the aforementioned West African countries whereby a female minor, usually a virgin, is consecrated by her parents to a fetish priest in the atonement of her family's crimes.<sup>1</sup> These *trokosi's* become the life-long, often sexual, slaves to the priests.<sup>2</sup> Despite the perpetuating exercise of the practice, and it having been criminalised in Ghana in 1998 under the *Criminal Code Amendment Act*,<sup>3</sup> not one person has been brought before the Ghanaian courts, let alone been convicted.<sup>4</sup> Furthermore, the practice continues to subsist not only in Ghana, but also in Togo and Benin due to these governments' ostensible unwillingness to acknowledge the continued existence thereof, consequently inhibiting the realisation of the requisite legislation.<sup>5</sup>

International law determines that the right to culture and religion<sup>6</sup> of every person is to be protected and upheld. Article 27(1) of the *Universal Declaration of Human Rights* (hereinafter referred to as the UDHR) protects every person's right to freely participate in the cultural life of the community.<sup>7</sup> Article 1 of the *International Covenant on Civil and Political Rights*<sup>8</sup> (hereinafter referred to as the ICCPR) provides that all peoples have the right to self-determination, by virtue that they freely pursue their cultural development. Article 27 of the ICCPR<sup>9</sup> states that such religious and ethnic minorities shall not be denied the right to enjoy their own culture or practice their own religion. Moreover, article 29 of the *United Nations Convention on the Rights of the Child*<sup>10</sup> (hereinafter referred to as the UNCRC) states that children of such an ethnic or religious

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<sup>1</sup> Ameh 2004 *CJLS* 51.

<sup>2</sup> Ameh 2004 *CJLS* 51.

<sup>3</sup> *Criminal Code Amendment Act* 554 of 1998.

<sup>4</sup> Howusu *The cry of trokosi girls in Ghana* i.

<sup>5</sup> Akpabli-Honu and Agbanu 2014 *IJHSS* 308.

<sup>6</sup> From the outset of this study, it is acknowledged that culture and religion, including the rights relating thereto, are different in concept. The jurisprudence related to both are admittedly similar and the interrelatedness thereof does not warrant too much differentiation for the purpose of this study.

<sup>7</sup> Article 27(1) of the *Universal Declaration of Human Rights* (1948).

<sup>8</sup> Article 1 of the *International Covenant on Civil and Political Rights* (1966).

<sup>9</sup> Article 27 of the *International Covenant on Civil and Political Rights* (1966).

<sup>10</sup> Article 29 of the *Convention on the Rights of the Child* (1989) (hereinafter referred to as the CRC).

minority shall be afforded the same right to enjoy his or her own culture and religion. On a regional level, article 12 of the *African Charter on the Rights and Welfare of the Child*<sup>11</sup> (hereinafter referred to as the ACRWC) expressly protects the cultural right of children by stating that signatory states are to recognise, respect and promote the right of the child to fully participate in cultural life. Domestically, the *Constitution of the Republic of Ghana, 1996 (Constitution of Ghana)*, for example, enshrines the abovementioned international standpoint under article 26(1).<sup>12</sup> It is, however, important to note that the intention is not to conduct a comparative study of the Ghanaian legal system, but rather to elucidate how Ghana is a prime example of a jurisdiction where the practice of *trokosi* subsists despite the prohibitions of international, domestic and regional law.

The same international and regional instruments impose a duty on its signatories to act in line with the legal construct known as the best interest of the child. Article 3 of the ICCPR,<sup>13</sup> and article 4 of the ACRWC<sup>14</sup> expressly impose an obligation on the state, as an authority, to always consider the best interest of the child whenever action is taken. Against this background of children's interest being of paramount importance, article 26(2)<sup>15</sup> of the *Constitution of Ghana* states that "all customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited".

Furthermore, as these children are consecrated to a fetish priests by the parents,<sup>16</sup> the subject of parental authority must be placed within the ambit of this discussion. Article 5 of the UNCRC provides that signatory states are to respect the rights, responsibilities and duties of parents and extended community as provided for by local custom. Moreover, the notion of parental autonomy and authority over children is indubitably

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<sup>11</sup> Article 12 on the *African Charter on the Rights and the Welfare of the child* (1990).

<sup>12</sup> Article 26(1) of the *Constitution of the Republic of Ghana, 1996*.

<sup>13</sup> Article 3 of the *ICCPR*.

<sup>14</sup> Article 4 of the *African Charter on the Rights and the Welfare of the child* (1990).

<sup>15</sup> Article 26(2) of the *Constitution of the Republic of Ghana, 1996*.

<sup>16</sup> Ameh 2004 *CJLS* 51.

present even in modern Africa as minors are habitually deemed as property of their parents.<sup>17</sup>

Although the criminalisation of *trokosi* in Ghana is assumed to be commendably progressive, two issues are elucidated from the fact that it has not proliferated into punitive action in the form of policies or law enforcement. Firstly, how exactly the best interest of the child principle is to be construed against the right to relativist interpretations of the right to culture in conjunction with parental authority. Secondly, how states can be compelled to take further steps to protect those minors who are still subjected to ritual slavery.

This study will be guided by a literature study, encompassing relevant primary sources such as international, regional and domestic legislation and case law. Moreover, secondary sources such as textbooks, journal articles and electronic texts will be utilised in the substantiation of the primary sources. Although reference will be made to the domestic law of countries where *trokosi* is most prevalent, namely Ghana, Togo, and Benin, the study will not be conducted in a comparative manner due to the natural constraints of a mini-dissertation. In its stead, domestic law will solely be used to afford general oversight of the legal position of *trokosi* in Ghana in the primary, with due, albeit peripheral, consideration accorded to Benin and Togo.

Chapter two serves to explore the actual history, current position, prevalence and general workings of ritual slavery in West Africa, with the principal focus afforded to *troxorvi* in Ghana. Moreover the practice itself is discussed in light of expected international instruments so as to ascertain the legality of the practice without elucidating the normative qualities of other rights.

Chapter three then provides for the normative underpinnings of the study, and serves to expound core concepts such as the best interest of the child, the right to culture and religion, parental authority, and finally an inferred normative position of the practice. The presumption is that the best interest of the child principle is paramount and is accorded primacy over other rights. The objective is chapter three is not only to explain

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<sup>17</sup> Arts 1993 *AJICL* 139.

the legal qualities of these rights, but to describe the competing nature thereof in the attempt to reaffirm the illegality of the practice.

The nature of state responsibility as well as extra-national mechanisms that are generally available to presumably prohibited practices, coupled with how specifically *troxorvi* can be brought before extra-national judicial bodies, is to be discussed in chapter four.

## **Chapter 2 The anatomy of ritual slavery as a harmful religious and cultural practice in West Africa**

### **2.1 Introduction**

Considering that the term "ritual slavery" denotes a diverse array of meaning and practices, delineation of what is meant by this term relative to this study is required. This discussion will therefore primarily, although not exclusively, focus on ritual slavery in Ghana - not only because it is most prominent there, but in view of the fact that it has been on-going for many centuries among the Anlo in the Volta Region, the Ewes of Tongu, and the Dangmes of the Accra region in this country.<sup>18</sup> Comparable adaptations of ritual slavery are found in Benin and Togo, known as *vidomegon* and *vudusi* respectively, each exemplifying its own similarities and contradistinctions to the custom in Ghana.<sup>19</sup>

Moreover, the practice itself has not only prevailed since at least the 19<sup>th</sup> century, it has proven to be an extant problem today. The forms in which these practices have manifested in the past, how such forms have been addressed and exactly to which extent the custom has evolved are therefore to be discussed, not only to give insight as to the magnitude thereof, but also to indicate its historical impact in terms of its jurisprudential position. Ritual slavery is prevalent in West Africa also today and along with it there arises a confluence of extant and prevailing problems- legal, social and the like, the pervasiveness of which is aggravated by its presumed illegality.

### **2.2 Definitional and etymological exposition of ritual slavery**

Ritual slavery is a prevailing practice which is especially pervasive amongst religious groups in Ghana, Benin, Togo and, to a lesser extent, Yorubaland in Nigeria.<sup>20</sup> In the endeavour to express contrition for supposed crimes of the family, this social control

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<sup>18</sup> Asomah 2015 *AHRLJ* 137.

<sup>19</sup> Ameh 2004 *CJLS* 51.

<sup>20</sup> Ameh 2004 *CJLS* 51.

system compels the parents of a virgin minor to consecrate the latter to a fetish priest of said religious group.<sup>21</sup>

In Ghana particularly, the practice is colloquially referred to as *trokosi*.<sup>22</sup> Although there is uncertainty amongst scholars as to the exact definition of the word itself, there is academic consensus that the etymological arrangement of its two E'we words, "*tro*" (deity) and "*kosi*" (slave) means slave of a deity.<sup>23</sup> Terminologically, *trokosi* is categorised into three forms.<sup>24</sup> The first category, *fiasidis*, refer to women who are set aside for kings to marry; the second, *kosis*, allude to female children given in supplication to a deity for the sake of an infertile woman; *trokosis* proper, the third category which will principally be focussed on for the purposes of this study, implicates female minors who are sent to shrines in reparation for crimes committed by another member of that family.<sup>25</sup>

Although the general impression of the term itself implicate female minors as wives, writers such as Ellis,<sup>26</sup> Dovlo,<sup>27</sup> Nukunya and Kwafo<sup>28</sup> argue that the suffix "*si*" particularly denotes "persons consecrated to the gods". Considering the expected subject matter resulting from this study, it is acknowledged that the present-day practice involving young virgin girls, and not the original word, imply "wife of the gods" as many articles maintain.<sup>29</sup> Although boys are infrequently accepted as *trokosis*, it is girls who are customarily subjected to the shrines.<sup>30</sup>

*Trokosi* is habitually also translated as "fetish slave" – the term is commonly used as an adjunct to the allusion that the custom coerces female virgin minors to be betrothed as vestal virgins to fetish gods in the atonement for the sins or transgressions of a relative.<sup>31</sup> *Trokosiwo* or *trokosio* is the plural form of *trokosi*, but it is commonly

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<sup>21</sup> Ameh 2004 *CJLS* 51.

<sup>22</sup> Dzansi and Biga 2014 *Study of Tribes and Tribals* 2.

<sup>23</sup> Dzansi and Biga 2014 *Study of Tribes and Tribals* 2.

<sup>24</sup> Addo "Trokosi system" 63.

<sup>25</sup> Addo "Trokosi system" 64.

<sup>26</sup> Ellis *The Ewe-Speaking Peoples* 140.

<sup>27</sup> Dovlo and Adzoyi "Report on Trokosi Institution" 2.

<sup>28</sup> Nukunya and Kwafo "Report on de-criminalizing trokosi" 3.

<sup>29</sup> Ameh *Child bondage in Ghana* 70.

<sup>30</sup> Ameh *Child bondage in Ghana* 71.

<sup>31</sup> Quashigah 1998 *AJICL* 193.

accepted in literature to use the anglicised plural, *trokosis*, which will also be used in this study.<sup>32</sup>

Ameh<sup>33</sup> remarks that in the Ewe language, "tro" means deity, "xo" translates to accept or receive, and "vɪ" means child. He concludes that the term *troxovi* denotes a deity who accepts children within the religious and crime system of the Ewes of Tongu, implying a reformed institution which facilitates and enables the custom of *trokosi*. It is worthy to note, moreover, that many scholars and researchers use *trokosi* and *troxovi* interchangeably, as both terms signify the same custom of ritual slavery, the prior implying the practice and the latter indicating the institution itself.

### **2.3 History of ritual slavery in West Africa**

Despite the indubitable efforts made by researchers, traditionalists and pro-Christian scholars to explicate the origin and initial purpose of ritual slavery, *trokosi* is shrouded in obscurity.<sup>34</sup> There are, nonetheless, erudite accounts suggesting that the custom originated in South-Western Nigeria, when the Tongus were migrating from the Niger Delta, as a war ritual in the 16th century, whereby warriors supposedly would offer young virgin girls to the war gods in reciprocal exchange for successful outcomes and safe returns after warfare.<sup>35</sup>

The first transcribed historical record of the word "*trokosi*" is found in the book by Alfred Burdon Ellis titled *The E'we-speaking people of the Slave Coast of West Africa* which was published in 1890.<sup>36</sup> Ellis makes reference to "*edro-kosi*" which is a term used to describe a priest or god. The latter part the word also alludes to a child recruit dedicated or affiliated to that priest or god since the words "*kono*" or "*kosi*" have the connotation of "being unfruitful" in that a *trokosi* is a "child who is lost to her parents" and is consequently subject to the rendering of services to that god or priest. The aforementioned author gives account of a practice whereby "attractive" female *trokosis*, between the ages of ten and twelve years, engaged in prostitution with inmates of male

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<sup>32</sup> Ameh *Child bondage in Ghana* 30.

<sup>33</sup> Ameh *Child bondage in Ghana* 29.

<sup>34</sup> Quashigah 1998 *AJICL* 194.

<sup>35</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 3.

<sup>36</sup> Ellis *The Ewe-Speaking Peoples* 140.

institutions in the temples and at shrine for three years, after which they became public prostitutes.<sup>37</sup> He also affirms the supposition that the children born from these solicited minors belonged to the gods, and by general extension, the temple.<sup>38</sup>

The mention of *trokosi* rematerialised in literature only again in 1919 when Nyagbledsi, a native of Tongu, responded to an inquiry made by the colonial administration in Ghana on the institution and its supposed harms.<sup>39</sup> The findings of the inquiry were primarily that whenever illnesses transpire in families, a young girl, who is about to have her menses, is sent against her will by her family to the shrine in order to appease the fetish.<sup>40</sup> Moreover, it was found that the fetish priests incontestably had sexual intercourse with the girls and that children born from their sexual union would belong to that priest.<sup>41</sup> These girls and their children were coerced to provide free labour to the priest and were for all practical purposes the slaves to the latter.<sup>42</sup> Additionally, the results of the inquiry called attention to the fear that not only the *trokosis*, but also their parents and families had for the priests and the wrath of the gods which was frequently sermonised.<sup>43</sup> Although the colonial government in Ghana did not address or remedy the effects of the findings in the report, the depiction of the custom is, in and of itself, virtually analogous to the indigeneity and common construal of ritual slavery in Ghana today.

*Trokosi* again drew public attention when the Fetish Slaves Liberation Movement (FESLM) initiated another offense on the custom in the latter part of the 1970s.<sup>44</sup> Under the direction of Mark Wisdom, FESLM was heavily castigated for being culturally insensitive and insolent to the indigenous character of Ghana when they assumed a radical and diaconal approach by delivering the fetish priests from evil spirits and

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<sup>37</sup> Ellis *The Ewe-Speaking Peoples* 141.

<sup>38</sup> Ellis *The Ewe-Speaking Peoples* 142.

<sup>39</sup> Nyagbledsi *Letter to the Colonial Secretary of Native Affairs*.

<sup>40</sup> Nyagbledsi *Letter to the Colonial Secretary of Native Affairs*.

<sup>41</sup> Nyagbledsi *Letter to the Colonial Secretary of Native Affairs*.

<sup>42</sup> Nyagbledsi *Letter to the Colonial Secretary of Native Affairs*.

<sup>43</sup> Nyagbledsi *Letter to the Colonial Secretary of Native Affairs*.

<sup>44</sup> Asomah 2015 *AHRLJ* 143.

implored the *trokosi* themselves to come to faith. The endeavour unsurprisingly failed.<sup>45</sup>

In 1995 the realisation transpired amongst leading opponents of the *trokosi* practice that the paucity of recognised published material on the custom itself inhibits the legal reform and ideological contestation thereof.<sup>46</sup> International Needs Ghana (ING), the principal opponent of the custom, initiated a workshop "to create awareness and educate the public on *trokosi*" and "to find a collective solution to end the practice;" other stakeholders such as the *Commission on Human Rights and Administrative Justice* (CHRAJ), the International Federation of Women Lawyers (FIDA), shrine priests, scholars, and policy makers were subsequently assembled to gain insight and a way forward.<sup>47</sup> The two-day workshop engendered the *International Needs' Report of the First National Workshop on the Trokosi System in Ghana*, which is considered to be the first ever major issuance dedicated entirely to *trokosi*.<sup>48</sup> The presentation introduced by the member of the Ghanaian parliament for the Ketu and Volta Regions, Honourable Modestus Ahiable, was diametrically opposed to the submissions made by Anita Ababio and Justice Emile Short, who was a Ghanaian judge and then First Commissioner of the CHRAJ. The prior averred that *trokosi* is legally and ideologically tolerable as it is founded on the principles of the preservation of traditional, indigenous and religious rights, whereas the latter resolutely established that the practice is to be deemed illegal since it incontrovertibly contravenes many international human rights conventions to which Ghana is a signatory.<sup>49</sup> It is, however, significant for the purposes of this study to note there was consensus amongst most stakeholders at the workshop that the solution to ritual slavery in Ghana could best be found not in legislative remedies, but in vigorous educational programmes, counselling, training and rehabilitation.<sup>50</sup>

Provided the discordant interpretations of the nature, types and definition of *trokosi* at the aforementioned workshop, the anti-*trokosi* proponents soon became cognisant of

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<sup>45</sup> Asomah 2015 *AHRLJ* 143.

<sup>46</sup> Ameh *Child bondage in Ghana* 36.

<sup>47</sup> Ameh *Child bondage in Ghana* 37.

<sup>48</sup> Ahiable "The anatomy of Trokosi system in Ghana" 1.

<sup>49</sup> Ahiable "The anatomy of Trokosi system in Ghana" 6.

<sup>50</sup> Ahiable "The anatomy of Trokosi system in Ghana" 6.

the urgent need for elucidative documentation and further research on ritual slavery in Ghana.<sup>51</sup> As a result, ING commissioned in 1995 the *Report on the Trokosi Institution*, which was the first academic exposition entirely dedicated to *trokosi* in Ghana.<sup>52</sup> Its authors, Dovlo and Adzoyi, provided ample insight into the practical workings of *trokosi*, as well as the ontological and religious traditions underlying the practice, but clarification on the exact scope and statistical prevalence thereof were left in want.

ING set in motion another study in 1997- *Baseline Survey on Ritual Bondage in Ghana: The Geographical Spread and Count of Victims*- produced by Dovlo and Kufogbe in an endeavour to "identify and map out the geographical spread of practices that amount to institutional female ritual bondage and estimate the number of woman currently involved in such practices".<sup>53</sup> The survey established that there were 51 *trokosi* shrines spread over three areas in southern Ghana- 43 shrines were found in the Volta Region, 5 in the Greater Accra Region and 3 in the Eastern Region.<sup>54</sup> Dovlo and Kufogbe estimated that there were approximately 4700 *trokosis* at the time, but that most of them were either liberated from, or unconfined to the shrine itself.<sup>55</sup> Although the timely insight brought about by the aforesaid survey is merited, Ameh<sup>56</sup> suggests that the initiative taken by the researchers themselves to reconsider their estimations might signify that their statistics could be inaccurate and should be used with caution and reservation. It is averred that the inaccurate representation of the custom could further be attributed to not only the reticent conduct of the fetish priests, but also to the evident fear *trokosis* have to vocalise any misconduct and exploitation by the prior.<sup>57</sup>

In 1998, ING extended their lobbying capacity on the government of Ghana when they partnered with the Commission on Human Rights and Administrative Justice (CHRAG), the Ghana Law Reform Commission (GLRC), the Ghana National Commission on Children (GNCC), the National Council on Women and Development (NCWD), the National Commission on Culture (NGC), the National Council on Civic Education (NCCE),

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<sup>51</sup> Ameh *Child bondage in Ghana* 38.

<sup>52</sup> Dovlo and Adzoyi "Report on Trokosi Institution".

<sup>53</sup> Dovlo and Kufogbe "Baseline survey on female ritual 'Bondage' " 4.

<sup>54</sup> Dovlo and Kufogbe "Baseline survey on female ritual 'Bondage' " 23-43.

<sup>55</sup> Dovlo and Kufogbe "Baseline survey on female ritual 'Bondage' " 23-43.

<sup>56</sup> Ameh *Child bondage in Ghana* 41.

<sup>57</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 7.

FIDA, Equality Now, Anti-Slavery International and the United Nations Population Fund, Ghana.<sup>58</sup> Against the milieu of humanitarian pressure against ritual servitude, the Ghanaian parliament proscribed "dehumanising customary practices" by subsequently passing the *Criminal Code (Amendment) Act* of 1998<sup>59</sup> which amended the *Criminal Code* 1960 (Act 29)<sup>60</sup> by inserting section 314, which will be discussed below.

Inasmuch as the initiative taken by the Ghanaian parliament to criminalise the practice is in some measure meritorious, it is nevertheless disconcerting to note that, to date,<sup>61</sup> there is no evidence to show that a single shrine holder, fetish priest or accomplice to the customary activities have been arrested, prosecuted or incarcerated for their involvement, whether tacit or explicit, in the *troxorvi* institution.<sup>62</sup> Potential reasons for the supposed dereliction demonstrated by the government of Ghana will be discussed hereunder.

## **2.4 Extant issues pertaining to troxorvi**

### *2.4.1 Current incidence of troxorvi*

As previously stated,<sup>63</sup> young virgin girls are forcibly taken to a fetish priest at a dedicated *troxorvi* shrine in the effort to atone for the sins or offences her close relative may have committed, and thereupon serve as a ritual slave for an indeterminate period of time- some are released after a couple of years, but most serve for the rest of their lives.<sup>64</sup> These offences of committal to the shrine include, but are not limited to, theft, murder, adultery, land litigation, defaulting on outstanding debts, covetousness and even dishonesty- vices that are considered by the E'wes of Ghana to be abominable.<sup>65</sup> Virgin girls, and not boys, are usually consecrated to the priest given that the supposed deity and the priests, who acting as the proxies of said deity, are male and are to have

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<sup>58</sup> Asomah 2015 *AHRLJ* 144.

<sup>59</sup> *Criminal Code Amendment Act* 554 of 1998.

<sup>60</sup> *Criminal Code Act* 29 of 1960.

<sup>61</sup> Howusu *The cry of trokosi girls in Ghana* 2. It is sensible to note that such was the status quo in 2016 and, although this submission is made with reservation, there is no academic literature, newscast or judicial report to suggest that any arrest or prosecution processes have ensued since.

<sup>62</sup> Howusu *The cry of trokosi girls in Ghana* 2.

<sup>63</sup> See paragraph 2.1.

<sup>64</sup> Wiking *From slave wife of the gods* 14.

<sup>65</sup> Ammah, Amos and Mahu 2013 *JEP* 147.

many children with the young women- it is the sacred privilege of the priests to take the minor girls' virginity.<sup>66</sup>

The traditional priests habitually caution families that such retributive action is necessitated in the appeasing of the gods and that non-performance will give effect to the wrath of the latter.<sup>67</sup> According to an empirical study conducted by Dzansi and Biga<sup>68</sup> in 2014, all of the shrine priests that were interviewed maintained that whenever the said deity's anger is invoked, it often results in "the deity beginning a campaign of death in the family of the culprit" until a young virgin girl is brought into servitude. Likewise, most of the interviewed *trokosis* attested to the claims of the priests as they themselves have witnessed family members dying sudden and inexplicable deaths.<sup>69</sup>

#### 2.4.2 *Troxorvi as a system of slavery*

It is again required to note that the practice is commonly referred to as "ritual slavery" and that the virgin girls are labelled the "fetish slaves of the gods".<sup>70</sup> The presupposition here is that services are rendered by the *trokosis* to the priests whilst in servitude, without any remuneration or compensation, and that the prior is the *de facto* slaves of the latter.

Many an account of the undertakings of subjugated *trokosis* at shrines have been affirmed by numerous empirical reports and personal interviews conducted by academia throughout the past two decades, most of which disclose the statements made by ex-*trokosis*. There is, for the most part, indubitable academic consensus that virgin girls are condemned to the shrines where they do hard labour without being compensated for their work. Studies conducted by Dzansi and Biga,<sup>71</sup> Goltzman,<sup>72</sup> Guyárcz,<sup>73</sup> and Wiking<sup>74</sup> concurrently assert that *trokosis* customarily have to cook, clean, fetch water, work in the fields, and do physical farm-related labour without any form of

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<sup>66</sup> Ammah, Amos and Mahu 2013 *JEP* 147.

<sup>67</sup> Ameh *Child bondage in Ghana* 181.

<sup>68</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 6.

<sup>69</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 6.

<sup>70</sup> Asomah 2015 *AHRLJ* 138.

<sup>71</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 6.

<sup>72</sup> Goltzman 1998 *NEICLA* 55.

<sup>73</sup> Gyurácz 2017 *AHRLJ* 98.

<sup>74</sup> Wiking *From slave wife of the gods* 15.

remuneration. In the case where the labour is paid for by a third party, the profits are automatically transferred to the shrine owner.<sup>75</sup>

Trokosis are figuratively shackled to the shrine and the authority of priests for reasons akin to those for which they are initially confined- leverage imposed by the priests and compelled capitulation by the families. In the case of a *trokosi* dying or running away from the shrine, another girl from the same family is to take her place; numerous reports corroborate accounts of girls being the fourth substitute recompensing for the same crime that was committed by a distant relative.<sup>76</sup> It is maintained therefore that *trokosis* are not only forcibly, and without consent, subjected to the institution and its associated harms, but are left without any means of leaving the shrine on their own accord and preference.

#### *2.4.3 Sexual and physical abuse of the trokosis*

As soon as the young girls reach their menses, usually at the age of 12 or 13, they soon become the sex slaves of the priests as intermediary to the gods who are supposedly entitled to the sexual exploitation of the prior.<sup>77</sup> Interviewed priests<sup>78</sup> have orally attested to the fact that *trokosis* are seen as their priestesses who "copulate with the gods through their earthly servants - the priests themselves".<sup>79</sup> The young girls, who have no other choice but to acquiesce to the repeated sexual advances, are often physically assaulted if they refuse intercourse with the priest.<sup>80</sup> No other member of the community may have sexual relations with a *trokosi*, but priests have unlimited licence to have sex with them without any inhibition or reservation.<sup>81</sup> It is remarked that the practice of overtly subjecting a child to sexual exploitation, regardless of its traditional justification, religious quality, cultural relativist character or human rights contraventions, is by any objective metric morally detestable- these young girls have no reproductive rights and are exposed to continual pregnancies without any satisfactory

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<sup>75</sup> Wiking *From slave wife of the gods* 15.

<sup>76</sup> Wiking *From slave wife of the gods* 14.

<sup>77</sup> Goltzman 1998 *NEICLA* 55.

<sup>78</sup> Reference to interviews are done with reservation as this study has not undergone ethical clearance. This study moreover does not serve to corroborate verbal attestations.

<sup>79</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 7.

<sup>80</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 3.

<sup>81</sup> Boaten "The trokosi system in Ghana" 94.

healthcare due to absence of medical facilities at the shrines.<sup>82</sup> Furthermore, *trokosis* are exposed to a high risk of contracting HIV/AIDS and other sexually-transmitted diseases since the fetish priests may have numerous sexual partners.<sup>83</sup>

The priests reportedly have sex with the girls regularly- one account by a priest tells of him fathering over 400 children over a span of 37 years.<sup>84</sup> The born offspring of the slave girl and the priest are called *trokosivivo* who then ineluctably become the slaves of the priest for as long as his or her mother is confined, and sometimes even if the prior had been liberated or released.<sup>85</sup> This phenomenon, yielding increasing generations of *trokosis*, further perpetuates the merciless cycle from which these children struggle to escape.

Dissent or disobedience is heavily and repeatedly punished by the priests. *Trokosis* are customarily whipped or even deprived of food for wrongdoings such as denying the priest sex, insulting other people, declining an order to run errands, leaving the shrine without authorisation or eating the produce without permission.<sup>86</sup>

#### *2.4.4 Deprivation of education and learning opportunities*

Whilst confined to the institution of *troxorvi* and subjected to the practices associated with its shrines, *trokosi* girls are, in some cases at least, denied a formal education and the prospect of becoming literate.<sup>87</sup> As Asomah<sup>88</sup> notes, the *troxorvi* institution extends its deprivative repercussions even to the children of the slave girls given that the fetish priests often have many children with them and cannot afford to send all of them to school or an institution of mainstream learning.

Apart from the religious and traditional milieu against which the committal of *trokosis* to the shrines are usually set, it must be mentioned that some parents prefer ritual servitude to formal institutions of learning, as there is a lack of schools and a functional

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<sup>82</sup> Ababio *Trokosi, woryokwe, cultural and individual rights* 321.

<sup>83</sup> Bastine *The relevance of freedom of association* 27.

<sup>84</sup> Boaten "The trokosi system in Ghana" 95.

<sup>85</sup> Wiking *From slave wife of the gods* 14.

<sup>86</sup> Dzansi and Biga 2014 *Studies of Tribes and Tribals* 3.

<sup>87</sup> Howusu *The cry of trokosi girls in Ghana* 69.

<sup>88</sup> Asomah 2015 *AHRLJ* 139

education system in Ghana, as well as the fact that "national governments are not able to provide the minimum conditions for education".<sup>89</sup> However, the general impression garnered from Asomah<sup>90</sup> is that *trokosis* are deprived of learning primarily due to the nature of the *troxorvi* institution, rather than preferences held by their parents.

#### *2.4.5 Social status of the trokosis and their children*

As a result of the sexual abuse inflicted by the priests, many girls committed to the shrine have also been reported to suffer from severe emotional self-esteem issues which detracts their ability to reintegrate into society after they have been liberated.<sup>91</sup> This is primarily due to an attempt by their immediate community to distance themselves from the victims and also because of the fear of affronting the gods.<sup>92</sup> Quashigah<sup>93</sup> writes that not only the *trokosis*, but their children also, are discriminated against and treated as social rejects.

The aforesaid status quo is evident from what transpired in the Ghanaian case of *Atomo v Tekpetey*.<sup>94</sup> The plaintiff's mother was, for all practical purposes, a *trokosi* who was committed to a *troxorvi* shrine by her family in the appeasing of the gods.<sup>95</sup> After the priest had died and the plaintiff's mother was released from confinement, the latter remarried a man named Atomo Lawer - the natural father of the plaintiff and her sisters.<sup>96</sup> Atomo Lawer, too, passed away after which the defendant claimed to be the only customary successor to the estate of the prior. When the plaintiff and her sisters, who were also born from the *trokosi* mother, submitted a claim to their natural father's estate, the defendant challenged the claim based on arguments founded on customary principles.<sup>97</sup> It was alleged that since their mother was a *wayokwe* (the Dangme word for *trokosi*), all children born to her, even after the death of the priest, will forever be

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<sup>89</sup> Asomah 2015 *AHRLJ* 139

<sup>90</sup> Asomah 2015 *AHRLJ* 139

<sup>91</sup> Ammah, Amos and Mahu 2013 *JEP* 147.

<sup>92</sup> Ammah, Amos and Mahu 2013 *JEP* 147.

<sup>93</sup> Quashigah 1998 *AJICL* 201.

<sup>94</sup> *Atomo v Tekpetey* 740.

<sup>95</sup> *Atomo v Tekpetey* 740.

<sup>96</sup> *Atomo v Tekpetey* 740.

<sup>97</sup> *Atomo v Tekpetey* 740.

considered to be his children.<sup>98</sup> The court rejected the defendant's submission and held that "it would be too harsh a custom to deprive a father of his own natural child merely because the mother had been formerly married to a fetish priest as a *wayokwe*".<sup>99</sup> Although judgment was passed by the courts before ritual slavery was proscribed by the Ghanaian government in 1998, it is maintained that the public stigma and discrimination massed against *trokosis* is palpable, if not even more so, today.<sup>100</sup>

#### 2.4.6 Indifference towards *troxorvi* in Ghana

As previously noted,<sup>101</sup> not one shrine owner or fetish priest associated with the custom of ritual slavery has been arrested or brought to justice since its proscription in 1998. Gyurácz<sup>102</sup> attributes this to a confluence of reasons, but gathers that inadvertence by national human rights mechanisms towards the custom is primarily due to its clandestine character, indistinct religious background, corruption and bribery in the Ghanaian judicial system and the general denial of traditional religious groups. It is further posited that the corruption of the law enforcement officials and an incontrovertible lack of resources in the prosecution of perpetrators yield inaction.<sup>103</sup>

According to the findings of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, the indifference shown by authorities can be attributed to the following:<sup>104</sup>

However, according to information received, local authorities in some districts remain reluctant to enforce the law against ritual servitude fearing popular backlash or negative spiritual consequences for themselves, while some elected politicians fear alienating key constituencies

Ame<sup>105</sup> suggests that the inefficacy ascribed to the arraignment of those associated with the custom is two-fold. Firstly, that there is considerable credence in such traditional crime control systems amongst the E'we people in Ghana- they believe that the "instant justice" mechanisms akin to *troxorvi* are more effectual than the Western-

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<sup>98</sup> *Atomo v Tekpetey* 740.

<sup>99</sup> *Atomo v Tekpetey* 742.

<sup>100</sup> Ammah, Amos and Mahu 2013 *JEP* 151.

<sup>101</sup> Gyurácz 2017 *AHRLJ* 97.

<sup>102</sup> Gyurácz 2017 *AHRLJ* 97.

<sup>103</sup> Ame "Traditional religion, social structure, and children's rights in Ghana" 256.

<sup>104</sup> Special Rapporteur/Shahinian 2014 para 64.

<sup>105</sup> Ame "Traditional religion, social structure, and children's rights in Ghana" 251.

imported criminal justice system- the latter considered to give delayed effect to unsolicited sanctions.<sup>106</sup> Secondly, that *trokosi* as an institution itself carries extensive religious gravity in that its devotees believe in the omniscient and certain nature of the wrath of the *troxorvi* deities.<sup>107</sup>

The Afrikania Mission, an entity acting in pious defence of ritual servitude in Ghana, admits in their own report the following:<sup>108</sup>

Trokosi shrines are a complex of many institutions including healing centres, pharmacies, places of devotional service, refuge sanctuaries, schools, conservatories of culture and morality, lodges of esoteric knowledge and courts for the administration of justice.

Although not explicitly conceded to, it is inferred from the statement above that there is governmental involvement under the veil of the "courts for administration of justice".

Unresponsiveness is further demonstrated by the government of Ghana in that their national and international responsibility to challenge and curtail ritual servitude is devolved to NGO's instead.<sup>109</sup> Moreover, in an attempt to circumvent active engagements against *trokosi*, the government accords political and administrative preference to educational reform concerning the practice rather than law enforcement.<sup>110</sup>

## **2.5 Prevalence of troxorvi in Ghana<sup>111</sup>**

Academic reports on the number of active shrines and subjugated *trokosis* are laden with uncertainty and insufficient findings. As Gyurácz<sup>112</sup> admits, it is virtually unachievable to garner evidence against ritual slavery in West Africa since "there is a crucial lack of reliable data due to the underground and illegal nature of ritual slavery".

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<sup>106</sup> Ame "Traditional religion, social structure, and children's rights in Ghana" 251.

<sup>107</sup> Ame "Traditional religion, social structure, and children's rights in Ghana" 251.

<sup>108</sup> Gyurácz 2017 *AHRLJ* 98.

<sup>109</sup> Asomah 2015 *AHRLJ* 146.

<sup>110</sup> Asomah 2015 *AHRLJ* 146.

<sup>111</sup> No empirical data could be gathered as to the prevalence of the practice in Togo and Benin - there is a strong presumption that no such study has been instituted as of yet. However, it must be mentioned that there is academic consensus that the practice nevertheless prevails in these states.

<sup>112</sup> Gyurácz 2017 *AHRLJ* 97.

The only quantitatively-sound result is found in a recent published statistic provided by Akpabli-Honu.<sup>113</sup>

In 2014 which estimates that there are 33 ritual shrines in the Volta region of Ghana alone, 21 of which are still active and operational. Howusu's<sup>114</sup> empirical findings in 2016 corroborate those established by Akpabli-Honu. In North Tongu, it was found that some of the shrines in Dorfo and Mepe have been liberated or confirmed to be dormant, but that most are still active in the region of Bator.<sup>115</sup> In central and south Tongu, almost all of the shrines were found to be still active in places such as Mafidugame, Dovekpogadzi, Kebenu, Mafi Awakpedome, Agave and Dalive.<sup>116</sup> The regions of Keta and Akatsi house numerous *troxorvi* shrines that are still active in that no endeavour has been made to liberate such establishments by NGO's and the like.<sup>117</sup>

## **2.6 Legal framework of ritual slavery<sup>118</sup>**

### *2.6.1 Arrangement of domestic directives in Ghana*

#### 2.6.1.1 Constitution of the Republic of Ghana

The Constitution of the Republic of Ghana (the Constitution)<sup>119</sup> was approved through national referendum with 92% support from eligible voters in 1992 and deemed to be the supreme law of the country.<sup>120</sup> Article 14 of the Constitution<sup>121</sup> provides that every person shall be entitled to his personal liberty and that no person shall be deprived of it. Cognate to the dialogue relating to ritual slavery, article 16 of the Constitution<sup>122</sup> overtly prohibits slavery in that it declares that no person shall be held in servitude or be required to perform forced labour. Furthermore, for the purposes of delineating

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<sup>113</sup> Akpabli-Honu and Agbanu 2014 *IJHSS* 308.

<sup>114</sup> Howusu *The cry of trokosi girls in Ghana* 11.

<sup>115</sup> Howusu *The cry of trokosi girls in Ghana* 11.

<sup>116</sup> Howusu *The cry of trokosi girls in Ghana* 11.

<sup>117</sup> Howusu *The cry of trokosi girls in Ghana* 11.

<sup>118</sup> Although the normative and legal underpinnings on the prohibition of ritual slavery is to be discussed in Chapter Three hereof, this discussion serves to indicate that the practice itself intuitively stands in direct contrast to other international jurisprudence. This chapter only serves to further elucidate the domestic illegality of the practice over and above such as is described in Chapter Three.

<sup>119</sup> *Constitution of the Republic of Ghana*, 1992.

<sup>120</sup> Aye 2013 *The Round Table* 259-280.

<sup>121</sup> Article 14 of the *Constitution of the Republic of Ghana*, 1992.

<sup>122</sup> Article 16 of the *Constitution of the Republic of Ghana*, 1992.

Ghana's constitutional commitment to children specifically, it is essential to make reference to article 27 of the Constitution<sup>123</sup> which states the following:

(1) Parliament shall enact such laws necessary to ensure that-...(c) parents undertake their natural right and obligation of care, maintenance and upbringing of their children in cooperation with such institution as Parliament may, by law, prescribe in such manner that in all cases the interest of the child is paramount; (d) children and young person's receive special protection against exposure to physical and moral hazards...(2) Every child has the right to be protected from engaging in work that constitutes a threat to his health, education and development (3) A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment (4) 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 (5) for the purposes of this article, 'child' means a person below the age of eighteen years.

#### 2.6.1.2 National legislation

The *Children's Act* 560 of 1998<sup>124</sup> is considered to be a broad and comprehensive act which consolidates most Ghanaian bills relating to children and further fortifies the law on ritual servitude.<sup>125</sup> For the purpose of conciseness, a broad overview is hereunder afforded to the act. Most importantly, the best interest of the child principle is explicitly and unambiguously endorsed by section 2 of the *Children's Act*<sup>126</sup> which states that "(1) the best interest of the child shall be paramount in any matter concerning a child" and "(2) the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child". Moreover, sections 6(1)<sup>127</sup> and 6(2)<sup>128</sup> of the *Children's Act* establish the parental duty and responsibility towards children which states respectively that no parent shall deprive a child of his welfare, and that every child has the right to life, dignity, liberty and education from his parents. Sections 6(3)(a)<sup>129</sup> and (b)<sup>130</sup> affirm a positive obligation on parents in that:

Every parent has rights and responsibilities whether imposed by law or otherwise towards his child which include a duty to – (a) protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression; (b) provide good guidance,

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<sup>123</sup> Article 27 of the *Constitution of the Republic of Ghana*, 1992.

<sup>124</sup> *Children's Act* 560 of 1998 (hereinafter the *Children's Act*).

<sup>125</sup> Ameh *Child bondage in Ghana* 257.

<sup>126</sup> Section 2 of the *Children's Act*.

<sup>127</sup> Section 6(1) of the *Children's Act*.

<sup>128</sup> Section 6(2) of the *Children's Act*.

<sup>129</sup> Section 6(3)(a) of the *Children's Act*.

<sup>130</sup> Section 6(3)(b) of the *Children's Act*.

care, assistance and maintenance for the child and assurance of the child's survival and development...

Children are also protected against exploitative labour under section 12<sup>131</sup> and section 87<sup>132</sup> of the *Children's Act*, which classifies labour as exploitative if it "deprives a child of its health, education and development".<sup>133</sup> As deemed pertinent in the auxiliary scope of this study, it is worth referencing section 3<sup>134</sup> which prohibits discrimination against a child on the grounds of religion or ethnic origin, section 8<sup>135</sup> which protects the child's right to education and well-being and section 13(1)<sup>136</sup> which proscribes the torture and degrading treatment of a child, including "any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child".

As previously mentioned, the *Criminal Code (Amendment) Act* 554 of 1998<sup>137</sup> which amended the *Criminal Code* of 1960 (Act 29)<sup>138</sup> introduced section 314A<sup>139</sup> which states that:

(a) whoever sends to or receives at any place or (b) participates in or is concerned in any ritual or customary activity in respect of any person with the person 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

As is derived from section 314A,<sup>140</sup> the Ghanaian penal code overtly imposes retributory action against *trokosi* as the institution and the practice, by its very nature, falls within the definitional ambit of "ritual or customary activity" which subjects a person "to any form of forced labour related to a customary ritual". The general practice related to such ritual subjugation, with specific reference to terms such as "sends", "receives" or "participates", is jurisprudentially classified as an offence, and therefore warrants punitive action.

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<sup>131</sup> Section 12 of the *Children's Act*.

<sup>132</sup> Section 87 of the *Children's Act*.

<sup>133</sup> Section 87(2) of the *Children's Act*.

<sup>134</sup> Section 3 of the *Children's Act*.

<sup>135</sup> Section 8 of the *Children's Act*.

<sup>136</sup> Section 13(1) of the *Children's Act*.

<sup>137</sup> *Criminal Code Amendment Act* 554 of 1998.

<sup>138</sup> *Criminal Code Act* 29 of 1960.

<sup>139</sup> Section 314 of the *Criminal Code Amendment Act* 554 of 1998.

<sup>140</sup> Section 314 of the *Criminal Code Amendment Act* 554 of 1998.

## 2.6.2 Ghana's international and regional commitments

Article 37(3),<sup>141</sup> read within the context of article 37(2)<sup>142</sup> of the *Constitution*, assumes a dualist approach to international and regional law in that it maintains that the state shall enact appropriate laws which are "guided by international human rights instruments which recognises and apply particular categories of basic human rights to developmental processes". Additionally, the Ghanaian government must "promote respect for international law and treaty obligations" under article 40(c) of the *Constitution*.<sup>143</sup>

By virtue of its membership to such organisations as the United Nations (UN), the International Labour Organisation, and the Organisation of African Unity, Ghana and all of its administrative substructures are required to respect the provisions of several international human rights instruments the country ratified.<sup>144</sup> This includes, but is not limited to, the *United Nations Convention on the Rights of Child*<sup>145</sup> (UNCRC), *International Covenant on Civil and Political Rights*<sup>146</sup> (ICCPR), the *First Optional Protocol to the International Covenant on Civil and Political Rights*<sup>147</sup> (Optional Protocol to the ICCPR), *International Covenant on Economic, Social and Cultural Rights*<sup>148</sup> (ICESCR), the *African Charter on Human and People's Rights*<sup>149</sup> (African Charter), the *African Charter on the Rights and Welfare of the Child*<sup>150</sup> (ACRWC) the *Abolition of Forced Labour Convention*<sup>151</sup> and the *Supplementary Convention on the Abolition of Slavery*.<sup>152</sup>

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<sup>141</sup> Article 37(3) of the *Constitution of the Republic of Ghana*, 1992.

<sup>142</sup> Article 37(2) of the *Constitution of the Republic of Ghana*, 1992.

<sup>143</sup> Article 40(c) of the *Constitution of the Republic of Ghana*, 1992.

<sup>144</sup> Republic of Ghana Treaty Manual.

<sup>145</sup> *United Nations Convention on the Rights of the Child* (1990).

<sup>146</sup> *International Covenant on Civil and Political Rights* (1976).

<sup>147</sup> *First Optional Protocol to the International Covenant on Civil and Political Rights* (1976).

<sup>148</sup> *International Covenant on Economic, Social and Cultural Rights* (1976).

<sup>149</sup> *African Charter on Human and People's Rights* (1986).

<sup>150</sup> *African Charter on the Rights and Welfare of the Child* (1990).

<sup>151</sup> *Abolition of Forced Labour Convention* (1957).

<sup>152</sup> *Supplementary Convention on the Abolition of Slavery* (1956).

## **2.7 Conclusion**

Ritual slavery, in the contemporary forms of *troxorvi* in Ghana, *vidomegon* in Benin and *vudusi* in Togo, has historically established itself as a significant cultural-religious practice which is intrinsically linked to the self-determination of certain communities within said countries. Due to the probable inattention and possible neutrality of the states and even the international community, the practice of consecrating young virgin girls to fetish priests still prevails and has proven to be increasingly extant; the minor girls are left without recourse as the states have shown indifference to the eradication thereof.

Ritual slavery presumably operates in overt contravention of many an international legal norm as such can be construed to not only be a form of slavery, it subjects minors to sexual and physical abuse, as well as deprives them of liberty, dignity and education opportunities. Apart from instituting national legislation, Ghana has also acceded to and ratified many international and regional instruments which, presumably, prohibit such customs; the state has nevertheless communicated that it is not to take active and penal measures as it prefers to rely on the private sector to action organic eradication.<sup>153</sup>

The remaining presumption then is that is accepted for states to value competing rights differently and sanction based on such valuations. If, for instance, cultural and religious rights are held in high esteem and considered to be imperative in a certain state, such indifference and subsequent inaction may be warranted. The juxtaposition of competing rights and principles, as well as the jurisprudential effects thereof is to be discussed in the succeeding chapter below.

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<sup>153</sup> Special Rapporteur/Shahinian 2014 para 64.

## **Chapter 3 International, regional and domestic legal framework: protecting children and regulating parental authority**

### **3.1 Introduction**

Despite certain overt proscriptions on harmful cultural and religious practices in Ghana, the matter has not yet been diminished or even addressed in the punitive sense. It is argued then that international and regional rights as well as universal principles find relevance in that more jurisprudential attention must be given so as to address the incidence of ritual slavery in West Africa.

The standard<sup>154</sup> of the best interest of the child is universally recognised and accepted as the principal paradigm when considering all matters directly or indirectly affecting the child and is self-evidently thought to be the mainstay of children's rights and especially the promotion and protection thereof.<sup>155</sup> It established by the UNCRC and the ACRWC not only as a substantive right, but also as a procedural marker and interpretative gauge against which competing rights are measured. The UNCRC is scholastically categorised into provision rights,<sup>156</sup> protection rights (which includes the best interest of the child standard),<sup>157</sup> prevention rights,<sup>158</sup> and participation rights,<sup>159</sup> each with its own legal qualities and inferred responsibilities. Furthermore, the instrument is fundamentally, although not exhaustively, predicated on four essential values. The first being non-discrimination as provided for by article 2,<sup>160</sup> the second is the best interest of the child,<sup>161</sup> the third referring to the right to survival and

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<sup>154</sup> Although admittedly the term 'standard' could potentially denote different legal consequences, the term shall be used interchangeably with concept, principle, *et al.*

<sup>155</sup> Dowuona-Hammond 2014 *UGLJ* 125.

<sup>156</sup> Articles 24, 26 and 28 of the *United Nations Convention on the Rights of the Child* (1990).

<sup>157</sup> Articles 2, 3, 4, 6 and 9 of the *United Nations Convention on the Rights of the Child* (1990).

<sup>158</sup> Articles 16, 19, 34, 36, 11, 35 and 37 of the *United Nations Convention on the Rights of the Child* (1990).

<sup>159</sup> Articles 12 and 14 of the *United Nations Convention on the Rights of the Child* (1990).

<sup>160</sup> Article 2 of the *United Nations Convention on the Rights of the Child* (1990).

<sup>161</sup> Article 3 of the *United Nations Convention on the Rights of the Child* (1990).

development under article 6,<sup>162</sup> and lastly article 12 which provides for the views of the child which is to be respected.<sup>163</sup>

The distinction of the principle of the best interest of the child is evidenced in that it is duly recognised as an essential entitlement by many an international and regional instrument such as the UNCRC and the ACRWC as well as, particularly, the *Constitution of Ghana*.<sup>164</sup> Moreover, in the effort to accord context as to the general character of the standard in Togo and Benin, the constitutional and legislative approach to the best interest of the child will be briefly discussed below.<sup>165</sup>

Considering that the principle is deemed an essential entitlement, it should nevertheless be expected that same would inevitably compete with other civil-political rights such as cultural, religious rights and parental rights within the African context. The question as to the extent of qualification, if at all, of the best interest principle in relation to its presumed qualifiers (cultural and religious rights, et al) must be further expounded so as to ascertain whether the principle enjoys primacy and could consequently be prompted within the context of ritual slavery.

### **3.2 The best interest of the child**

#### *3.2.1 The UNCRC and its normative underpinnings*

##### 3.2.1.1 Brief historical overview of the UNCRC and the best interest of the child

Relative to international human rights at the time, the best interest of the child standard found the *Geneva Declaration on the Rights of the Child* (hereinafter referred to as the 1924 Declaration)<sup>166</sup> to be its pioneering instrument when the League of Nations adopted the document in 1924.<sup>167</sup> Considering that the instrument was established before the "best interest" terminology became as universally ubiquitous as it is today, the 1924 Declaration did not make overt reference to the term, but provided

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<sup>162</sup> Article 6 of the *United Nations Convention on the Rights of the Child* (1990).

<sup>163</sup> Article 12 of the *United Nations Convention on the Rights of the Child* (1990).

<sup>164</sup> Dowuona-Hammond 2014 *UGLJ* 125.

<sup>165</sup> See paras 3.5.1.2 and 3.5.1.3.

<sup>166</sup> *Geneva Declaration on the Rights of the Child* (1924).

<sup>167</sup> *League of Nations OJ Spec Supp* 21 43 (1924).

for predominant principles<sup>168</sup> and recognised in the preamble<sup>169</sup> that "mankind owes the child the best it has to give", which is arguably the ideological and conceptual advent of the standard itself.

The first international instrument that made explicit reference to the term as we recognise it today was the *Declaration of the Rights of the Child*, 1959 (hereinafter referred to as the 1959 Declaration).<sup>170</sup> Principle 2 hereof stated in ensuring that a child enjoys special protection<sup>171</sup> as well as the enactment of laws for that purpose, "the best interest of the child shall be the paramount consideration". However, the terminology used in the *1959 Declaration* supposes that the paramountcy principle is one which is unqualified<sup>172</sup> - this is denoted from the phrasing of the provision to be "the paramount consideration" as opposed to "a paramount consideration". As explicated in detail below, this distinction was found to be especially consequential during the drafting process of the UNCRC.

The UNCRC, which prevails internationally as the substantive bastion of the best interest of the child standard, is considered to be distinct in that it is the most widely ratified human rights treaty on record, and in that no other international instrument has been ratified more rapidly by its signatories.<sup>173</sup> As noted previously, Ghana, Benin and Togo have signed and ratified the convention.

Freeman<sup>174</sup> opines that article 3(1) of the UNCRC<sup>175</sup> is fundamental to not only the convention itself, but to its subsequent provisions – it becomes the primary criterion

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<sup>168</sup> *Geneva Declaration on the Rights of the Child* (1924). The listed principles were, *inter alia*, that the child must be given the material and spiritual means necessary for normal development, that the child must be the first to receive relief in times of distress, and that the child must be protected against every form of exploitation.

<sup>169</sup> Preamble of the *Geneva Declaration on the Rights of the Child* (1924).

<sup>170</sup> *Declaration on the Rights of the Child* (1959).

<sup>171</sup> Principle 2 of the *Declaration on the Rights of the Child* (1959). According to this principle, children "shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner in conditions of freedom and dignity".

<sup>172</sup> Freeman *Article 3* 25.

<sup>173</sup> Boezaart *Child Law* 310.

<sup>174</sup> Freeman *Article 3* 25.

<sup>175</sup> Article 3(1) of the *United Nations Convention on the Rights of the Child* (1989). "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of

when interpreting and giving effect to its later articles. The first draft of the UNCRC closely imitated the 1959 Declaration in that the best interest of the child was to be "the" paramount consideration<sup>176</sup> - this is to infer that whenever the principle is to be judicially adjudicated or administratively performed, it is to be exclusively determinative since the wording implicates only one consideration deemed to be paramount. This inference, which was considered by some delegations at the convention to be problematic, occasioned another revision of article 3(1) which brought about two changes which resulted in the provision as it remains today.

The first change being that the best interest of the child should be "a" primary consideration, which presaged a qualified imperative instead of the original unqualified standard.<sup>177</sup> This change in phrasing is relevant when conflicting rights are contrasted and balanced against one another, and becomes increasingly pertinent as other rights are discoursed in this chapter. If the best interest of the child principle possessed unconditional interpretative privilege, as it did before the subsequent drafts of article 3(1), it is submitted that *trokosi*, which is presumably<sup>178</sup> not in the best interest of the child, would not be afforded the jurisprudential licence to hinge on other legal concepts such as cultural relativism,<sup>179</sup> the right to religion<sup>180</sup> or parental authority<sup>181</sup> as such would de facto be immaterial wherever the practice conflicts with what is in the best interest of the child. *General comment no 14*<sup>182</sup> does, however, consider the place of the principle in the common jurisprudential hierarchy, and state that "primary consideration" means that:<sup>183</sup>

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law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."

<sup>176</sup> Freeman *Article 3* 25.

<sup>177</sup> Freeman *Article 3* 26.

<sup>178</sup> It is noted that, although this finding has not yet been made in this paper, the presumption exists nevertheless that *trokosi* and its ritual counterparts are irreconcilable with the standard of the best interest of the child.

<sup>179</sup> See para 3.2.

<sup>180</sup> See para 3.3.

<sup>181</sup> See para 3.4.

<sup>182</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14.

<sup>183</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 40.

...the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.

The second change brought about by the revised article 3(1) was the inclusion "legislative bodies" as another entity that undertakes official action concerning children. This addition significantly extends the scope of the best interest of the child since, by implication, the parliamentary, law-making and statutory bodies are to be involved in realising the principle.<sup>184</sup>

### 3.2.1.2 Legal character of the principle under the UNCRC

*General comment no 14*,<sup>185</sup> was adopted by the Committee on the Rights of the Children in 2013 and designed to extend comprehension as to how the best interest of the child principle is to be applied, assessed and implemented.<sup>186</sup> Although the document does not give inference to the exact definition of what exactly constitutes the best interest, it does nevertheless acknowledge that the concept is complex and commissions the judicial, legislative and even executive authorities with the duty to "clarify the concept and make concrete use thereof", as well as to ascertain its content on a case-by-case basis.<sup>187</sup> It is therefore the signatory State's inherent obligation to apply and clarify the standard subjectively when adopting methods for its implementation.<sup>188</sup> Notwithstanding the flexibility and adaptability of the concept, Eekelaar's<sup>189</sup> abstracted definition of best interest includes concepts such as "physical, emotional and intellectual care" as well as developmental interests so as "to enter adulthood as far as possible without disadvantage". Especially germane to the addressing of *trokosi* which is objectively an issue affecting many children, *General*

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<sup>184</sup> Freeman *Article 3* 26.

<sup>185</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14.

<sup>186</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 12.

<sup>187</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 32.

<sup>188</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 33.

<sup>189</sup> Eekelaar 1992 *IJLPF* 230.

*comment no 14*<sup>190</sup> states that whenever a collective decision is made, the best interest of children must be assessed generally in light of their circumstances.

The principle is conceptualised to be a substantive right in that it serves to be applied and convey gravity whenever decisions are made which concerns the child or children in the collective, – it can be invoked as a right before a court of law and institutes a positive obligation on the state.<sup>191</sup> Moreover, the principle itself is self-executing and can be relied on when brought before a judicial body.<sup>192</sup>

It is also interpretative in character in that, wherever a legal principle exists which is open to sundry interpretations, the understanding thereof must be such that the best interest of the child is best served.<sup>193</sup> Proponents of *trokosi*, and its survival as a practice, have in the past amalgamated the best interest of the child with other rights by claiming that it is inherently also in the best interest of the child to participate in such practices that are inextricably linked to the culture, religion and traditions of his or her community.<sup>194</sup> Considering that the construal of the best interest of the child must be done in a manner that best serves the child, the aforesaid argument made by the *trokosi* proponents is objectively true, but it is averred that subjectively, which is to say that the practice is considered with due cognisance of the reality in which it occurs, such an interpretation of the principle is fallacious.<sup>195</sup>

Finally, the standard operates also as a rule of procedure - it must be assessed and gauged as a matter of procedural guarantee that it has been taken into account in all matters concerning the child.<sup>196</sup> Not only are signatory states obligated to conduct evaluations relating to positive and negative impacts on children during a decision-

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<sup>190</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14.

<sup>191</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 6(a).

<sup>192</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 6(a).

<sup>193</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 6(b).

<sup>194</sup> Ahiabile "The anatomy of Trokosi system in Ghana" 6.

<sup>195</sup> This submission is merely a postulation of the legal position, and can only be verified once the other competing rights have been duly evaluated and compared.

<sup>196</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 6(c).

making process, but it must "explicitly be weighed against other considerations, be they broad issues of policy or individual cases".<sup>197</sup> As noted previously,<sup>198</sup> the reluctance of the Ghanaian government to prosecute actors involved in *trokosi* is ascribed to the purported resistance from communities that would supersede the penal action itself.<sup>199</sup> However, there is no indication that, as a broad issue of policy, the state decision makers participated at all in any procedural deliberation concerning the best interest principle.<sup>200</sup>

The principle itself serves to address any contravention, such as presumably *trokosi*, against a substantive, normative and procedurally sound *modus*. From the general application of the principle, it can be derived that such is not used solely as a juridical mechanism for the purposes of ensuring administrative functionality, parental responsibility or governmental accountability, but also the yardstick against which governmental and private conduct is appraised whenever decisions are made that could affect the child individually or children as a collective.

### *3.2.2 The ACRWC and its normative underpinnings*

While not as widely ratified as the UNCRC, the ACRWC<sup>201</sup> is a regional convention that was adopted in 1990 and to which African state parties pledge<sup>202</sup> their commitment to children's rights in Africa.<sup>203</sup> The outline and general functioning of the instrument is akin to that of the UNCRC,<sup>204</sup> but differs slightly in wording and application. The need and significance of ratifying the ACRWC have been widely examined and the document has been critiqued for being a mere replication of the UNCRC.<sup>205</sup> Article 1(2) of the ACRWC does, however, provide that the charter itself cannot be interpreted in such a

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<sup>197</sup> Committee on the Rights of the Child General Comment no 14 on the right of the child to have his or her best interest taken as a primary consideration CRC/C/CG/14 para 6(c).

<sup>198</sup> See para 2.3.6.

<sup>199</sup> Ame "Traditional religion, social structure, and children's rights in Ghana" 251.

<sup>200</sup> Ame "Traditional religion, social structure, and children's rights in Ghana" 251. This matter is to be discussed in detail at para 3.1.2.3.

<sup>201</sup> *African Charter on the Rights and Welfare of the Child* (1990).

<sup>202</sup> Ghana, Togo and Benin have signed and ratified the *African Charter on the Rights and the Welfare of the Child*. See Epstein *Greenwood Encyclopedia* 515.

<sup>203</sup> Brems *Human Rights* 137.

<sup>204</sup> Ekundayo 2015 *IJHSS* 149.

<sup>205</sup> Mezmur 2008 *SAPL* 2.

manner that it would render other instruments, such as the UNCRC, less conducive and beneficial to the realisation of children's rights- that is to say that the charter is to be read in tandem with other instruments, and that the interpretation which is most beneficial to the child then retains primacy. The intended purpose of the ACRWC was not to stand in opposition of the UNCRC, it in fact serves to enhance and compliment it.<sup>206</sup>

The first principal difference is that the ACRWC accentuates provisions pertaining to problems experienced by African children particularly. For instance, article 21 of the ACRWC<sup>207</sup> makes overt reference to "harmful cultural practices and customs". In contrast to the normative disposition of the UNCRC, children also have responsibilities under the ACRWC in that they are to "work for the cohesion of the family", "to respect parents, superiors and elders at all times",<sup>208</sup> as well as "to preserve and strengthen African cultural values in relation to other members of the society, in the spirit of tolerance, dialogue and consultation".<sup>209</sup> From the aforementioned differences, as was noted by Mezmur,<sup>210</sup> the ACRWC reflects the UNCRC in principle, but additionally emphasises familial responsibilities and cultural significance relative to the African community.

Article 4(1) of the ACRWC<sup>211</sup> asserts the best interest of the child principle and states that "in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration". The provision closely resembles that of article 3(1) of the UNCRC in content, with the exception of the article "the". Notwithstanding the implication of the "the" as opposed to "a" as already discussed above,<sup>212</sup> Ekundayo<sup>213</sup> suggests that the terminology of "the" as opposed to "a" in the ACRWC imposes a higher standard than that of the UNCRC. This suggestion is

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<sup>206</sup> Olowu 2002 *IJCR* 128.

<sup>207</sup> Article 21 of the *African Charter on the Rights and the Welfare of the Child* (1990).

<sup>208</sup> Article 31(a) of the *African Charter on the Rights and the Welfare of the Child* (1990).

<sup>209</sup> Article 31(d) of the *African Charter on the Rights and the Welfare of the Child* (1990).

<sup>210</sup> Mezmur 2008 *SAPL* 2.

<sup>211</sup> Article 4(1) of the *African Charter on the Rights and the Welfare of the Child* (1990).

<sup>212</sup> See para 3.1.2.1.

<sup>213</sup> Ekundayo 2015 *IJHSS* 149.

corroborated by Skelton<sup>214</sup> when she posits that where there is a right competing with the best interest of the child standard, heavier consideration must be accorded to the latter.

### 3.2.3 Domestic legislation<sup>215</sup>

#### 3.2.3.1 Ghana

Dowuona-Hammond<sup>216</sup> opines that the standard of the best interest of the child has been accepted and entirely integrated by the formal Ghanaian jurisprudence. Moreover, she notes that the Ghanaian customary law also signposts awareness for children's rights by practices such the traditional imposition on parents and family to secure the child's material, intellectual and psycho-social needs, as well as "the collective approach to the raising and nurturing of children which strongly secures the safety and well-being of children in traditional communities".<sup>217</sup>

As mentioned previously,<sup>218</sup> the *Constitution of Ghana*<sup>219</sup> indicates the state commitment to the best interest principle in that article 28(1)(c)<sup>220</sup> requires for the Ghanaian parliament to enact laws in such a manner "that in all cases the interest of the children is paramount". Admittedly, the constitution itself does not endow children with a substantive or protection right that can be employed in court, but rather imposes a positive obligation on the state to enact laws which, presumably, would have the prior effect.

Section 2 of *Children's Act* indicatively supplements the aforementioned supposition as it references the best interest of the child as a substantive right. Section 2(1)<sup>221</sup> affirms the paramountcy principle and states that the "best interest of the child shall be

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<sup>214</sup> Skelton 2009 *AHRLJ* 486.

<sup>215</sup> Although this mini-dissertation is not delineated as a comparative study, it is nevertheless of merit to consider the domestic position of the best interest of the child in Ghana, and to a lesser extent, Togo and Benin.

<sup>216</sup> Dowuona-Hammond 2014 *UGLJ* 130.

<sup>217</sup> Dowuona-Hammond 2014 *UGLJ* 125.

<sup>218</sup> See para 2.5.1.1.

<sup>219</sup> *Constitution of the Republic of Ghana*, 1996.

<sup>220</sup> Article 28(1)(c) of the *Constitution of the Republic of Ghana*, 1996.

<sup>221</sup> Section 2(1) of the *Children's Act* 560 of 1998.

paramount in any matter concerning a child", whereas section 2(2)<sup>222</sup> directs that "the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child". It is also clear that the substantive provision in section 2(2) concurs with the categorical "the" of the ACRWC as opposed to the qualified "a" of the UNCRC. A slightly varied adaption of the best interest principle features in Ghanaian procedural law - section 18(2)<sup>223</sup> of the *Courts Act* 495 of 1993 (hereinafter referred to as the *Courts Act*) directs that the Ghanaian High Court, in exercising its powers, shall deem the welfare of the infant<sup>224</sup> as a primary consideration.

The Ghanaian courts have not yet detailed the qualification, nature or character of the best interest of the child principle as a matter of normative precedence, but has somewhat expounded the welfare principle even before adoption of the UNCRC and the ACRWC. In the case of *Braun v Mallet*,<sup>225</sup> the court indicated that the term "welfare" in relation to children should be interpreted in its widest sense, as well as that the "moral, religious and physical wellbeing must be considered".<sup>226</sup>

### 3.2.3.2 Togo

According to a report<sup>227</sup> published by the *Committee on the Rights of the Child* on the current legal, judicial and institutional frameworks in Togo, the best interest of the child principle is found in the *Constitution of the Fourth Republic of Togo, 1992* (hereinafter referred to as the *Constitution of Togo*).<sup>228</sup> The report references articles 31,<sup>229</sup> 32<sup>230</sup>

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<sup>222</sup> Section 2(1) of the *Children's Act* 560 of 1998.

<sup>223</sup> Section 18(2) of the *Courts Act* 495 of 1993.

<sup>224</sup> Infant is considered to be a person under the age of eighteen years as per s 18(3) of the *Courts Act* 495 of 1993.

<sup>225</sup> *Braun v Mallet* 1975 1 GLR para 81.

<sup>226</sup> See also *Beckley v Beckley* 1974 1 GLR para 393 and *Grunshie v Acquah* 1965 CC para 59.

<sup>227</sup> CRC/C/OPSC/TGO/1.

<sup>228</sup> *Constitution of the Fourth Republic of Togo, 1992*.

<sup>229</sup> Article 31 of the *Constitution of the Fourth Republic of Togo, 1992*. "The state shall have the obligation to assure the protection of marriage in the family. Parents shall have the duty to train and to educate their children. The state shall support them in this task. Infants shall have the same family and social protection, whether born in or out of wedlock."

<sup>230</sup> Article 32 of the *Constitution of the Fourth Republic of Togo, 1992*. "Children born of either a Togolese mother or father shall be granted Togolese nationality. Other means of attaining citizenship shall be regulated by law."

and 35<sup>231</sup> thereof as evidence of its actuality. However, the aforementioned provisions merely cite children's rights to be protected and educated by their parents, to be granted Togolese nationality and to education – there is no overt mention of the best interest principle. *Ordinance No 80-16 of 1980*<sup>232</sup> also only includes provisions that can be construed, albeit by deduction, to be to the advancement of the best interests of the child as the principle itself is not referenced. It is averred that, even if the standard is extrapolated from the other rights pertaining to children, it still does not constitute the overarching concept that can be utilised in court or in the creation of policy.

The Togolese state has nevertheless ratified the UNCRC and the ACRWC in 1990 and 1998 respectively.<sup>233</sup> Article 140 of the *Constitution of Togo* states:<sup>234</sup>

The treaties or agreements regularly ratified or approved have, on their publication, an authority superior to the laws, under reserve, for each agreement or treaty, of its application by the other party.

This provision confirms that instruments, such as the ACRWC and the UNCRC, have authority that supersedes that of national legislation and that the prior enjoys higher precedence. The best interest of the child is consequently incorporated into Togolese jurisprudence as per the ratified article 3(1) of the UNCRC and article 4 of the ACRWC.

### 3.2.3.3 Benin

Despite the fact that the best interest of the child principle is not explicitly referenced in the *Constitution of the Republic of Benin* (hereinafter referred to as the *Constitution of Benin*),<sup>235</sup> article 147<sup>236</sup> thereof accords ratified instruments primacy over national legislation, just as in the case of Togo. Considering that Benin assumes a monist system, the UNCRC is deemed to be part of the Beninese national legislative structure

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<sup>231</sup> Article 35 of the *Constitution of the Fourth Republic of Togo*, 1992. "The state shall recognize the right of all children to education and shall create conditions favourable to this end. Education is mandatory for children of both sexes until the age of 15 years. The state shall act progressively to assure that public education be free of charge."

<sup>232</sup> *Ordinance No 80-16 of 31 January 1980*. It is furthermore noted that the ordinance itself was passed almost a decade before the Togolese state adopted the UNCRC and the ACRWC.

<sup>233</sup> CRC/C/OPSC/TGO/1.

<sup>234</sup> Article 31 of the *Constitution of the Fourth Republic of Togo*, 1992.

<sup>235</sup> *Constitution of the Republic of Benin*, 1990.

<sup>236</sup> Article 147 of the *Constitution of the Republic of Benin*, 1990.

as the UNCRC has been ratified by Benin and the document has been published in the Official Gazette in 2016, which also allows for the UNCRC to be directly enforceable in courts.<sup>237</sup> The best interest of the child principle is therefore considered to be part of Beninese jurisprudence, albeit by extension under article 3(1) of the UNCRC.

The Beninese government also legislated the *Loi no 2015-08 Portant code de l'enfant en Republique du Benin* (hereinafter referred to as the *2015 Child Code*)<sup>238</sup> which not only includes the full texts of the UNCRC and the ACRWC, but also incorporates many different rights and provisions from an array of previous children's rights documents.

The best interest of the child principle is often referred to in lower courts, especially in relation to child custody matters, but is not overtly cited as a provision of the UNCRC or otherwise.<sup>239</sup> There are no recorded dicta made by Beninese courts to afford greater interpretative substance to the scope of the best interest standard, how it is to be applied or under which circumstances it can be invoked.<sup>240</sup> It is nevertheless clear from the monist application of international jurisprudence in Benin, that the best interests of the child may be invoked as a legal right before the judiciary, as well as a standard before administrative authorities.

### **3.3 The right to culture and religion<sup>241</sup>**

The definitional ambit of cultural and religious rights as well as the jurisprudential metric according to which they are adjudged, are contingent on the comprehension of what culture denotes in a specific community.<sup>242</sup> According to the *Mexico City Declaration on Cultural Policies 1982* (hereinafter referred to as the *Mexico Declaration*), which was also established to ensure collaboration between countries to realise cultural rights, defines a culture to be "the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group, including

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<sup>237</sup> Access to Justice for Children: Benin 1.

<sup>238</sup> *Loi no 2015-08 Portant code de l'enfant en Republique du Benin*, 2015.

<sup>239</sup> Access to Justice for Children: Benin 3.

<sup>240</sup> Access to Justice for Children: Benin 3.

<sup>241</sup> Although the right to culture and religion are admittedly different in historical and normative character, they are protected similarly in Africa and often referenced together as a socio-political right. For the sake of brevity, they are expounded in parallel and interchangeably.

<sup>242</sup> Mubangizi 2004 *AHRLJ* 105.

value systems, traditions and beliefs".<sup>243</sup> Moreover, the *Mexico Declaration* ascribes a person's self-actualisation as moral beings to culture and considers same to be the catalyst for our ability to "discern values and make choices".<sup>244</sup>

From the outset of this discussion, it is of consequence to acknowledge that the Anlo, Ewes and the Dangmes tribes consider the practice of *trokosi*, and its counterparts, to be indissolubly determinative to their culture.<sup>245</sup> The ethnology pertaining to the fetish shrines, including the practice of ritual slavery, is fundamental to the aforesaid communities' ability to discern values and make choices.<sup>246</sup> In subsequence hereto, the best interest of the child competes with the indubitable cultural rights of those practicing and abetting the *troxorvi* traditions.

Article 31(2) of the UNCRC,<sup>247</sup> which is notably relevant to this point in question, imposes a positive obligation on state parties in that:

State parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 27(1) of the *UDHR* expands on this right in that it protects every person's right to participate freely in the cultural life of the community, as well as to the arts.<sup>248</sup> Article 1 of the *ICCPR*<sup>249</sup> provides that all peoples have the right to self-determination, by virtue that they freely pursue their cultural development, a right which, in principle, is also affirmed by article 15 of the *ICESCR*.<sup>250</sup> The universal importance of the right to culture is furthermore evidenced by the fact that it is widely safeguarded by a plethora of different international and regional instruments such as, inter alia, article 13(c) of the

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<sup>243</sup> Preamble of the *Mexico City Declaration on Cultural Policies* (1982).

<sup>244</sup> Preamble of the *Mexico City Declaration on Cultural Policies* (1982).

<sup>245</sup> Asomah 2015 *AHRLJ* 137.

<sup>246</sup> Asomah 2015 *AHRLJ* 137.

<sup>247</sup> Article 31 of the *United Nations Convention on the Rights of the Child* (1989).

<sup>248</sup> Article 27(1) of the *Universal Declaration of Human Rights* (1948).

<sup>249</sup> Article 1 of the *International Covenant on Civil and Political Rights* (1966).

<sup>250</sup> Article 15 *International Covenant on Economic, Social and Cultural Rights*. "The State parties to the present Covenant recognise the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

*Convention on the Elimination of All Forms of Discrimination against Women*,<sup>251</sup> article 30 of the *Convention on the Rights of Persons with Disabilities*,<sup>252</sup> and even article 5(e)(vi) of the *International Convention on the Elimination of All Forms of Racial Discrimination*.<sup>253</sup>

It is, however, the ACRWC which is arguably most germane to dissecting cultural rights in relation to that of the African child. The preamble<sup>254</sup> acknowledges that state parties are to take due consideration of the "virtues of their (the children's) cultural heritage, historical background and the values of the African civilization" which, in turn, is to characterize their interpretation of the welfare principle. Article 12(1)<sup>255</sup> thereof also provides that children are to participate freely in cultural life, whereas article 12(2)<sup>256</sup> also reaffirms the state's obligation to realise that right.

The right to culture, although considered to be an individual right in the *ICCPR*, is also one that is conferred to communities such as the Anlo or Dangmes people who practice *troxorvi*. *General Comment no 21 on the Covenant on Economic, Social and Cultural Rights* (hereinafter referred to as *General Comment 21*),<sup>257</sup> which serves to afford interpretative meaning to article 15 of the *ICESCR*, notes that indigenous people often maintain strong communal sentiments, and that considering that their cultural life is

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<sup>251</sup> Article 13(c) of the *Convention on the Elimination of All Forms of Discrimination against Women* (1971). "State Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (c) The right to participate in recreational activities, sports and all aspects of cultural life."

<sup>252</sup> Article 30 of the *Convention on the Rights of Persons with Disabilities* (2006). "States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities (a) enjoy access to cultural materials in accessible formats."

<sup>253</sup> Article 5(e)(vi) of the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965). "State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following right: (6) Economic, social and cultural rights, in particular: (vi) The right to equal participation in cultural activities."

<sup>254</sup> Preamble of the *African Charter on the Rights and Welfare of the Child* (1990).

<sup>255</sup> Article 12(1) of the *African Charter on the Rights and Welfare of the Child* (1990).

<sup>256</sup> Article 12(1) of the *African Charter on the Rights and Welfare of the Child* (1990).

<sup>257</sup> *United Nations Committee on Economic, Social and Cultural Rights General Comment no 21 Right of everyone to take part in cultural life*.

"indispensable to their existence",<sup>258</sup> the right to culture is to be communal in as much as it is individualistic.

It is admitted, moreover, that adjudicating competing rights<sup>259</sup> can be an onerous task, especially since pronouncements on the "triumphant" right is subject to broad legal interpretation, judicial opinion and even the general convictions of the community. In the case of *Katangese People's v Zaire*,<sup>260</sup> the African Commission on Human and People's Rights even conceded that "all people have a right to self-determination" but that the content of that right can be controversial. However, *General Comment 21* categorically declares that "no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope".<sup>261</sup> Although the aforementioned general comment, as is the case for all general comments, is deemed to be soft law, it does nevertheless afford signatories to the *ICESRC* guidelines as to how the document itself is to be read and understood. It is not by mere inference that cultural rights cannot enjoy primacy over the best interest of the child – it is overtly maintained by the Committee on Economic, Social and Cultural Rights.

Perhaps the most popular contention advanced against international instruments, including the ACRWC, is that the jurisprudential character thereof is neo-colonial and western, in concept as well as application, since it confers certain right to children that are not aligned with African culture and traditions.<sup>262</sup> This assertion is, however, largely abated by the aforementioned preamble of the ACRWC which precisely makes reference and considers Afrocentric culture as a principle whereby the rest of the document is to be interpreted. This position is nonetheless also assimilated into Ghanaian law in that section 13 of the *Children's Act*<sup>263</sup> states the following:

State parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

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<sup>258</sup> *United Nations Committee on Economic, Social and Cultural Rights General Comment no 21 Right of everyone to take part in cultural life* para 36.

<sup>259</sup> Presumably, in this case, the best interest of the child standard versus the right to culture.

<sup>260</sup> *Katangese People's Congress v Zaire* 2000 AHRLR 72.

<sup>261</sup> *United Nations Committee on Economic, Social and Cultural Rights General Comment no 21 Right of everyone to take part in cultural life* para 18.

<sup>262</sup> Lloyd 2002 *AHRLJ* 16.

<sup>263</sup> *Children's Act* 560 of 1998.

The right to culture is undoubtedly revered in Africa – not only as a generic legal directive, but as an essential ethic that befits the communal and traditional value system of the continent. Although the ACRWC indicates that the cultural self-actualisation of the child is certainly in her best interest, such understanding of the rights does not imply that the prior supersedes the latter. On the contrary, international, regional and domestic law (in Ghana) prescribes cultural rights, but is clear that it cannot be used as a normative umbrella to contravene other rights. Sloth-Nielsen and Mezmur<sup>264</sup> opines precisely this point as she states that positive culture "should be harnessed for the advancement of children's rights" but that the benefits of harmful practices are to be weighed against the human rights violation it brings about.

In the endeavour to further expound the pluralist character of human rights in Africa, it is worthy to note that the right to the religion is, for the most part, the normative equivalent of the right to culture – in most legislative directives, said rights are referenced in tandem. The prevailing religions in Africa are Christianity, Islam and traditional belief systems, whereby *troxorvi* is undoubtedly established as a form of the latter. The ACRWC makes overt reference to the right to religion in articles 9(1)<sup>265</sup> as well as 9(3),<sup>266</sup> the latter inferring that states are to respect the right of parents to guide children in the enjoyment of their religious rights. The aforesaid provisions reflect that of article 14(1) of the UNCRC<sup>267</sup> which also directs state parties to respect the child's right to freedom of religion. That right is, however, caveated by article 14(3)<sup>268</sup> which provides that the right to manifest one's religion may be limited if such a manifestation stands in contrast to "public safety, order, health or morals, or the fundamental rights and freedoms of others".

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<sup>264</sup> Sloth-Nielsen and Mezmur 2007 *AHRLJ* 343.

<sup>265</sup> Article 9 of the *African Charter on the Rights and Welfare of the Child* (1990). "Every child shall have the right to freedom of thought, conscience and religion."

<sup>266</sup> Article 9(3) of the *African Charter on the Rights and Welfare of the Child* (1990). "State Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies."

<sup>267</sup> Article 14(1) of the *United Nations Convention on the Rights of the Child* (1989). "State Parties shall respect the right of the child to freedom of thought, conscience and religion."

<sup>268</sup> Article 14(3) of the *United Nations Convention on the Rights of the Child* (1989). "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

Section 21(1)(c) of the *Constitution of Ghana* classifies right to religion as a general fundamental freedom in that "all persons shall have the right to freedom to practice any religion and to manifest such practice".<sup>269</sup> It is noted that the right itself is not merely one that is to be personally actualised as a theoretical idea, but that individuals who subscribe to certain a religion may manifest the practices related thereto.

The practice of *troxorvi*, as well as the necessary subsistence thereof, is often safeguarded under the veil of cultural and religious rights of both parent and child. Such are especially distinguished in Africa as important socio-political rights – even for the child, and although it occupies a revered legal position within the African context, it does not necessarily hold primacy as it is qualified by many other international norms and legislative provisions.

### **3.4 Parental authority**

According to article 5 of the UNCRC,<sup>270</sup> "appropriate direction and guidance" is to be given to a child by parents, members of the extended family as well as "the community provided for by local custom and other persons responsible for the child". Though it does not reference the extension of familial and communal relation as does the UNCRC, article 20 of the ACRWC<sup>271</sup> upholds this notion in that it provides that the primary responsibility for the upbringing of the child lies with the parents, and that their basic concern is to ensure the best interests of the child at all times. Parental authority, as a legal as well as communal guideline in the adjudication of children's rights, is established by the aforementioned provisions as it bestows broad autonomy on parents (as well as the extended family and community) when raising children.<sup>272</sup>

The doctrine of parental authority over children, or the ideal that children are to be subject to the discretion and preferences of their parents and sometimes the patriarchal

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<sup>269</sup> Section 21(1)(c) of the *Constitution of the Republic of Ghana*, 1996.

<sup>270</sup> Article 5 of the *United Nations Convention on the Right of the Child* (1989).

<sup>271</sup> Article 20 of the ACRWC 1990. "Parents or other persons responsible for the child shall have the primary responsibility for the upbringing and development of the child and shall have the duty (a) to ensure that the best interests of the child are their basic concerns at all times; (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child."

<sup>272</sup> Moyo 2012 *AHRLJ* 157.

institution, finds its deeply-rooted conviction in common law practice and historical ethos, especially in contemporary Africa where it is presented that the child is the property of their parents or legal guardians.<sup>273</sup> This discussion is positioned against precisely that ideal in that it is the parents who dedicate their children to ritual slavery in an attempt to appease the gods – the *trokosis'* nexus to the shrines and its purported depravities start with not only the parent's abetment thereof, but especially so when they actively compel their children to participate in the practice itself.

Although the best interest of the child principle is objectively interpreted to be individualistic in nature and application, Moyo<sup>274</sup> suggests that such construal is erroneous and that the principle conveys gravity even when considered in relation to communal rights. It is against this presupposition that he posits that the best interest principle is not to be considered in isolation or individualistically, but in relation to "the totality of the familial arrangements in which the child finds herself".<sup>275</sup> This is to infer that the best interests of children is not realised independently, but often as a product of a domestic relationship as opposed to draconian intrusion by state actors.

Possession rights and control rights are differentiated normatively, whereby the prior infers the custodial entitlement parents would have over a child, and the latter warrants the power and freedom of parents to exert their child-rearing preferences whenever beliefs, communal traditions and societal sentiments are to be instilled.<sup>276</sup> Although admittedly different, *trokosi* constitutes a control right in the same way that, for instance, parents would exert corporal punishment or infant male circumcision on their children.<sup>277</sup> Substantiation of control rights is vested in the conception that it is in the best interest of the child for the state not to be exceedingly prescriptive in child-rearing methods.<sup>278</sup> It proposes that a child's best interest is served when parents have full autonomy to encourage their community's norms in the advancement of societal diversity as well as preference satisfaction which must be accorded to parents due to

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<sup>273</sup> Lloyd 2002 *AHRLJ* 16.

<sup>274</sup> Moyo 2012 *AHRLJ* 142.

<sup>275</sup> Moyo 2012 *AHRLJ* 158.

<sup>276</sup> Dwyer 2010 *LCP* 194.

<sup>277</sup> Dwyer 2010 *LCP* 194.

<sup>278</sup> Dwyer 2010 *LCP* 194.

their child-rearing sacrifices.<sup>279</sup> Common critique against the absolute value of control rights is that its proponents cannot merely ascribe its value to its historical conventionality, but should prove rather that children have the substantive right to be, within the current context, subjected to *trokosi*, and most importantly how the interest of parents would satisfy the validation of that right.<sup>280</sup>

A cogent argument in advancing parental interest and autonomy is one based on the onus imposed on parents to avoid legal or moral accountability for harms their children may perhaps cause others.<sup>281</sup> In the case of ritual slavery, however, such contention would be of no merit since the practice itself cannot forward a parent's pre-emption to ensure that the child does not cause detriment to a third party; *trokosi* is after all not a disciplinary remedy, but rather religious relief sought from fetish priests.

Noggle<sup>282</sup> maintains that the universal construction of parental authority is premised on the ideal that, providing that parents are affecting their parental duties, the child has an inherent obligation to subject herself to that very authority. He does, however, suggest that the caveat to the practically unfettered authority of parents is that state parties are to intervene only if that very authority results in abuse or conduct contrary to the best interest of the exposed child.

The parent-child relationship, regardless of whether it is measured from an anthropological or legal perspective, is disparate from any other fiduciary relationship, in that the agency of the child is limited by the assumed morally-established agency of the parent.<sup>283</sup> In light hereof, it is submitted that parental authority, although normatively and legally bastioned especially in Africa, only validates the consecration of children to fetish shrines by their parents if the latter fulfils its moral agency by doing so. As mentioned previously, section 6(3)(a)<sup>284</sup> and (b)<sup>285</sup> of the Ghanaian *Children's Act* affirms a positive obligation on parents in that "every parent has rights and

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<sup>279</sup> Dwyer 2010 *LCP* 194.

<sup>280</sup> Dwyer 2010 *LCP* 207.

<sup>281</sup> Dwyer 2010 *LCP* 207.

<sup>282</sup> Noggle "Special agents" 2.

<sup>283</sup> Noggle "Special agents" 6.

<sup>284</sup> Section 6(3)(a) of the *Children's Act*.

<sup>285</sup> Section 6(3)(b) of the *Children's Act*.

responsibilities to, *inter alia*, protect the child from neglect, violence and oppression". If the exposing of a child to ritual slavery is proscribed by international as well as domestic dictates, the practice itself cannot be reconciled with the argument of moral agency ascribed to the parent.

### **3.5 Conclusion**

The best interest of the child principle is considered by most to be the bastion of children's rights protection and promotion. State parties are obligated to recognise its primacy, although the extent of such recognition is disputed, as well as ensure that the principle is applied, assessed and implemented so as to concretise same. Considering that there seems to be scholarly dissension as to whether the principle is to be interpreted as qualified or unqualified, it is concluded that the standard itself maintains primacy when placed against competing rights. This is to strongly infer that the best interest of the child is elevated in the hierarchy of substantive rights and that competing rights would seldom, if at all, gain jurisprudential favour over the principle.

The children themselves, their parents, the fetish priests and proponent communities undoubtedly have the right to have and give effect to their cultural and religious beliefs – such is well-established and recognised within the African relativist convictions. Denying these Ghanaian, Togolese and Beninese communities their right to self-actualise as cultural and religious personalities is objectively discordant with the fundamental underpinnings of the international and regional laws. However, it is objectively clear from the aforesaid discussion that such cultural-religious rights would be deemed subject to whether that right is affected in accordance with the best interest of the child principle. It is submitted then the enslavement of minors, sexual and physical abuse of young virgin girls and depriving a child of the opportunity to be educated stands categorical contrast to the best interest of that consecrated child.

Similarly, parental authority as a social concept is revered in African jurisprudence as well as society in general. It mirrors collectivist ideals in Africa and elevates parents to moral agency over their children. However, the concept presupposes that there is in fact moral agency, which is not unqualified – it necessitates that the parent must in fact act in the best interest of the child. Even if it is conceded that a parent truly believes

that he or she is acting in their child's best interest, same cannot apply to *troxorvi*. The pertinent parent does not consecrate her child to the shrine in an endeavour to advance the child's interests, but does so rather in the attempt to appease the gods and elude the wrath of the latter. It is furthermore noted that cultural, religious and parental rights are often compatible with the child's best interest. In the case of *troxorvi*, however, the realisation of the prior rights is diametrically opposed to the best interest principle and cannot be prompted in the defence of the practice or otherwise.

## Chapter 4 State obligations and available legal mechanisms

### 4.1 State obligations to devote effort to its international commitments

#### 4.1.1 Preliminary remarks

As noted previously,<sup>286</sup> the Ghanaian government has shown inaction to address ritual slavery in the country as not prosecution measures have been instituted against the fetish priests, members of the shrine or the parents who commit their minor children to the shrine. Although the state has by implication branded the practice of ritual slavery an offence, the state's evident disdain towards taking punitive steps against the aforesaid actors are attributed to fear of losing the votes of traditionalist constituencies, as well as their self-proclaimed conviction of soft reform rather than retribution. In relation hereto, this discussion seeks to establish whether the states in which ritual slavery is prevalent has an obligation to purposefully attend to the harmful practice by means of active state sanctions.

According to Viljoen,<sup>287</sup> African countries have an infamously deficient record of realising international commitments pertaining to human rights in general – this supposes, as there is no indication of the contrary, that Ghana, Togo and Benin are not the exceptions to the rule. Apart from a lack of reporting to the relevant commissions, albeit prescribed by the conventions *et al*, African countries seem to lack the political willpower to bring about the domestic realisation of their international (and regional) commitments.<sup>288</sup> The ratification of legal instruments have become a superficial practice in Africa as it is politically expected – signatory states are not merely to commit to their formal obligations, but must implement those commitments domestically and address non-compliance of the obligations.<sup>289</sup> Neither the executive authorities nor the judiciaries of monist states such as Togo and Benin have made satisfactory effort to

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<sup>286</sup> See para 2.3.6.

<sup>287</sup> Viljoen *International Human Rights Law in Africa* 568.

<sup>288</sup> Viljoen *International Human Rights Law in Africa* 568.

<sup>289</sup> Viljoen *International Human Rights Law in Africa* 568.

domesticate international human rights law as the courts prefer to utilise such interpretatively as opposed to a realised right.<sup>290</sup>

The *African Charter*, by the very implication of its ratification by African countries, indicated consensus by those countries that there is an established set of regional procedures for the promotion and protection of certain rights, including the obligation on its signatories to realise those rights – it is of limited value if such is not translated into practice.<sup>291</sup> Hereunder shall be discussed the extent to which state parties are obligated to bring about the realisation of their international commitments

#### *4.1.2 Obligation to realise the relevant instrument in good faith*

As is referenced in the *Vienna Convention on the Law of Treaties*,<sup>292</sup> the international law principle, commonly referred to as the *pacta sunt servanda*, refers to the understanding that every treaty is binding on those states and that the relevant treaty is to be performed in good faith. Anyangwe<sup>293</sup> indicates that obligations under the *African Charter*, as well as the ACRWC, are treaty obligations and therefore appropriates the *pacta sunt servanda* principle and its accompanying imperatives.

Obligations are not to be merely politicised to garner international favour, they must in principle be obeyed. Failing to fulfil the said obligations equates to breach of treaty which brings about an external responsibility and does in fact capacitate another State Party to file a complaint with the relevant commission.<sup>294</sup>

#### *4.1.3 Obligation to adopt appropriate measures*

Article 4 of the UNCRC<sup>295</sup> read with article 1 of the ACRWC<sup>296</sup> positively affirms signatory states' obligation to take the necessary steps to "adopt legislative or other measures as may be necessary to give effect" to the respective instruments. In

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<sup>290</sup> Viljoen *International Human Rights Law in Africa* 568.

<sup>291</sup> Anyangwe 1998 *AJICL* 626.

<sup>292</sup> Article 26 of the *Vienna Convention on the Law of Treaties* (1969).

<sup>293</sup> Anyangwe 1998 *AJICL* 628.

<sup>294</sup> Anyangwe 1998 *AJICL* 628. See also para 4.2.1 hereunder.

<sup>295</sup> Article 4 of the *United Nations Convention on the Right of the Child* (1989).

<sup>296</sup> Article 1 of the *African Charter on the Rights and Welfare of the Child* (1990).

elucidating what is meant by "adopt measures", Anyangwe<sup>297</sup> claims that states must "develop and enforce a national legal system protective of human rights and adequate to respond to claims of violation" as well as "enactment and enforcement of individual safeguards and remedies".

It is precisely this supposition that negates Ghana's fortuitous reliance on soft policies with the hope that ritual slavery will come to an organic end. It is submitted that the formal ratification of international and regional instruments, as well as the criminalisation of ritual slavery as a harmful practice does not result in the state's obligation to take appropriate measures if no discernible measures are adopted to bring the initial commitment to fruition. Admittedly, the state allowing NGO's to educate *trokosis* about the practice falls within the ambit of "adopting appropriate measures",<sup>298</sup> but it is nonetheless ineffectual to the extent that the practice itself is not being statistically mitigated or the effects thereof reduced.

Moreover, the UNCRC General Comment no. 5, which specifies the *General Measures of Implementation of the Convention of the Rights of the Child* (hereinafter referred to as General Comment no. 5),<sup>299</sup> provides that legislative measures<sup>300</sup> must be taken and that the rights must be justiciable in that the domestic law of Ghana, Togo and Benin should define in detail so as to facilitate affected children in garnering effective remedy. The inference is also that "children's special and dependent status creates difficulties for them in pursuing remedies for breaches of their rights" and that state parties are to afford special attention "to ensure that there are effective, child-sensitive procedures available to children and their representatives."<sup>301</sup> Importantly the general comment explicitly provides that in the case of breach of applicable rights, there must also be "appropriate reparation".

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<sup>297</sup> Anyangwe 1998 *AJICL* 630.

<sup>298</sup> Anyangwe 1998 *AJICL* 631.

<sup>299</sup> GRC/GC/2005/3 para 24 and 25.

<sup>300</sup> GRC/GC/2005/3 para 18 to 23.

<sup>301</sup> GRC/GC/2005/3 par 24.

#### 4.1.4 *Obligation to promote rights*

The promotion of rights is generally considered to be conscientising the community about their rights by means of media communications, large-scale publications, conferences and similar public awareness initiatives.<sup>302</sup> Although African states are less inclined to promote rights in, for instance, schools by means of educational programmes, Anyangwe<sup>303</sup> acknowledges that human rights education is imperative to the long-term advancement and appreciation of human rights. He posits that "when people know their rights and are aware of the duty they owe to others, they stand a better chance of realising those rights" as well as developing appreciation for human rights in general.<sup>304</sup> In as much as the promotion of rights is meritorious, it is submitted that due to the deeply entrenched cultural necessity to "appease the gods by consecrating a young virgin girl", states realising their obligation to sensitise individuals will have a marginal effect as opposed to, for instance, penal action.

#### 4.1.5 *Obligation to submit periodic reports*

Article 44(1) of the UNCRC<sup>305</sup> and article 43(1) of the ACRWC<sup>306</sup> stipulate that state parties are to submit reports to the Committee<sup>307</sup> on the measures that have been taken to realise the rights of that instrument. The proposed rationale for periodic submissions to said committees is for the latter to monitor the implementation of the relevant instrument and assess the extant contraventions of human rights.<sup>308</sup> State parties are to submit initial reports to explicate general information about the country and the legal framework in terms of which the country functions, after which the state files periodic reports thereafter to update the Committee on how the relevant instrument finds application in that country.<sup>309</sup>

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<sup>302</sup> Anyangwe 1998 *AJICL* 634.

<sup>303</sup> Anyangwe 1998 *AJICL* 630.

<sup>304</sup> Anyangwe 1998 *AJICL* 635.

<sup>305</sup> Article 44(1) of the *United Nations Convention on the Right of the Child* (1989).

<sup>306</sup> Article 43(1) of the *African Charter on the Rights and Welfare of the Child* (1990).

<sup>307</sup> Committee on the Rights of the Child as per the UNCRC; Committee on the Rights and Welfare of the child as per the ACRWC.

<sup>308</sup> Anyangwe 1998 *AJICL* 637.

<sup>309</sup> Anyangwe 1998 *AJICL* 637-638.

Both Viljoen<sup>310</sup> and Anyangwe<sup>311</sup> have indicated that there are patent issues which inhibit the effective actualisation of this obligation. For instance, state parties would seem not to fully grasp the value of the reports and often deliver it mere days before it is to be examined. The commission also habitually makes generic statements as opposed to substantive and well-deliberated pronouncements. In response to the initial report of Ghana, the United Nations Human Rights Committee communicated its evaluation on said report – on the issue of *trokosi*, the Committee asked about its prevalence and continuation, after which the Ghanaian delegation answered that "People who practiced *trokosi* believed that they had to continue with that practice, so the police could not be successful in their interventions".<sup>312</sup> The Committee did not have any follow-up question relating to Ghana's indifference toward the practice.

## **4.2 Extra-national legal mechanisms**

### *4.2.1 The African Commission*

The African Commission on Human and People's Rights (hereinafter referred to as the African Commission), as a regulatory body of the *African Charter* and subsidiary instruments such as the ACRWC, serves to promote, interpret and protect the rights established by those instruments by means of undertaking research, collecting documents, disseminate information and give recommendations to governments.<sup>313</sup> The African Commission intends to, and has in the past, passed many a resolution and recommendation as to provide thematic and substantive content to the application of the African instruments.<sup>314</sup>

The African Commission monitors state parties' compliance with the *African Charter* by way of state reporting mechanisms after which the prior can make general observations on such reports and catalyse constructive dialogue to address and alleviate core issues

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<sup>310</sup> Viljoen *International Human Rights Law in Africa* 568.

<sup>311</sup> Anyangwe 1998 *AJICL* 638-642.

<sup>312</sup> HRC 2016 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20180&LangID=E>.

<sup>313</sup> Article 45 of the *African Charter*.

<sup>314</sup> Dugard *International Law* 562.

pertaining to the contravention of those rights.<sup>315</sup> Thereafter, as a quasi-judicial body, the African Commission provides concluding comments. For the African Commission to consider a matter brought by an individual or an NGO, the case must be deemed admissible as provided for by article 56 of the *African Charter*; conditions for admissibility are non-exhaustively that "communications must not be anonymous, must not be submitted in disparaging language, or be based on news disseminated from mass media".<sup>316</sup> Although discussed in greater detail below,<sup>317</sup> local remedies must also be exhausted. In terms of rule 119(1) of the *Rules of Procedure of the African Commission on Human and People's Rights*,<sup>318</sup> if the matter is considered to be admissible, both the state party as well as the complainant are invited to make argumentative submissions on the merits of the communication, where after the outcome is published in the *Annual Activity Report of the African Commission on Human and People's Rights*.

Moreover, the African Commission's capacity to consider matters is not limited to communications being brought by aggrieved individuals or NGO's – the prior body has its own discretion to investigate major human rights violations, and the admissibility requirements stipulated may be waived if there is *prima facie* evidence of such violation.<sup>319</sup> Considering the extant nature of ritual slavery in West African countries, as well as the countries' inadvertency to address the violations the practice brings about, it is submitted that the African Commission's own initiative to investigate the matter, make a finding and possibly refer its communication to the African Court, would be in the best interest of the *trokosis*.

#### 4.2.2 *The African Committee of Experts on the Rights and Welfare of the Child*

Article 32 of the *ACRWC*<sup>320</sup> establishes the African Committee of Experts on the Rights of and Welfare of the Child (hereinafter referred to as the ACERWC) so as to promote and protect the rights and welfare of the child. Access to the ACERWC is granted

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<sup>315</sup> Evans and Murray *The reporting mechanism of the African Charter* 300.

<sup>316</sup> Article 56 of the *African Charter on Human and People's Rights*.

<sup>317</sup> See para 4.2.2.

<sup>318</sup> Rule 119(1) of the *Rules of Procedure of the African Commission on Human and People's Rights*.

<sup>319</sup> Murray 1999 *NQHR* 109.

<sup>320</sup> Article 32 of the *African Charter on the Rights and Welfare of the Child*.

primarily by way of communications, whereby same can be submitted by a natural or legal person, including a minor, any state party or an NGO.<sup>321</sup> In the event of the communication being of a serious nature or if such signifies a massive violation, the secretariat of the ACERWC shall notify the committee in order for provisional measures to be introduced.<sup>322</sup> The metric for serious, urgent and massive in this regard is determined by the likelihood of irreparable harm being done to a child<sup>323</sup> as well as “whether the situation or harm has been brought to the attention of the relevant authorities or the reasons why it has not been possible to do so.”<sup>324</sup> It is noted that although the irreparability of harm related to *troxorvi* can generally not be contested, urgency to bring the matter before the ACERWC is diminished since the practice has existed for many years.<sup>325</sup> There is, however, no provision<sup>326</sup> which would inhibit aggrieved *trokosis* or supportive NGOs from submitting a communication void of urgent relief, which relief would warrant provisional measures.

Article 45 of the *ACRWC*<sup>327</sup> read with section 15(1) of the *Revised Guidelines for the Consideration of Communications*<sup>328</sup> provides that ACERWC may investigate the matter by any method, including on-site investigations, and request state parties to provide the prior with any information. It is noted that the submitting party, such as a representative of the *trokosis*, would find merit in proposing that the ACERWC attend *troxorvi* shrines and investigate the severity of the issue.

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<sup>321</sup> Section 1(1) of the *African Committee of Experts on the Rights and Welfare of the Child: Revised Guidelines for the Consideration of Communications* (2014).

<sup>322</sup> Section 3(2) of the *African Committee of Experts on the Rights and Welfare of the Child: Revised Guidelines for the Consideration of Communications* (2014).

<sup>323</sup> Section 7(1)(i) of the *African Committee of Experts on the Rights and Welfare of the Child: Revised Guidelines for the Consideration of Communications* (2014).

<sup>324</sup> Section 7(2)(i) of the *African Committee of Experts on the Rights and Welfare of the Child: Revised Guidelines for the Consideration of Communications* (2014).

<sup>325</sup> See par 2.3 above.

<sup>326</sup> The *African Committee of Experts on the Rights and Welfare of the Child: Revised Guidelines for the Consideration of Communications* (2014) indeed provides for guidelines to determine the admissibility of communications. It is nevertheless noted that the scope and ambit of this study does not allow for the determination of the admissibility of a hypothetical communication as such would infer legal question based on the merits and procedural compliance of the communication. It is assumed that a communication brought before the ACERWC would be admissible and that such would comply with the aforesaid guidelines.

<sup>327</sup> Article 45 of the *African Charter on the Rights and Welfare of the Child*.

<sup>328</sup> Section 15(1) of the *African Committee of Experts on the Rights and Welfare of the Child: Revised Guidelines for the Consideration of Communications* (2014).

The ACERWC can also make declarations as was the case in the *Addis Ababa Declaration on Ending Child Marriage in Africa*.<sup>329</sup> Herein, the ACERWC called upon the African Union to, *inter alia*, endorse the aforesaid declaration on ending child marriage, provide the essential budgetary and technical support to aid the ACERWC to advocate for the ending of child marriages on a domestic level and even to monitor the evaluation of progress made by member states.<sup>330</sup> The declaration also implored member states to "operationalize existing legislation relating to child marriage," "develop national action plans" and "ensure that child marriage is tackled in a holistic, multi-sectoral manner, with a balance between preventive and responsive measures." It is averred that such provisions are particularly relevant in the case of *troxorvi* as a similar declaration to the African Union and member states would be advantageous to the addressing of ritual slavery.

#### 4.2.3 *The African Court*

The African Court on Human and People's Rights (hereinafter referred to as the Court) was established in terms of *Article 1 of the Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (hereinafter referred to as the *Court's Protocol*)<sup>331</sup> which came into force in 2004. The Court has jurisdiction to decide "all cases and disputes submitted to it concerning the interpretation and application" of the *African Charter*, the UNCRC and the ACRWC.<sup>332</sup>

As per article 5(1) of the *Court's Protocol*,<sup>333</sup> "the Commission, a state party which has lodged a complaint with the Commission, a state party against whom a complaint has been lodged, a state party whose citizen is a victim of human rights violations and an African Intergovernmental Organisation" may bring their case before the Court to be

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<sup>329</sup> *African Committee of Experts on the Rights and the Welfare of the Child: Declaration on Ending Child Marriage in Africa* (2014).

<sup>330</sup> *African Committee of Experts on the Rights and the Welfare of the Child: Declaration on Ending Child Marriage in Africa* (2014).

<sup>331</sup> Article 1 of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

<sup>332</sup> Article 3 of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

<sup>333</sup> Article 3 of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

adjudicated. NGO's with observer status will also have standing,<sup>334</sup> as well as individuals if the state party has made a special declaration in terms of article 34(6) of the *Court's Protocol* – such cases are, however habitually only considered in cases where the Commission refers the case to the Court, which has judicial discretion to hear the case or not, only after the prior has considered the matter to be referred to the latter. Only Ghana and Benin have made a declaration in terms of article 34(6) of the *Court's Protocol*, whereas Togo has not. This leaves Togolese individuals who are subjected to ritual slavery no remedial action in the Court itself as they cannot bring their matter before it in their own capacity.

Where it is considered to be in the best interest of justice, the entities or individuals who appear before the Court may receive free legal representation,<sup>335</sup> and if the Court finds that a protected right, including the best interest of the child principle has been contravened, it may remedy such contravention by adopting additional measures or grant compensation to the victim. As the Court is considered to be the highest judicial body in Africa, the judgment passed by the Court is final,<sup>336</sup> cannot be appealed,<sup>337</sup> and state parties must comply with said judgment within the time frame provided for by the Court.<sup>338</sup> A nation state's non-compliance as sanctioned by the Court may be referred to the Assembly of the African Union for further consideration.

As Dugard<sup>339</sup> notes, very few cases have been considered on the merits thereof, as many cases are considered and dismissed on procedural issues. Apart from the Court having the necessary jurisdiction to adjudicate the matter, as well as those bringing their application having the requisite *locus standi*, the matter itself must also be admissible before Court. Rule 40(5) of the *Rules of the African Court on Human and People's Rights* establishes the basis on which most cases are dismissed – just as is the

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<sup>334</sup> Article 5 of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

<sup>335</sup> Article 10(2) of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

<sup>336</sup> Article 28 of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

<sup>337</sup> Article 28 of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

<sup>338</sup> Articles 30 of the *Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights* (2004).

<sup>339</sup> Dugard *International Law* 562.

case with the African Commission, it states that applications to the Court can only be filed after exhausting all local remedies, "unless it is obvious that this procedure is unduly prolonged".

In the case of *Article 19 v Eritrea*,<sup>340</sup> the Court affirmed the aforementioned rule and offered further elucidation as to the nature of what is considered to be local remedy. The Court held that "a remedy is considered available if the complainant can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint".<sup>341</sup> The Court also stipulated that for a local remedy to be considered exhausted, an actual attempt for its exhaustion must be made.<sup>342</sup> With consideration afforded to the above, it is submitted that for the victims of ritual slavery to find remedial recourse in the Court, domestic courts in Ghana, Togo and Benin respectively are to be first approached.

### **4.3 Conclusion**

Whenever states ratify international instruments, it cannot be done solely for the sake of diplomatic esteem – there are sundry obligations that come part and parcel with a signatory state's acquiescing to its objectives and provisions. State parties are to obey the prescriptions in good faith and in accordance with the rationale of the ratified instrument. The best interest of the child, for instance, cannot be brought to effect in Ghana if a certain practice is in evident contravention of said principle is not addressed due to cultural or political concerns. Moreover, there is a positive obligation on state parties to act and bring effect to their international commitments. The criminalisation of ritual slavery in Ghana is certainly aligned with the international and regional commitment, but the publicly-acknowledged indifference of the Ghanaian state toward *troxorvi* cannot infer that the prior has brought effect to the *trokosis'* rights.

There exists an acceptable presumption then that the relevant state parties have not satisfied its international obligations and the victims' reliance on domestic judiciaries to provide relief is then examined. Considering then that any local remedy must be readily

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<sup>340</sup> *Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR) 2007.

<sup>341</sup> *Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR) 2007.

<sup>342</sup> *Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR) 2007.

available and must be pursued without impediment, it is again significant to note that the practice has been criminalised in Ghana.<sup>343</sup> This is to infer that the victims cannot bring an application to Ghanaian courts as such would be incompatible with the tenets of criminal procedure as prosecutorial authority lies exclusively with the state. Instead, after the Ghanaian prosecution authorities show inadvertence based on public policy, such inadvertence is tried before another civil court, appealed to an even higher court, only then does a human rights dispute arise and consequently implicates the exhaustion of a local remedy in that no prospect of success is assumed.

Victims of *troxorvi* or NGO's with observer status would be capacitated to apply to the *African Commission* for relief as local remedies cannot be considered to be exhaustible in any instance. After adjudication by the *African Commission*, same can either refer the communication to the *African Court*, or make recommendations to the Ghanaian, Togolese and Beninese governments relating to the mitigation of the effects of the crime; such recommendation could also include that active prosecutorial directives are to be imposed.

## **Chapter 5 Conclusion and recommendations**

### **5.1 Conclusion**

Ritual slavery – a ceremonial mechanism figuratively fettering young children to the preferences and desires of a fetish priest – has impacted minors in West Africa since its conceptual advent. Against the backdrop of international and regional unanimity, the academic presumption is that ritual slavery and its colloquial counterparts in Ghana, Togo and Benin operate in stark contrast to fundamental children's rights and principles, the most pertinent hereof being the best interest of the child. However, an objective answer to the moral validity of the *troxorvi* practice was not methodically investigated in this study – firstly as its anthropological eminence is largely self-explanatory, secondly because the presumption of its iniquity is accepted and lastly because it has already been criminalised in Ghana.

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<sup>343</sup> Section 314 of the *Criminal Code Amendment Act* of 1998.

It is then, against this backdrop, that the actual normative status of the practices relating to ritual slavery was placed within the interpretative framework of competing rights such as the best interest of the child principle, cultural and religious rights as well as parental rights. This comparative never aimed at reaffirming the illegality (internationally or otherwise) of the practice, but served to predicate further jurisprudential analyses as to the basis for its unlawfulness. In addition hereto, analysis of such competing rights advanced criticism against the non-compliant and indifferent conduct of said state governments.

The socio-legal underpinnings of African jurisprudence are for a large part predicated on pluralist and even relativist persuasions. It is therefore predictable for cultural and religious rights to be pitted against the "universalist" best interest of the child principle. The principle, however, exerts its privilege of primacy when pitted against competing rights by virtue of the prior being overtly elevated by international and regional instruments to which these countries are signatories. Although the aforesaid was expected before the study was conducted, the comparative is nevertheless imperative in that the conclusion it brings repudiates the Ghanaian government's defence of its apathy and inaction. This is to say that the executive authorities of Ghana cannot rely on contentions that action would generate criticism or be culturally and religiously "insensitive" – such would evidently be contrary to the best interest of the child principle and strongly infer that the state accords more political gravity to the cultures religions and the parental authority of their constituents than to the legal obligations resulting from their commitment to the paramountcy principle. It is further averred that signatory states should not have ratified the applicable instruments if it was done so solely to garner international favour or appease neighbouring countries, especially when it is void of pragmatic and tangible effect domestically. The best interest of the child principle must prevail and the *trokosis* must be protected, not only in theory, but especially in practice.

Parental authority, as social and legal concept, is imperative to the societal fabrics of nations – such is no exception in African countries and it is submitted that the concept is even more so revered as culturally axiomatic in the latter. However, it would be fallacious to rely on parental authority so as to compete with the best interest of the

child in this case specifically. The latter serves as a guideline to the former in that parents, who have moral agency over their children, raise and nurture according to their discretion. *Troxorvi*, by its very nature, does to suppose that children are committed to shrines because it is in their best interest, it is done so that the parents and families can escape the wrath of the gods. Such nullifies the assumed moral agency and reliance on parental authority.

The Ghanaian, Togolese and Beninese states have an obligation to realise their commitments in good faith and active measures in the realisation of such obligations. This study indicates that the aforementioned countries have not taken reasonable steps to satisfy their obligations in this regard. If, then, the states do not assume operational measures to combat ritual slavery by means of prosecution or otherwise, the *trokosis* must find recourse at the African Commission and eventually, the African Court. It is nevertheless important to acknowledge that the African Court seldom make findings on merits, and orders the respondent states to take active steps and measures.

## **5.2 Recommendations**

Scholastically, it is presumed that the best interest of the child principle is applied as a theoretical and judicial tenet in the discussed West African countries. It is recommended then that the state parties are to adopt a child-centred approach and pragmatically commit to the realisation of measures that would protect children from harmful cultural practices such as *troxorvi*. This is to assume that the adoption of the principle must not be considered to be a mode for diplomatic approval, but should indeed be acceded to and complied with for its own sake as a value structure and imperative guideline.

Section 314 of the Ghanaian *Criminal Code 1960 (Act) 29*, which criminalises *troxorvi* and imposes a minimum sentence of three years, is a statutory provision. However, it is submitted that the persistence of the practice cannot be ascribed to statutory or legislative errors – ritual slavery prevails as a result of indifference and indecisive policy-making. Ghana is therefore to review national policy so as to enable the prosecutorial authorities to bring the fetish priests before a court to be charged, and possibly sentenced.

Togo and Benin must first take legislative measures to criminalise ritual slavery and other cultural practices that are harmful to children, and then also impose measures to realise punitive justice.

Without circumventing state responsibility, the countries may collaborate with NGO's so as to educate children and especially parents about the harm brought about by ritual slavery. This recommendation is, however, offered with reservation as state officials and NGO members would inevitably be forced to convince communities that an intrinsic tenet of their culture and religion is immoral; such measures must be exacted with due consideration that it is a sensitive matter and therefore necessitates sensible and specialised expertise.

The *trokosis*, which would in all probability be represented by observer NGO's and other human rights institutions, should refer the matter to the ACERWC or the African Commission for further investigation. If either of the aforesaid entities so deems it appropriate, it should either address the matter and make robust recommendations or declarations to the non-compliant states, or refer such as a communication to the African Court for further adjudication. The latter, for all theoretical purposes, would have the jurisdiction *ratione* to impose certain obligations on the state parties so as to ensure that active steps are taken. In the event of the ACERWC making a declaration to the African Union, diplomatic measures and budgetary support may also be accorded to the alleviation ritual slavery.

As noted in this study, the African states – Ghana, Benin and Togo being no exception – are recalcitrant in submitting their annual reports to the African Commission and the human rights bodies of the United Nations. In order for said institutions to monitor state parties' compliance with international children's rights, it is imperative for said states to submit their annual reports prudently and timeously so as to enable the prior to give recommendations and provide the necessary resources.

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## **LIST OF ABBREVIATIONS**

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
AHRLJ	African Human Rights Law Journal
AJICL	African Journal of International and Comparative Law
CHRAG	Commission on Human Rights and Administrative Justice
CHRAJ	Commission on Human Rights and Administrative Justice
CJLS	Covenant Journal of Language Studies
FESLM	Fetish Slaves Liberation Movement
FIDA	International Federation of Women Lawyers
GLRC	Ghana Law Reform Commission
GNCC	Ghana National Commission on Children
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IJCR	International Journal of Children's Rights
IJHSS	International Journal of Humanities and Social Sciences
IJLPF	International Journal of Law, Policy and the Family
ING	International Needs Ghana
JEP	Journal of Education and Practice
LCP	Law and Contemporary Problems

NCCE	National Council on Civic Education
NCWD	National Council on Women and Development
NEICLA	New England International and Comparative Law Annual
NGC	National Commission on Culture
NGO	Non-Governmental Organisation
NQHR	Netherlands Quarterly of Human Rights
SAPL	SA Public Law
UDHR	Universal Declaration of Human Rights
UGLJ	University of Ghana Law Journal
UNCRC	United Nations Convention on the Rights of the Child