

Women's Survival in Ghana: What Has Law Got to Do With It?

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Abstract

In the 21st century, women around the world continue to face societal, economic, and sexual adversities, even as the “#MeToo” and “Time’s Up” movements appear to have excited a new tone toward the fight for gender equality and female empowerment. In this context, and in the broader context of liberating women from the oppressive shackles of a world that seems to punish women for their mere existence, this article tackles issues which are mainly peculiar to Ghana, and which have an impact on the equality, empowerment, and survival of women. The article discusses the laws, policies, and regulations that have been established to improve the lives of women in Ghana. It also examines the scourge of dangerous, discriminatory practices such as female genital mutilation, the banishment of suspected witches, and inhumane widowhood rites, which are detrimental to the survival of women in Ghana. The article recognizes that the lack of sustained growth in women’s progress globally, and specifically in Ghana, is due in large part to these discriminatory practices that have muted the voices and perspectives of women in decision-making. The law, therefore, is not enough. Some of the pivotal roles nongovernmental organizations (NGOs) have played to empower women include campaigns to repeal legislation adversely affecting women’s inheritance and to improve the fairness of the Parliamentary process, efforts toward the elimination of *trokosi*, and the initiatives to protect women suspected of witchcraft from humiliation and banishment.

Keywords

women’s studies, sex & gender, sociology, social sciences, crime, law, & deviance, sociology of law, Ghana, survival, development

Introduction

In the eyes of the law, men and women in Ghana appear to have equal rights; however, a closer look at life in Ghana reveals the harsh reality of an endemic state of gender inequality in all facets of life, so to speak. In a country where female genital mutilation (FGM), banishment of suspected witches (U.S. Department of State, 2008), and inhumane widowhood rites (United Nations Development Programme [UNDP], 2007) continue to be widely practiced and tolerated despite prohibitive legislation in Section 69A of the 1960 Criminal Offences Act, it is clear that laws alone are insufficient to improve women’s lives. Women in Ghana suffer from sustained harmful customary practices and gender inequality, which requires something more than the creation of largely unenforced laws and the signing of aspirational treaties. Although the jury is still out on whether these practices represent authentic cultural practices in Africa or a jaundiced exhibition of how things used to be, the fact remains that these legally unacceptable practices persist in many parts of the country, especially in the rural areas (Atindanbila et al., 2014).

It is important to continue to enact and adapt existing laws to meet the needs of its citizens as well as involve

stakeholders to effect change from the grassroots level. The problem of disparate treatment of women is of course not limited to Ghana, or even limited to developing countries. Gender inequality, to varying degrees, is a global problem and deserves careful examination.

Assessing the laws of a nation can provide an initial starting point to examine the way its society treats women. Generally, the nation-state, an all-encompassing and veritable octopus in its reach and power, has become an immutable framework for the organization of people, the generation and distribution of resources, and the management of conflict. States have found no better instrument than law, however structured and wherever contained, for implementing policies aimed at changing or transforming society. Thus, the

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instrument for the creation and ordering of individual and institutional relationships and the distribution of resources has always been, and continues to be, the law. This conclusion imposes tremendous responsibility on legal institutions.

Law within a state tends to include everything that is required, permitted, condoned, discouraged, or disallowed within a society, whether citizens are aware of the laws and violate them intentionally or unintentionally. In other words, we often look to the law for the legitimacy of our actions and inactions. It follows that a fertile base for any improvement in the condition of women is the transformation of the laws that define the relationships between individuals and institutions and the distribution of resources in ways that legitimize gender inequality, thereby impeding women's survival in Ghana. To be clear, the issue of inequality goes beyond laws that explicitly discriminate and also involves laws that should explicitly advocate for women but fail to do so.

Having started with the law, it quickly becomes apparent that legislation alone is sometimes deficient in pushing for a change of the harsh reality of the discrimination women face in Ghana. The duty also devolves on activists to look beyond the current state of the law and take additional steps in communities to demand an end to degrading and discriminatory practices that violate the rights of women. Against this background, objectives of this article are the following:

1. Critically analyze the laws, policies, and regulations that have been established to improve the lives of women in Ghana.
2. Examine the scourge of dangerous and discriminatory customary practices which are detrimental to women in Ghana.

Method

This is a conceptual article. Therefore, we adopted a desk review of existing articles, books, government reports, policy documents and parliamentary proceedings, law reports, and other relevant documentation on women empowerment specific to the Ghanaian context. Both peer-reviewed and gray literature were consulted. Based on the literature analysis and our understanding of women's issues, we offer a critical perspective on the survival of women in Ghana and the discriminatory practices they face daily.

Law and Organizing as Liberator: Steps for Effective Political and Legal Action to Improve the Status of Women

Where patriarchy is entrenched and institutionalized in the structures of a state and the psyche of people, what is required is not merely legislation but effective organizing to make progress toward equality for all. Law provides authority to make change and legitimizes the actions that are taken in the direction of change. However, law alone is insufficient for

real change. History abounds with instances where rights and entitlements have been successfully enacted into legislation, but remain unavailable for certain constituencies. In the United States, several constitutional rights were denied to African Americans for centuries. Following the civil war, numerous constitutional amendments were passed extending basic civil rights to include African Americans; however, these were largely unenforced and African Americans continued to be denied basic rights of citizenship. In the second half of the 20th century, stronger legislation was implemented and the civil rights movement was more successful. In most African countries, including Ghana, the trend has been for governments to legislate rights and entitlements with no intention or commitment to serious enforcement. Some countries pass legislation to meet certain international standards as a prerequisite for accessing loans and grants from the international community (Kosack, 2008). Other countries make laws to silence in-country rights and social justice activists and to help ensure election victories, when citizens mistakenly perceive enacted laws as concrete promises that will be kept. Central to this sophisticated ploy is a government's justifications of inaction due to a lack of resources to adequately provide the rights and entitlements that have been legislated (Okin, 2000).

An Introduction to the Ghanaian Legal System and Its Effort at Gender Equality

The Ghanaian legal system is based heavily on British common law (including procedures, rules, traditions and practices), inherited during colonial times; even though it has undergone significant amendments through statutory implementation and the Constitution (Manteaw, 2003). Although English case law is not binding on the Ghanaian court system, English cases are often cited and considered as persuasive authority to support propositions of law. Ghanaian law comprises the Constitution; Parliamentary enactments; orders, rules, and regulations created by any authority or person acting under conferred power of the Constitution or an Act of Parliament; and the Common Law (defined to include Customary Law).

The British colonialists infused their homeland legal systems into their colonies, including Ghana, but created room for the retention of customary law and judicial processes not deemed contrary to British views on justice or morality (Kuruk, 2007). A dualistic judiciary in which British dignitaries presided over the civil court system and traditional chiefs or local elders presided over the statutorily created customary law courts (which only had jurisdiction over Africans) emerged. The traditional adjudication system, pre-dating colonialism, was not abolished. Eventually the two judicial branches fused, with the general civil courts taking on a supervisory role over the customary court system. Thus, common law in Ghana, as described by the 1992 Constitution, includes customary law. Also, traditional chiefs and elders

became less involved in the customary courts as young magistrates trained in law began to get involved. The 1992 Constitution defines customary law as “rules of law which by custom are applicable to particular communities in Ghana.”

Acting as an independent governmental branch, the Judiciary is subject only to the Constitution and is accordingly immune from Presidential or Parliamentarian interference (Manteaw, 2003). Structurally, the Judiciary enjoys a significant amount of autonomy. The 1992 Constitution grants the Judiciary jurisdiction in all civil and criminal matters. The Judiciary comprises Lower (Circuit Courts and District Courts) and Superior Courts (the Supreme Court, the Court of Appeal, the High Court, and the Regional Tribunals).

In an effort to implement gender equality into its legal system, Ghana has adopted a treaty, multiple statutes, and established a government agency to address the problem of gender inequality—Ministry of Gender, Children, and Social Protection. The international Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by Ghana in 1986. It defines discrimination against women as

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

Ghana’s domestic laws further supplement the international legal obligations on gender equality by mandating equality and equal access in various realms, including equality in law, right to education, legal age of marriage, divorce proceedings, land rights, and inheritance.

In addition, the Ministry of Women and Children’s Affairs (MOWAC) was established in 2001, with a mandate to initiate, coordinate, and monitor gender responsive issues in an effort to ensure equal rights for women. MOWAC, re-christened the Ministry of Women, Children and Social Protection, is also charged with promoting children’s rights and the protection of vulnerable segments of the society such as persons with disability and the aged. Accordingly, the Ministry is specifically mandated to

initiate/formulate policies and promote gender mainstreaming across all sectors that will lead to the achievement of gender equality and empowerment of women, survival, development and growth of children as well as ensuring the protection of the rights of women and children. (Mahama, 2006)

Despite its assent to international treaties and the existence of the MOWAC, the government often uses the lack of resources as an excuse for the lack of enforcement of laws or entitlement fulfillment. Countering a government’s resource availability scapegoating as an excuse for not implementing changes is a crucial first step for advocates. The relevant

question for the government should not be, “where do we get enough money to enforce all these rights and entitlements?” but rather, “to what extent can we enforce these rights and entitlements with the resources we have and can generate?” This is an important paradigm shift for the government to acknowledge its responsibility and work proactively to secure changes instead of continually justifying inaction on account of financial constraints. Compelling the fulfillment of promises made by the government the Constitution and other legislation should be the primary focus of constituents and activist organizations, such as NGOs. These include the domestic and international legal obligations of working to eliminate gender discrimination, which Ghana agreed to in ratifying the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

The Lack of Customary Change Despite the Enactment of Laws and the Continued Burgeoning of Gender Inequality

Despite the significant advocacy work of nongovernmental organizations (NGOs) and other organizations toward enhancing gender equality, several factors continue to hamper effective legal change. The frontline institutions that are responsible for initiating legal change may not, and often do not, initiate real change. Parliament and the Executive may feel pressure to concentrate on the development of law in particular areas due to the influence of private industry and foreign investment, consequently ignoring other areas. There is immense international pressure on the Executive and Legislative branches of government in Ghana to concentrate on reviewing the laws on various aspects of foreign direct investment to make them more investor friendly. The Ghana Free Zones Board, established by the 1995 Free Zone, Act 504, has identified 11 priority sectors in Ghana (Information and Communication Technology, Textile/Apparel Manufacturing, Agro-Food Processing, Seafood Processing, Jewelry/Handicraft Production, Metal/Hand Tool Fabrication, Floriculture, Light Industry/Assembling Plant, Ceramic Tiles Manufacturing, Pharmaceuticals, and Ethnic Beauty Products) in which to attract foreign direct investment (Ghana Free Zones Board, n.d.). Second, perhaps these institutions are unaware or unconvinced of the necessary legal change. Third, the institutions are often unwilling or too timorous, for a variety of reasons, to initiate legislation for social change. For these reasons, some organized activism from forces outside the Legislative and Executive branches is needed to initiate and facilitate necessary social and legal change.

While some obstacles to gender equality in Ghana are created by government’s failure to act, other obstacles emanate from the activities of activists (see section on activists). Unfortunately, some forms of collaborative work potentially

legitimize and reinforce the very power hierarchies sought to be eliminated or reduced. To combat this, groups such as the Gender Centre and the Legal Resources Centre (LRC) utilize a process of participatory social science action research (Newman, 2000). This research methodology aims to engage the persons and groups that bear the brunt of a social problem to better understand the root causes of the social problem (Newman, 2000).

Another seemingly helpful activity that may reinforce gender hierarchies in Ghana is activists' direct appeals to the institutions. In Ghana, activists for gender equality are nearly 100% female. These female activists *appeal* to androcentric, mostly male-staffed institutions for "concessions" and "opportunities" to benefit women. This process reinforces gender hierarchies, disempowering the entire female gender; activists suffer from the following hierarchical characteristics: a weaker power-seeking redress from a person with significantly stronger political power; the discretionary power of the higher authority to grant or refuse the application; and the elements of entreaty, beggarliness, and efforts to attract sympathetic attention. And, if gender activists comprehensively publicize the systemic and structural factors that encumber women's survival, the publicized grievances are often viewed negatively as tireless, whining harangues from an insatiable constituency. Thus, gender activists are seemingly engaged in a perpetual self-defeating struggle to escape the disadvantaged position of women.

In some instances, governments have actually made ephemeral attempts at enforcing the rights and entitlements of women by creating or restructuring institutions to implement rights and entitlements. In Ghana, the National Council on Women and Development (NCWD) was formed in 1975 to focus on the well-being of women. These have taken two suboptimal forms. First, the creation of women staffed institutions to manage welfare programs, independent of national strategies, has resulted in slight benefits for only a small number of women. This gender-based structure creates a sense of "otherness" or "separateness" within the struggle for gender equality, inhibiting the building of a strong coalition of gender activists and potentially moving the struggle from "separate and unequal" to "separate but equal." As long as women's issues are regarded as separate issues in the struggle for national development, gender equality will never transpire. Moreover, these institutions are so often resource-starved that they are incapable of building coalitions or undertaking innovative programs (UNDP, 2007). Second, the integration of women's issues into existing institutional designs has occurred such that institutions pay lip service to gender equality during policy debates. This lip service further disempowers women. These paltry attempts at institutional change, which are merely formal and nonfunctional, serve to salve the conscience of those in power and fill gender activists with a false sense of victory. That this strategy will lull gender activists into a state of inactivity works well to reinforce gender hierarchy.

The Role of Activists and NGOs in Making Progress and Lessons Learned From Previous Efforts

The struggle for women's rights has always had a predominantly politico-legal flavor. Many activists especially from the global south sometimes questioned the definitions of the objectives of their movement (Antrobus, 2004). The struggle has focused on generating political pressure to secure legislation and executive action, aimed at securing gender equality or, occasionally, gender inequality favoring women by way of affirmative action. At the close of the 20th century, the struggle was adopted mostly by epistemic communities (Dowuona-Hammond, 1998) and issue-networks (e.g., voluntary organizations and NGOs). The representation of female citizens, politicians, and lawyers in those groups has been remarkable. Accordingly, law and community organizing are intertwined with women's survival in Ghana. A number of legal changes have directly improved the lives of women in Ghana. The role of activists and organizers in creating and promoting the enforcement of laws must be recognized as significant.

Some of these legislative interventions took place after local groups, supported by international partners and funders, pressured the Executive and the Legislative branches to pass the relevant pieces of legislation. Women in Law and Development in Africa (WiLDAF), the International Federation of Women Lawyers (FIDA), the NCWD, the 31st December Women's Movement (Ofei-Aboagye, 1994), and several other women's rights organizations and activists (including academics) helped fight for the legislative changes. The organizational strategy of epistemic communities and issue networks changed at the close of the last millennium. The type of activism that led to the various legislative changes described above were significantly top-level, including the presentation and distribution of published academic works (including articles, books, papers, and presentations) written by academics and NGOs at national and international symposia and workshops (Ofei-Aboagye, 1994).

Issue networks and epistemic communities have engaged and utilized grassroots type groups and constituencies in their activities by drawing on the vast literature and experience in the area of participatory development, as illustrated by the activities of the Gender Centre and the LRC. Notably, the change in strategy was not an abandonment of top-level activism in favor of grassroots activism, but rather a compromised balance of the complementary strategies. Thus, the Gender Centre for Empowering Development (GenCED) and its partners organized neighborhood support groups and legal services for female victims of violence while working simultaneously with top-level institutions such as the Executive and Parliamentary branches to pass legislation addressing violence against women. Similarly, the LRC provides legal services to women on family law and property

issues while performing top-level advocacy for broader legislative reform in related areas.

The role of these organizations and activists should not end with the passage of laws, but must continue to ensure the enforcement of the laws. The efforts of these organizations are needed beyond the passage of law because law is not enough to substantiate a change in gender inequality. According to the UNDP (2007),

Experience in Ghana has shown that the enactment of laws per se has not addressed the substantive issues which systematically undermine and constrain the ability of excluded groups to participate equally and effectively in social, political and economic life in Ghana. In Ghana, even though formal laws and policies promise equal treatment for all citizens, deep-seated inequities embedded and institutionalized in family and gender systems, informal norms and practices, religious beliefs and political systems influence the way these laws and policies are implemented and often result in unequal outcomes for certain groups.

Enforcement of the laws can be ensured by NGOs and activists in two prominent ways. First, advocacy groups and activists promote compliance by disseminating information about the rule change, encouraging the citizenry, especially women, to insist upon their rights and the rights of their fellow women per the enacted legislation (Ofei-Aboagye, 1994). Second, advocacy groups take steps to directly enforce the new rules in court. Some organizations, such as the LRC, try to combine the dissemination of changes in the law and impact litigation with direct enforcement by suing state agencies to perform certain statutory duties imposed on them by law, the performance of which will impact positively on the well-being of women.

In 2017, a private legal practitioner who specializes in human rights cases (Kbebu, 2017) sought a declaration from the Human Rights Court of Ghana that the Government had a duty under Sections 8(3) and 29 of the Domestic Violence Act to establish a domestic violence fund and to provide, out of that fund, free medical care to victims of domestic violence (Kpebu, 2017). Martin Kpebu, a private legal practitioner in Ghana, argued that the Government was obligated to establish the Fund to provide basic material support for victims of domestic violence and to rescue, rehabilitate, and reintegrate victims of domestic violence. Unfortunately, despite the success of Martin Kpebu's action, the Government of Ghana is yet to meet its statutory obligation and establish the fund (Kpebu, 2017).

In other instances, organizations work with state institutions in a nonconfrontational manner to ensure that legal provisions are enforced. For many years, the LRC, for example, had a formal collaboration with both the Women and Juvenile Unit (WAJU), now the Domestic Violence and Victim Support Unit (DOVVSU) of the Ghana Police Service. Through this formal link, the LRC was able to better ensure that laws such as the Intestate Succession Law, which criminalizes the deprivation of a widow's share of her deceased

husband's estate, were enforced. The following examples illustrate the varied strategies NGOs have used in working toward gender equality.

Efforts by the Gender Centre Toward Enactment of Domestic Violence Law

In 1997, the Gender Studies and Human Rights Documentation Centre (Gender Centre) led a partnership of eight NGOs along with the Trades Union Congress (TUC) to initiate social science research on violence against women and children in Ghana. The exercise involved hundreds of women, men, adolescents, children, practitioners, and opinion leaders. The partnership of NGOs gathered comprehensive information about the topic, including the nature, incidence, and diversity of the phenomena, the social responses to the problem, and ways and means to combat it. In 1999, the partnership released the ground-breaking results (Sam, 2007). The findings indicated that one in three Ghanaian women had experienced physical violence during her life (Sam, 2007). Relating to sexual violence, 33% of the women surveyed had experienced forced sexual touching and 20% reported that their first sexual intercourse experience occurred against their will (Sam, 2007). The partnership helped draft legislation, among other activities, to deal with the problem of domestic violence (Appiah & Cusack, 1999).

The Gender Centre supplemented its research with various educational, advocacy, consciousness raising, and support service activities (Appiah & Cusack, 1999). To bolster its advocacy activities, the Gender Centre furthered its mission of combating domestic violence by establishing a network of women's rights organizations, known as the Network for Women's Rights in Ghana (NETRIGHT).

The value of the Gender Centre's advocacy activities was evident in the creation of legislation regarding domestic violence. Due to the results of the Gender Centre's research findings, the Chairpersons of the Women's Caucus and the Population Caucus of Parliament sponsored a domestic violence bill in May 2000. The memorandum to the proposed Bill revealed that its drafters and sponsors incorporated the results of the Gender Centre's work dedicated to the investigation of violence against women and children in Ghana.

While the Gender Centre's findings were considered to some extent, the proposed Bill suffered from several problems. First, the memorandum and the proposed bill itself were quite androcentric and failed to recognize the reality that the majority of domestic violence victims are women. This is illustrated in a memorandum to the proposed Bill stating that

[v]iolence within the domestic arena takes many forms. Young boys may be victims of sexual and physical abuse. Older and aged family members and the sick and disabled can equally suffer violence in the home. Some husbands and male partners can be attacked by their wives or female partners.

After considering the available statistics, the authors of the memorandum were compelled to acknowledge that the overwhelming majority of victims of domestic violence are women and girls (U.S. Department of State, 2008). Another problem was that the range of solutions to curb the high domestic violence rate in the draft Bill was limited and biased toward nonpunitive remedies. Finally, there was an obvious lack of serious consultation in the process of drafting the bill.

On February 22, 2007, the Ghanaian Parliament passed the long-awaited Domestic Violence Act (DV Act). The DV Act is divided into three parts (Sam, 2007). The first part includes definitions of domestic violence, domestic relationships, prohibition of domestic violence, the kinds of acts which would amount to domestic violence, filing of complaints to the police, police assistance, arrest by police, and arrest by police officer without warrant. The second part makes provision for protection orders and details the jurisdiction of the courts in domestic violence matters, how to make an application for protection order, the conduct of court proceedings, interim protection orders, grant of protection order, duration of such an order, reference to family tribunal, and the power to discharge protection order. The third part consists of miscellaneous provisions describing how the criminal code relates to the domestic violence act, promotion of reconciliation by the courts, publication of proceedings, criminal charges, civil claim for damages, regulations and interpretation, sources of money for the Fund, and management of the fund. A significant addition to the Bill is the allocation of funds to establish the Victims of Domestic Violence Support Fund.

Although the passing of the updated DV Act has provided protection for women and is seen as a progressive law, many supporters were disappointed that significant compromises were made to the Bill and therefore remain skeptical of effective implementation. Succumbing to public pressure, Parliament altered the meaning of domestic violence that explicitly countered the old formulation of Section 42(g) of the Criminal Code which had, for years, allowed what amounts to marital rape. Although there is some ambiguity in the language and some have argued the definition of domestic violence includes marital rape, a strong argument can be articulated to contradict this. In addition, this Bill, like similar laws discussed, is likely to be ineffective without proper implementation and community support.

LRC's Efforts to Repeal Law on Unfair Treatment of Muslim Women

Another example of the process of a NGO's activism is the Legal Resources Center's (LRC's) activism to repeal a law disproportionately affecting Muslim women. In 1997, the LRC started offering legal services to the residents of two predominantly Moslem communities in Accra, Nima, and Mamobi. Simple statistical analysis of the LRC's case

overload showed that issues of marriage, separation, and divorce, and consequences of inheritance and property ownership were the most prevalent cases, along with criminal cases. After some research, the LRC discovered that issues relating to the provisions of the Marriage of Mohammedans Ordinance were often the root cause of most of the problems presented. The LRC thoroughly scrutinized this law, launched a campaign aimed at its repeal and re-enactment or amendment. The campaign was run in conjunction with a number of legal and social science experts and the people of Nima and Mamobi.

In 2004, the LRC organized a conference sponsored by the United States Agency for International Development (USAID) and the Deon Foundation. The outcome of the conference was to be used as a basis for the introduction to Parliament for passage into law of a Private Member's Bill (PMB). The Bill, if it had been passed into law would have provided an avenue for the proper registration of marriages contracted under Islamic law. During the conference, the LRC detailed research findings on the views of Muslims in Ghana.

From the findings, 71.3% of the 500 respondents did not know that Muslims were required by law to register their marriages. Even for those who said they were aware of the requirement of registration, 96.3% of them did not know the procedure for registration. As a result of this, about 96.2% of respondents had not registered their marriages. Also, 78.9% of respondents did not know the legal effect of nonregistration of their marriages.

Of the total respondents, 57.3% recognized the need for a law on Muslim marriages and 72.8% suggested that an unregistered Muslim marriage should nevertheless be recognized as registration is not one of the essential factors that determine the validity of a marriage in Islam.

Of the 500 respondents, 453 of them, representing 90.6%, chose Islamic law as their personal law and the remaining 47 respondents, representing 9.4% of the respondents opted for customary law or the general laws of the state as their preferred personal law for varied reasons. To buttress this option, 99.2% of respondents indicated that Muslim marriages are generally recognized by chiefs, imams, and members of the Muslim community even if they are not registered. For those who indicated that it was necessary to register their marriages, 60.2% chose the mosque as their preferred place of celebration and registration of marriages.

In 2001, the LRC commenced a Parliamentary Advocacy Project under which Bills of parliament are subjected to thorough scrutiny by consultants, members of parliament, and the stakeholders (various groups and individuals interested in particular bills) (LRC, 2016). The results of these consultative fora are considered by members of parliament when the bills come before them. The LRC intended to use this working relationship with Parliament to ensure the repeal and re-enactment of the Marriage of Mohammedans Ordinance. The work of the LRC and the Gender Centre

exemplifies effective partnering or collaborating with state institutions in a nonconfrontational, cooperative manner.

The Efforts of International Needs Ghana (ING) to Eradicate Trokosi

For decades, another Ghanaian NGO, International Needs Ghana (ING) set out to tackle a domestic human rights issue specific to women, trokosi. The UNDP estimates that 4,714 females were in ritual bondage before the activism of ING, and through its activism, 2,800 females were freed from bondage (UNDP, 2007). ING has helped in both the liberation and rehabilitation of victims. ING continues to provide psychological counseling, education, and technical training to females who were formerly enslaved. Skills training include dress making, bread baking, kente weaving, and mat making. In addition, children of trokosi are cared for in a nursery. The government has also partnered with social service agencies, including ING, to assist victims and build awareness. However, many organizers remain frustrated because to date, no priest or family member has been jailed for participation in these traditional practices (Ben-Ari, 2001).

Examples of Problems Endured by Ghanaian Women

A Focus on Women-Specific Problems That Contribute to Gender Inequality in Ghana

Women in Ghana have suffered numerous disabilities due to misogynistic customs that prevail and a failure of the legal system to address these customs and other debilitating practices. Disabilities that women have suffered include FGM; widowhood rites, lack of proper inheritance rights; the forced enslavement of young female virgins, trokosi; domestic violence; and the banishment of old women to witches' homes. A male-biased allocation of traditional and modern entitlements and assets has been preserved through the instrumentation of law (Atuguba & Baah-Boateng, 2015). In the economic sector and in governance, for instance, there are very few laws and regulations mandating the inclusion of women in key positions of power. And this is despite the fact that the Constitution of Ghana requires that special provision be made to ensure that women benefit equally in the resources and benefits of a democratic nation. The legislative trend in Ghana merely ensures the involvement of women in the governance and regulatory bodies by mandating that such bodies include at least one—and sometimes two women. It is therefore unsurprising, and very unfortunate, that an almost all male Parliament has to date neglected to fulfill its constitutional duty to legislate for women's rights. The conscious or unconscious male-chauvinist effusions that influence that state of the law have created, nurtured, and condoned gender hierarchies. Customary law, jaundiced by colonialism, protected by legislation, and interpreted and re-shaped by the

judiciary, contained the same patriarchal conceptions of gender relations.

According to the Gender-Related Development Index (GDI), the status of women improved from 0.473 in 1991 to 0.596 in 2006, then wound down to 0.545 in 2015, and rose to 0.563 in 2017 (UNDP, 2007). While these recent scientific data show that the status of women in Ghana has progressed marginally since the 1990s, it is crucial to understand that these data translate into an improvement in human development that only sixty women experience for every 100 men experiencing the same improvement in human development. In addition, a recent study by the World Bank concludes that women in Ghana have a 75% chance to succeed compared with men (“Ghana Scores 75,” 2019). The report hails Ghana for the progress made in bridging the gender gap for the past decade while acknowledging that there is still room for improvement.

And while statistically, the status of women is progressing in some areas, the numbers show that gender inequality has increased in other areas including empowerment, economic participation, political participation, decision-making, and power over economic resources. Accordingly, the Gender Empowerment Measure (GEM), a composite index measuring gender inequality in the previously stated areas, decreased from 0.391 in 1998 to 0.374 in 2006 (World Economic Forum, 2017).

In Ghana, there are specific practices which negatively affect only women. These practices are enforced and sustained by custom, even though most of the distasteful laws promoting gender inequality and the suppression of women have been changed. Certain customary practices which have been proven to adversely affect women's health continue. Those cataloged below include FGM; widowhood rites involving various forms of assault and battery coupled with the lack of proper inheritance rights; the forced enslavement of young female virgins, a practice called “trokosi”; domestic violence; and the banishment of old women to witches' homes. Most of these phenomena were finally addressed at the close of the 20th century, through a series of politico-legal actions.

Widowhood rites and women's inheritance rights. “Widows are among the most excluded persons in many parts of Ghana, especially in rural areas. The death of the husband is accompanied by harsh and cruel widowhood rites” (UNDP, 2007). The customs of two of the largest ethnic groups in Ghana, the Akans and Ewes, require widows to undergo endurance rituals or rites to demonstrate mourning (henceforth “widowhood rites”). These rites may include seclusion; enforced dress codes; denial of the use of footwear; fasting; shaving of the widow's head; applying pepper to the widow's eyes; a public stripping of the widow's clothing, followed by a parade through town (while naked), and on to a river where the widow is washed and bathed; denying the widow a bed for the 40 nights following the death of her husband; and

symbolic gestures like compelling the widow to hold the ankles of the body of the deceased husband and being made to sleep in the room with the corpse. The purpose of these rites is the intentional discounting of the widow's attractiveness and hindrance of remarriage prospects. A widow is left to provide for herself, which often leads to destitution and homelessness (Fenrich & Higgins, 2001). Many times, widows and children are driven out of the home of the deceased while the deceased's family seizes the property (Erinsho, 2000). In contrast, widowers are rarely required to perform such rites following the death of their wives. And in the rare cases where widowers are required to perform rites, such rites tend to involve only minimal discomfort, the worst of which is a 1-week confinement to their homes (UNDP, 2007).

Historically, the law in Ghana reinforced these cruel and discriminatory practices against women, and further injured their prospects for survival by denying or restricting women's inheritance rights. Under the British common law, a woman's identity merged with or was eclipsed by that of her husband, and this judicial attitude was imported to Ghana. Ghanaian law upheld instances of intestate succession in which widows were invariably denied a share in their deceased husbands' estates. Their rights were limited to maintenance and support from the husband's family during widowhood, which terminated upon remarriage. Justice Ollenu stated that "by customary law it is the domestic responsibility of a man's wife and children to assist him in the carrying out of the duties of his station in life" (Ofori, 2008). He further explained that proceeds from the familial effort, along with any property acquired with such proceeds, are the property of the man alone (Ghana Law Reports, 1959).

This discriminatory customary law coupled with the Marriage Ordinance and the Criminal Procedure Code of 1960 lessened the societal status of women and increased the hardships for widows after the death of their husbands. The Marriage Ordinance provided that a widow was entitled to less of her deceased husband's property by way of inheritance than a widower is entitled to with respect to his wife's property (Adinkrah, 1980). The Criminal Procedure Code of 1960 provided that men, not women, were eligible for service as assessors in Court; consequentially, married women were prohibited from entering into contractual relationships independently, except in very limited circumstances and then only for very mundane goods considered "necessaries" by law. Thus, the maintenance of the residence was dependent upon that of her husband, and upon his death, his widow had no rights or recourse to obtain them with respect to the household property and goods.

Although the cruel and discriminatory widowhood rites practices were rooted in law inherited from precolonial times and reinforced through domestic common law and enacted law, the current law has evolved to outlaw the cruel practices of widowhood rites and discriminatory inheritance norms. Section 2(a) of PNDC Law 90 specifically prohibits

compelling bereaved spouses to endure cruel customary practices. In addition, certain provisions of the Marriage Ordinance have been repealed. Although the Marriage Ordinance is still in force, the relevant provisions are impliedly repealed by Article 17 of the 1992 Constitution, prohibiting gender-based discrimination, and Article 22, which uses the neutral term "spouse" in the key provision regarding succession to marital property. Furthermore, the Intestate Succession Law was passed to eliminate discrimination against either the widow or the widower, preventing either party from being disinherited upon the death of their spouses. However, this law is viewed primarily as a protection for widows, since widows are more likely to suffer from discrimination. To ensure implementation and enforcement of the law, Section 17 of the Intestate Succession Law, 1985, makes it an offense to unlawfully deprive either spouse of the use of the property of the deceased before the distribution of the estate. It is also a misdemeanor for any person to make a bereaved spouse or relative undergo any custom or practice that is cruel in nature, addressing the widowhood rites practices.

The Marriage of Mohammedans Ordinance harbors gender- and religious-based discrimination. The Marriage of Mohammedans Ordinance provides that marriages under the Muslim faith are to be registered within 1 week, whereas Christian marriages performed under the Marriage Ordinance can be celebrated within 3 months from the last publication of Marriage banns or notice of marriage. Failure to complete the marital registration of an Islamic marriage within 1 week requires an application to the High Court for special dispensation to legally register the marriage. Unless registered, such a marriage is not recognized under Ghanaian and Islamic law; therefore, Islamic law could not apply to the marriage.

A lack of marital registration and, thus, a lack of official marital recognition, has grave legal consequences for Ghanaian women in such areas as divorce, maintenance and custody of children, inheritance, and property rights. In 2000, an estimated 46.3% of married women were not recognized under customary and statutory law as wives, leaving the women vulnerable. In all this, Muslim women are disproportionately affected and have little or no legal recourse when a dispute arises.

Domestic violence. According to the 2016 Domestic Violence Victims Support Unit of the Ghana Police in 2016, 27.7% of women had experienced at least one type of domestic violence in the 12 months prior to the survey. The most common form of domestic violence reported by women was economic violence (12.8%), followed by social violence (11.6%), psychological violence (9.3%), physical violence (6.0%), and sexual violence (2.5%). The report also noted that sexual violence was largely considered a private matter; therefore, the reported results likely underestimate the true extent of this form of domestic violence.

According to the UNDP (UNDP), the low incidence of domestic violence from 1999 to 2001 can be attributed to the “unwillingness of affected persons to make complaints of incidents of domestic violence to the [Women and Juvenile Unit] WAJU and of incomplete data capture” (UNDP, 2007). The number of reported domestic violence occurrences rose in 2002 and then peaked in 2004, followed by a dramatic decline in 2005 (UNDP, 2007). The UNDP attributed the rise to a “greater willingness of affected person to use the available institutional mechanisms and improvements in data capture” (UNDP, 2007). The UNDP further credited the sharp decline in 2005 to an increase in available institutional resources that work to combat domestic violence.

Author and scholar, Ofei-Aboagye (1994) interviewed Ghanaian women and found that their “answers reflected the existence of a norm—a view that some beating is acceptable, even expected, to keep the woman in line.” Most of the surveyed women considered some level of beating as acceptable discipline and every respondent had been struck during the course of her marriage.

FGM. FGM is the process of altering female genitalia in an effort to suppress sexual desire and encourage chastity (UNDP, 2007). The practice “diminishes the capacity of females to experience and appreciate sexual fulfillment which is an important reproductive right” (UNDP, 2007). Victims that undergo FGM can suffer death or disabilities. Where disabilities are suffered, women often suffer from depression, withdrawal, protracted labor during child birth, and an increased risk of contracting sexually transmitted diseases, including HIV/AIDS due to their FGM-related disabilities (Keown, 2007). The contraction of sexually transmitted diseases and occurs for several reasons, including tainted knives used in the FGM procedures, complications during the FGM procedure that lead to blood loss, and rough sexual intercourse that leads to vulnerable torn vaginal areas. Women who refuse to undergo FGM procedures in communities that traditionally practice FGM are stigmatized as unclean. Because of the stigmatization, women have a difficult time finding husbands and actively participating in society. Also, the inability of women to reach orgasm as a result of FGM has ramifications beyond reproductive rights. It is a human rights issue.

Fortunately, the inimical customary practice of FGM has undergone legal reforms. In 1994, FGM was abolished in Ghana in Act 29, Section 69A of the 1960 Criminal Code. “After interventions prompted by international treaties and action by local NGOs, FGM was abolished under Section 69A of the Criminal Offences Act, 1960 (Act 29)” (UNDP, 2007). FGM is now a second-degree felony, carrying a minimum penalty of incarceration for 3 years. However, due to traditional belief systems, unawareness of the law, and economic benefits to excisors, there has been a low level of enforcement. In June 2007, the Ghanaian Parliament increased the minimum jail sentence for the offense from 3 to 5 years.

Trokosi. The forced enslavement of young female virgins in Ghana is known as “trokosi.” This traditional ritual is predominantly practiced among members of the Ewe ethnic group who live mostly in the Volta Region; however, there is some evidence of the occurrence of trokosi in the Greater Accra region. Trokosi involves the commitment of virgins, generally female children, to fetish shrines for atonement of their relatives’ sins. These sins include murder, adultery, theft, lying, sexual intercourse with a trokosi, refusal of debt payment, defiance of the group, and rudeness to group members. The victims of trokosi are forced to committal and may endure marked identification with garments, the denial of clothes selection, forced labor, forced marriage and sex with a priest, and physical abuse for defiance. “Servitude restricts their access to social services such as formal education, medical care (ante-natal and post-natal attention) and immunizations of their children” (UNDP, 2007). Fortunately, the inimical customary practice of trokosi has undergone legal reforms. According to the Criminal Code Amendment Act of 1998 (Act 554) inserted Section 314A of the Criminal Code, 1960 (Act 29), trokosi is now a second-degree felony, carrying a minimum penalty of incarceration for 3 years.

Banishment of women to witches’ homes or camps. The belief in witchcraft is widespread in Ghana (UNDP, 2007). Even into the current modern era, the notion that certain people practice witchcraft has remained especially pervasive in the northern parts of the country. Witchcraft is generally understood to be events or performances that are beyond the power of man and thus caused by supernatural means, but not by that of the divine. Witches are generally thought to possess evil spirits and initiate wretchedness and misfortune, such as death and illness, directed at specific individuals and to the larger community. Accused witches are usually singled out by fellow villagers as the cause of difficulties, such as death, illness, crop failure, or financial downfall.

Acting on their traditional religious belief systems, traditional village authorities and the accused witches’ families continue the custom of banishing the accused to isolated villages or areas designated as witches’ camps. This practice is especially prevalent in northern Ghana, where the belief in witchcraft is strongest. It is a traditional, religiously rooted custom visited only upon women suspected of witchcraft and hardly ever against men suspected of wizardry. According to ActionAid Ghana, over 95% of the camps’ inmates were women, and most of the incarcerated women were above 45 years of age. Rarely do men endure banishment to witches’ camps due to the belief that men are physically and spiritually stronger than females and thus they can fight any attempt at banishment. In addition, men manage the witches’ camps. Persons who live in witches’ camps are excluded from society and denied social rights. Although a mandated sanction for those accused witches returning to their original homes is nonexistent, the accused do not dare attempt to do so out of fear of lynching or molestation.

The Ghanaian government, under the auspices of the Domestic Violence Victims Support Unit (DOVVSU), has prosecuted persons who have committed violent acts against suspected witches and continues to charge and investigate alleged violence committed against suspected witches.

In the Northern Region of Ghana, government officials and the Commission on Human Rights and Administrative Justice (CHRAJ) reported that the witch camp population has slowly decreased in recent years. CHRAJ estimated the population of witches at camps in Yendi, Bimbilla, and Gambaga to be 1,090 in 2005, while NGOs with expertise in the northern region estimate that approximately 3,000 suspected witches reside in all camps. Some women accused of witchcraft are forced to take their families or children with them to the camps; it is estimated that more than 500 young children of school age are living in witches' camps.

Although there were no confirmed reports of assault on suspected witches during 2007, experts adamantly believe that intolerance toward and discrimination directed at suspected witches continues. Exacerbating the intolerance and discrimination directed at suspected witches is the accused witches' reluctance to seek protection through legal action in order to secure their freedom, even though the law provides protection for them (UNDP, 2007).

Recommendations and Emerging Issues

The Importance of Research and Activism in Law Reform and Enforcement

Activists can organize their constituencies to work to end or change legislation that diminishes gender equality. This is the essence of the Gender Center's advocacy for the Domestic Violence Bill and the LRC's advocacy for changes to the Marriage Laws as they affect Moslem women. As previously discussed, simply passing laws prohibiting activities is not sufficient. Rather, the laws must be designed with effective enforcement as a top priority. Thus, activists should sponsor legislation that strategically promotes their cause in conjunction with organizing activities that work to ensure the rights and entitlements contained in such legislation are enforced. In addition, to ensure that the legislation effectively addresses real problems of the citizens, activists must engage in social science research to determine the root causes and design viable solutions. A strong emphasis must be placed on gaining the support, involvement, and engagement of the constituencies that are directly affected by the social problem. Frequently, the lawmakers are not the individuals directly affected by the problem and they do not understand the weight and complexity of the issues. The gravity of the law is too important to be left to lawyers and politicians who may not fully comprehend the situation. Social scientists, community leaders, and grassroots organizations, must all generate feedback informed by their diverse skills and experiences to populate the interstices of the law, otherwise, unreasonable provisions, informed by the narrow

world view and experience of lawyers will constitute the law of the land. The Gender Centre and the LRC used this multifaceted approach in the areas of violence against women and women's marital and property rights. In addition, because of the complexities created by Ghana's complex legal system, it is essential to involve and consult traditional authorities to bridge this gap. Traditional leaders, including local chiefs, sub-chiefs, Queen Mothers, and members of the National House of Chiefs, which is made up of five representatives from each of the 10 regions, are willing to be involved in the process of modernizing laws and have invaluable recommendations for addressing the complexities of a pluralistic legal system. Although traditional leaders' legal roles have varied historically, the 1992 Constitution has allocated to them critical functions, thus underlining their importance in the governance of the nation.

Significantly, it must be acknowledged that some forms of law and organizing have the potential to legitimize and reinforce existing power hierarchies. This process can be illustrated by the participatory social science action research engaged in by groups such as the Gender Center and the LRC. This type of research attempts to engage the persons and groups that suffer from the social problem to better understand the root causes of the problem. This is a necessary prelude to taking actions such as sponsoring legislation (Seidman & Seidman, 1994). In addition to the obvious danger of outside academics, researchers, and activists mistakenly documenting what they view as problems and viable solutions, there is a more incipient danger of gathering information from persons within the constituency who are not representative of those who are most affected by the social problem. This may include authority figures within the constituency, local level politicians, and over enthusiastic, vocal, and relatively well-educated members of the constituency. This may lead to a situation where gender hierarchies are established or reinforced at the local and grassroots levels.

Using Education to Compel Enforcement and Accountability

More effective and diverse community education is necessary to move Ghana toward greater gender equality. Various education models in Ghana have proved effective including the Rights-Based Approach (RBA) which has been employed by the LRC and other organizations to empower communities. With regard to negative widowhood rites and other harmful traditional practices, these practices continue in many parts of the country in spite of the existence of prohibitory legislation. In Bongo and Walewale, the LRC supported community groups in working to ensure enforcement of widowhood rites legislation and to change negative practices. Thus, the changes in these communities were a result of community organization, education and the mobilization of community members and leaders. Leaders acknowledged a significant change in practices in the Bongo area. Many

women even stated that prior to education provided by the LRC, they did not realize their rights.

Cultural Considerations

Another layer to changing gender inequality in Ghana is being cognizant of the deep cultural connections that often continue to perpetuate the status quo. Straying away from ethnocentric approaches and toward approaches that allow grassroots communities to drive the changes will preserve strong aspects of cultural traditions. The importance of cultural practices in Ghana is evident primarily in the Constitutional inclusion of customary law as part of the applicable law in Ghana. See Article 11 of the 1992 Constitution of the Republic of Ghana. There are also entire laws that prescribe that Customary laws must be adhered to in order to establish the validity of actions in Ghana. See Part 1 of the Marriages Act on the requirements for a valid customary marriage; PNDCL 111 on the description of who constitutes a person's "family" for the purposes of inheritance; the Chieftaincy Act; and the Arbitration Act's provisions for Customary Arbitration. There is often a conflict between trying to create change from within the community and state control aimed at protecting individuals (Lewis, 1997). The United Nations, through CEDAW, recommends an integrated approach that values local input. It combines domestic legal and nonlegal means, international standard setting, monitoring, and grassroots education campaigns. These integrated approaches acknowledge the communal nature of the Ghanaian culture and help to counter the focus of existing human rights approaches that focus solely on complying with an international standard (Gunning, 1997). Effective activists must reach a balance between applying a universal standard without engaging in cultural dialogue and merely accepting traditional norms that are detrimental to women because they are rooted in the culture.

The Need for a Diverse Constituency

Building a diverse constituency of gender activists is beneficial to winning the fight for gender equality. A careful choice of issues around which to organize is paramount in building a constituency of supporters. These "sites of struggle" should not be limited to only battles that can yield clear advantages to women, but should include battles that result in responsibilities for women. A struggle to ensure that women are liable for service as assessors in court, for example, will not only improve the worth of women in the public eye, but send out a clear message that gender activists will take nothing short of equality of the sexes, whether this translates into more rights or more responsibilities. A reconsideration of the "sites of struggle" that gender activists choose as rallying points for action will prevent this mental leap which many unconsciously make and effectuate. Such a review of the sites of struggle will also help mobilize male support for the cause.

Conclusion

This article has attempted to emphasize the assertion that women's survival in Ghana depends not only on progress in laws supporting gender equality, but also on community research, community organizing and support. What the article does not seek to do is deny that the law is a good starting point for any improvement in the condition of women. However, it should be abundantly clear that legislation alone is insufficient to change the harsh reality of the discrimination women face in Ghana and that activists must look not only at the law, but take additional steps in communities to demand equal treatment for women and an end to harmful practices perpetuated in the name of customs.

Examining history in Ghana demonstrates the fact that laws alone are insufficient to change negative practices and advance gender equality. Although virtually all the distasteful rules of law discussed in this article have changed, a significant level of discrimination remains in Ghana. Simply adding gender issues to things that are predesigned in an andocentric fashion cannot rectify gender inequality. Too often, gender issues are made out to be "women's issues" which women are themselves expected to resolve, in spite of the fact that most issues affecting women are instigated by men, and men—for the most part—have majority access to the legislative, executive, and judicial mechanisms necessary to make *and enforce* protective and equalizing laws.

This article has also sought to shed light on the reality that while legislation is key, experience should teach us that simply legislating to make society and the workforce more inclusive for women just creates pockets of seclusion where patriarchy can sideline women to roles that they find tedious or "female friendly." These pockets of feminine work are usually lower paying and hardly afford women the opportunity to take charge of economic sectors. In politics and other corridors of power, women are admittedly starting to take more leadership roles, and hopefully that will translate into more effective implementation of laws, plans, and policies which are supposed to give women access to the same field of play as men. Experience shows that facially just laws without effective organizing can do little for any social change, including the struggle for gender equality. Communities and activists must therefore work for the implementation of these rights and entitlements. A committed group of activists with diverse disciplinary expertise, working intimately with the communities affected by the social problem, may have the power to produce change despite deep rooted customs and institutionalized discrimination. Future studies could adopt the systematic review approach to explore the literature on gender inequality or women empowerment so that a holistic and conceptual framework would be developed to serve as a guide for policymakers, NGOs, academics, and politicians in their fight to protect women's rights.

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