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Note

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MODERN DAY SLAVERY IN GHANA: WHY APPLICATION OF UNITED STATES ASYLUM LAWS SHOULD BE EXTENDED TO WOMEN VICTIMIZED BY THE TROKOSI BELIEF SYSTEM**Introduction**

Imagine that it is the year 1998 and you are a slave. Although slavery, in and of itself, may arguably be the worst living condition, imagine that there are different scenarios that could make your life as a slave worse. What would they be? Would it be worse if you were a five-year-old who, for no other reason than the fact that you are a ^{*170} virgin and related to someone who owed a favor to the gods, was subjected to a lifetime of repeated sexual and physical abuse? Maybe your life as a slave would be made worse by knowing that it was your own parents, who for all intents and purposes love you dearly, who assented to you becoming a slave? Would you despair? Or would you pray that someone does something? Let's pretend that you prayed--and that your prayers were answered: the government has outlawed slavery and has stated, quite convincingly, that anyone who forced a child to become a slave would be prosecuted. You are excited; you think, "This is it! I can soon go home and be free." So you wait. You wait for your master to declare you free. You wait for your family to come get you. You wait for the government to come arrest your master. You wait. And you wait. You have been waiting for over thirteen years. Thirteen years for the government to stop what they know is happening. But they don't. And your family doesn't come. It is now 2011 and you have stopped waiting. And although you know that slavery is a crime, you stay. Why? There is nowhere else to go.

You might wonder why, in this imagination exercise, you are forced to resign to your position as a slave. This is because, if you were a Trokosi slave, you would be living a life resigned to the fact that you will always be a slave.¹ ^{*171} Although "Trokosi [slavery] is a crime being carried out openly,"² very little has been done to avenge the harm inflicted on its victims, many of them pre-pubescent girls. As scholar Aziza Naa-Kaa Botchway adeptly puts it, while Trokosi slavery may be abolished by law, it is maintained in practice.³ In response to the inadequate legal remedies available to the Trokosi victims, this note explores one possible option for these enslaved individuals: asylum in the United States.⁴ Although this note is not meant to be an exhaustive discussion of the responsibilities of the international community regarding the human rights violations in Ghana, it does attempt to show that the international community can change the lives of Trokosi victims and influence Ghana's governmental responses (or lack thereof) to human rights abuses against the Trokosi women of Ghana. Indeed, this note argues that asylum protection should be extended to victims of Trokosi slavery because such an extension is in accordance with U.S. ^{*172} legislation and existing case law.

Part I provides a brief historical analysis of the Trokosi practice. Part II discusses the national and international laws violated by the practice of fetish slavery. Part III provides several explanations as to why Trokosi slavery continues to exist despite its violation of several national and international laws. Part IV discusses why U.S. asylum protection should be extended to victims of Trokosi slavery.

I. Origins of the Trokosi Belief System

The Trokosi belief system⁵ is a traditional African religious institution in Ghana⁶ believed to have originated *173 in the 17th century.⁷ The term “Trokosi” is an Ewe (pronounced Ay-vay) word that literally translates to “mean[] ‘slavery to the Gods [or deity].”⁸ Precisely, “Tro” is translated to mean “god” while “Kosi” can be interchangeably used to mean virgin, slave, or wife.⁹ However, some have attempted to give it a more dignified meaning through the explanation that the enslaved women have been divinely chosen to be the wives of the gods.¹⁰ Regardless of which definition one espouses, a Trokosi is a young virgin child who, because of various reasons beyond her control, becomes the property of a priest believed to be the physical being through whom the gods communicate to the human world.¹¹

Trokosi slavery “is a tradition that involves young [pre-pubescent] girls being offered by their parents to traditional priests in the faith that such an action will atone the sins committed by their parents or their relatives.”¹² Once offered as objects through which reparations are made, these young girls are subjected to a *174 life filled with hard physical labor and sexual abuse. Viewed as mere objects, “the girls have no right whatsoever in deciding when and who in the shrine should have sexual intercourse with them.”¹³ Often they are left to fend for themselves because priests have no obligation to ensure the girls' physical well-being, including providing food.¹⁴

As previously noted, to be offered to the gods as repayment for the protection of the girl's family, a Trokosi slave must fulfill two conditions: 1) she must be a virgin girl, and 2) she must be related to those believed to be protected by the gods.¹⁵ Aside from these two criteria, there are no restrictions on who can become a Trokosi slave. A girl can become a Trokosi slave at any age; this is seen in the fact that a girl can be born into slavery.¹⁶ *175 Although the most common reason one becomes a Trokosi slave is to atone for sins committed by family members, a girl can also become a slave for several other reasons. A fetish priest may demand that a family send a virgin girl to the shrine if one of her relatives “promised to make such an offer for any service rendered by the god” or even because, in instances where a mother had difficulty giving birth, the girl is believed to have been “born with the help of the god.”¹⁷ Regardless of the way that a girl becomes a fetish priest's property, the circumstances leading to her enslavement are those over which she rarely has control.¹⁸

Central to the Trokosi belief system is the fetish priest to whom the girl becomes a slave. Fetish priests are the spiritual leaders of the Trokosi religion. Fetish priests, unlike the leaders of the world's major religions, are believed to have direct communication with the gods.¹⁹ Because “priests have the power to communicate directly with the gods and . . . influence the spirit world,”²⁰ the fetish priests' followers never question their demands and desires. This blind faith in the validity of the fetish priest's *176 demand may be a result of the historically mild demands made by the priests. At the time of the religion's founding, priests demanded non-human items such as money, liquor, and cattle. However, this changed as a result of the fetish priests' declaration that the gods could only be appeased by virgins.²¹ As individuals began to see their desires come to fruition after they gifted the priests, they began to connect these occurrences with the priest. In this way, their faith in the priest's power was firmly cemented. As a result, they were often willing to provide whatever they believed was necessary to ensure that the gods continued to favor them. Thus, when priests began to gradually shift from demanding monetary compensation to demanding virgin girls, this change met little resistance.²²

The power allocated to the fetish priests allowed them to use “their authority to compete socially with others.”²³ Getting a family to give up their virgin daughter was a simple matter of imposing a monetary fine so high that the only way a family could afford it was to provide a child to pay off the debt through physical labor.²⁴ The fear of the power possessed

by these priests is so great that some families have provided a virgin female child for *177 generations to appease the gods for “crimes committed so long ago” that no one remembers what the crime was or even its nature.²⁵ Although the sexual abuse faced by Trokosi slaves is widely known amongst Trokosi practitioners, it is rarely questioned because of the belief that “[t]he sexual organs of the priest are dedicated to the gods of the shrine.”²⁶ Therefore, “when [the fetish priest] forces himself on the Trokosi slave girls,”²⁷ it is viewed simply as an act decreed by the divine ruler. This belief serves to cement a girl's bondage to the priest--it is a very rare occurrence when a Trokosi slave finds someone willing to defy the priest and attempt to help her escape his control. Once a girl becomes a Trokosi slave, very little can be done to break her bondage to the priest. From the moment she arrives at the shrine, the priest controls every aspect of the slave's life. As in any master-slave relationship, the fetish priest “exerts full ownership rights over the girl . . . controlling her interaction with others, demanding labor and sex from her, and denying her education, food, and basic health services.”²⁸

Upon arriving at the shrine, a ritual is performed in which the parents (or the family member offering the child) relinquish all rights to the child.²⁹ After the parents' presentation of the girl, she is then forced to “kneel[] in *178 the shrine in front of [the priest] and the [male] village elders . . . Then, while chanting, they strip her of . . . all of her clothes until she is bowed and humiliated in front of them.”³⁰ Upon the priest's acceptance of the girl as his Trokosi slave, an initiation ritual ensues.³¹ Spanning over a two-week time period, the initiation ceremony of a Trokosi slave begins with the pouring of libation,³² and later, the girl is subjected to “an initiation rite known as tsi de de ta . . . and [[] a ritual bath called agbametsilele in the inner shrine.”³³ The newly initiated slave is also given “concoctions [believed to] make her a faithful and dedicated devotee and [to] prevent her from running away.”³⁴ The girl's initiation into her life as a slave is completed with a wardrobe that identifies her as the property of the fetish priest to all those that see her.³⁵ At the conclusion of her initiation ceremony, the girl's physical appearance is altered to indicate her new status.³⁶ After having her hair shaved, the girl is then clothed in grey calico or clothes of blue and black hues; in addition, she is given a necklace, called a la, which consists of fiber strands or raffia leaf, to wear.³⁷ Thus marked, the girl's physical appearance serves as a barrier *179 between her and the rest of the world; only those willing to face the gods' wrath, through the physical being of the fetish priest, dare approach the Trokosi slave without the permission of her master.

II. National and International Laws Prohibiting Slavery, in General, and Trokosi Slavery, in Particular

There exist numerous legal prohibitions against modern-day slavery, both national and international. In Ghana's Constitution alone, several provisions can be pointed to as justification for the argument that the Trokosi slavery system goes against the fundamental principles upon which the nation was founded. If these constitutional arguments are not convincing enough, there also exists the Criminal Code Act of 1998 (“Criminal Code”). In addition to its national laws, Ghana is a signatory to many international agreements that specifically prohibit human rights abuses such as those existing within the Trokosi slavery system. It is apparent that “the problem of the Trokosi is not one created by a want of legislation; rather,”³⁸ it is created by the lack of mechanisms necessary to enforce the laws, and also a lack of desire to do so.

A. Ghana's Constitution

Although first established as a republic in July *180 1960,³⁹ Ghana's current Constitution was adopted in April of 1992.⁴⁰ Several articles under the 1992 Constitution can be pointed to as support for the eradication of the Trokosi slavery system.⁴¹ A thorough examination of the 1992 Constitution reveals that, while the Ghanaian Constitution does afford its citizens the freedom of religion, it does not do so at the expense of an individual's liberty interest.

Article 21(4)(e) recognizes the limitations on religious freedom by affording the government the flexibility to restrict any religious practices that may conflict with any other rights afforded by the Constitution.⁴² This provision of the Constitution permits the enactment of laws that “safeguard[] the people of Ghana against the teaching or propagation of a doctrine which exhibits or encourages . . . or incites hatred against other members of the community.”⁴³ Although Article 21(4)(e) does not directly deal with the issue of slavery or forced labor, it is applicable because it allows the Ghanaian government to enact statutes and regulations banning any religious acts *181 or traditions that compromise the values upon which the nation was founded. And what value could be more important than the value placed on the liberty of Ghana's people?

In addition, slavery is explicitly prohibited by the 1992 Constitution. Article 16 states that “no person shall be held in slavery or servitude” nor shall anyone “be required to perform forced labour.”⁴⁴ There is no doubt that the girls offered to the fetish priests are slaves. Therefore, the Trokosi slavery system is a direct violation of Article 16.

Under Article 26(2), “[a]ll customary practices which dehumanize or are injurious to the physical and mental well being of a person are prohibited.”⁴⁵ There is no question that the physical and mental health of a Trokosi slave is negatively impacted by her forced servitude. With sole responsibility for her upkeep, but no access to money or a food garden, a Trokosi slave sometimes goes for days without food.⁴⁶ Furthermore, no medical care or educational support is provided to the girl once she becomes the property of the fetish priest.⁴⁷ In fact, many Trokosi slaves are illiterate.⁴⁸ In addition, the slaves are often forced to carry out their pregnancies and give birth *182 with no medical assistance.⁴⁹ Thus, because the slaves' physical and mental well-being is often neglected, the Trokosi slavery system directly violates Article 26(2) of the 1992 Constitution.

The Ghanaian government is also authorized to limit certain practices should those practices violate the standards promoted under Article 37. Under Section 2 of this provision, the government may enact any laws necessary to secure “the protection and promotion of all other basic human rights and freedoms, including the rights of the disabled, the aged, children and other vulnerable groups.”⁵⁰ As the vast majority of the Trokosi slaves enter into slavery before they reach adulthood, the government can act under the authority of Article 37 to outlaw the practice of offering young girls to fetish priests. Even in the rare instance where a slave enters captivity as an adult, the government can act under the “other vulnerable group” clause of Article 37(2).

Article 15 of the 1992 Constitution can also be used to support governmental interference with religious freedom to the extent necessary to remove any degrading practices. Under Article 15(1), “[t]he dignity of all persons shall be inviolable.”⁵¹ There is no doubt that a Trokosi woman who is completely controlled by and “who must fulfill the sexual pleasures of the fetish priest” is left with no dignity.⁵² In addition, gender issues are raised by the *183 Trokosi slavery system. Under Article 17(2), “discriminat[ion] against [a person] on grounds of gender” is prohibited.⁵³ Since 99.99% of the individuals offered as slaves are girls,⁵⁴ the Trokosi slavery system is a form of gender discrimination. Consequently, one can point to both Articles 15(1) and 17(2) to further prove the unconstitutionality of fetish slavery.

B. The Criminal Code Act of 1998

Enacted in June of 1998, the Criminal Code Act of 1998 (“Criminal Code”) was the Ghanaian government's direct response to the protests of several non-governmental organizations against the continued tolerance of the Trokosi slave practice.⁵⁵ The current Criminal Code is an amendment of the 1960 Criminal Code, which made it a crime to engage in any ritualized type of forced labor.⁵⁶ Section 314(A)(1)(b) of the Criminal Code states that anyone who

participates in or is concerned in any ritual or customary activity in respect of any person with the purpose of subjecting that person to any form of ritual or customary servitude or any form of forced labour related to a customary ritual commits an offence and shall *184 be liable on conviction to imprisonment for a term not less than three years.⁵⁷

Section 314(A)(2) further clarifies that it is not merely the fetish priest who is criminally liable. The girl's parents, the person who made an agreement with the gods, any spectators at the girl's initiation ritual, and any mediators involved in the negotiations between the priest and the child's relatives are all subject to criminal prosecution.⁵⁸ In addition to its extensive list of those eligible for prosecution under the statute, the amended Criminal Code also “establishes indecent assault as a criminal offense and facilitates the prosecution of rape cases, both [of which are] crimes regularly committed against [T]rokosi slaves.”⁵⁹

After the enactment of the Criminal Code, one would expect a rapid drop in the number of Trokosi slaves in Ghana. However, this has not been the case. This may be due to the fact that, under the current Criminal Code, almost anyone with knowledge of the girl's enslavement is subject to criminal liability. This deters individuals with any knowledge of the bondage from coming forward. In addition, the effectiveness of the Criminal Code has been greatly undermined by the lack of government *185 enforcement. As of 2000,⁶⁰ the Ghanaian government has yet to enforce the Criminal Code. Unfortunately, because many Ghanaian officials “view the practice as an integral part of their [own] religious beliefs,”⁶¹ it may be years before any enforcement mechanism is put into place.

C. International Agreements and Conventions

The Ghanaian government's passive acceptance of the Trokosi slavery system violates numerous international laws ratified by Ghana.⁶² However, despite the international arena's awareness of the issue,⁶³ Ghana has *186 faced little international legal consequences. In fact, none of the international conventions that inherently prohibit the Trokosi slavery practice “appear to have an appropriate enforcement mechanism to bring violators to justice.”⁶⁴ Furthermore, due to the embedment of the Trokosi belief system in Ghanaian culture, implementation of international convention is made even more complicated by the desire of the international community not to appear imperialistic and/or paternalistic. The risk of appearing imperialistic and/or paternalistic is further heightened in situations where the violating state “justif[ies] discrimination and noncompliance with human rights conventions on the basis of custom or cultural practices . . . [Especially] when the customs are founded on religion.”⁶⁵ The issue then becomes: is there any way for the international community to intervene without intervention being viewed as: (1) an attack on Ghanaian culture and (2) an imperialistic attack on the sovereignty of the nation? Although this is not an issue explored here, it is an issue worth keeping in mind when engaging in the asylum debate.

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

Adopted in 1990 and entered into force on November 29, 1999 by the Organization of African Unity and its *187 member states, the African Charter on the Rights and Welfare of the Child (“Charter”) recognized the need to eliminate cultural traditions and practices that harm the welfare of children.⁶⁶ As a party to the Charter, Ghana is directed to

take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) those customs and practices prejudicial to the health or life of the child; and

(b) those customs and practices discriminatory to the child on the grounds of sex or other status.⁶⁷

In addition to this directive, the Charter also mandates that member states discourage any “tradition, cultural or religious practice that is inconsistent with the rights”⁶⁸ outlined within the Charter. Despite this mandate, Ghana continues to disregard the inconsistency between the Charter's directives and the perpetual cycle of mental, physical, and sexual abuse children face at the hands of the fetish priests.

***188 ii. International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights⁶⁹ (“Covenant”) explicitly prescribes that the liberty interest of individuals must be protected through a strict rejection of cruel and inhumane treatments.⁷⁰ Irrespective of any religious freedom arguments to be made, it is undeniable that the Trokosi religious practice involves treatments so cruel that one can make an argument that the fetish priests torture the girls.⁷¹ Furthermore, Article 8 of the Covenant specifically states:

(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

(2) No one shall be held in servitude.

(3)(a) No one shall be required to perform forced or compulsory labour;⁷²

Consequently, the continued enslavement of young virgin girls is a direct violation of the Covenant.

***189 iii. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Adopted in 1967 by the United Nations General Assembly, CEDAW encourages member states to take the necessary and appropriate preventive measures to ensure that any existing “customs and practices which constitute discrimination against women” are either modified or completely abolished.⁷³ CEDAW lists several rights for which states should take affirmative measures to ensure that they are extended to women. Specifically, CEDAW mandates that “[s]tate [p]arties shall take all appropriate measures” necessary to:

Art. 2(d): refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

Art. 5(a): modify the social and cultural patterns . . . with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of . . . women;

Art. 10: ensure [women have] equal rights with men in the field of education⁷⁴

***190** Regardless of this mandate, Ghana's government continues to ignore the imprisonment of children by fetish priests. As a result, thousands of fetish slaves continue to lose their liberty interests, including the right to receive an education. Furthermore, although it has been noted that CEDAW “has limited application to female children because the only pertinent provisions relate to early marriage and development of specific educational programs for female dropouts,”⁷⁵ this cannot be construed to mean that the Trokosi slavery system does not violate CEDAW. In fact, CEDAW is directly violated because the ritual ceremony initiating the girl into Trokosi slavery is essentially a marriage ceremony binding the girl to the fetish priest.

III. Why the Trokosi Slavery Practice Still Thrives Despite its Violation of National and International Laws

Despite the numerous international and national laws against slavery, conservative estimates postulate that there are currently about 130 shrines in Ghana housing more than 5000 Trokosi slaves.⁷⁶ When one takes ***191** into account that there are Trokosi slaves in other nations, it is estimated that the number of Trokosi slaves worldwide ranges anywhere between 29,000 and 35,000.⁷⁷ It must, however, be noted that these estimates do not take into account the children born into slavery as a result of the rape of their mothers by the fetish priests.⁷⁸ It also does not take into account those slaves that have died as a result of the brutish living conditions they were forced to suffer. Thus, it invites the question, why is Trokosi slavery still widely practiced despite the risk of criminal prosecution on both the national and international level? This section explores several reasons why both the government and the citizens of Ghana ignore, tolerate, and/or promote the continued existence of Trokosi slavery.

A. Fear

Although there are a variety of reasons why the Trokosi slavery system still has a strong presence in Ghana despite legislation outlawing it, the simplest and most encompassing explanation of its continued presence is that “[i]t thrive[s] simply because stark fear prevent[s] anyone from” challenging the powerful fetish priests.⁷⁹ It is this fear of the potential evil that the gods can inflict, through the priests, which deters individuals from ***192** disobeying the priests' demands. The “fear of the death curses” that can be imposed by the priest if one refuses to give up their child to a life of slavery is also the same fear that prevents the public from reporting the crime to law enforcement agencies.⁸⁰ Because of the strong belief in the powers of the fetish priests, many members of the Ghanaian public believe it is better to turn a blind eye to the flagrant violations of the laws abolishing the Trokosi slavery system than to report the ongoing crime and risk “the gods [[] wreak[ing] vengeance upon the[ir] family, or even the entire community.”⁸¹ Consequently, so long as the belief that the fetish priests “provide protection from various harmful and ‘unfriendly’ powers” remains, it is likely that Ghanaians living within the priest's community will continue to turn a blind eye to the violation of the enslaved girls' liberty interests.⁸²

The fear that prevents the public from speaking against the Trokosi practice is also what, for the most part, prevents the Ghanaian government from enforcing its law against Trokosi slavery. Like the Ghanaian public, Ghana's law

enforcement officials “are also afraid to go into the shrines.”⁸³ Even in instances where the individual *193 officer may not believe that the priest possesses any powers, he or she may still be “reluctant to enforce the law against ritual servitude, fearing a popular backlash.”⁸⁴ The reluctance of law enforcement officials to challenge the fetish priests is seen in the fact that, despite the public nature of the girls' enslavement, no one has been prosecuted for violation of Ghana's legal ban on the practice.⁸⁵ As Patience Vormawor, head of the gender programs at International Needs Network Ghana,⁸⁶ eloquently puts it,

[i]t is one thing making a law, it is another thing implementing the law. People have not been educated about the law and the practice. The practice is in very very remote areas. The law enforcement agencies are not resourced so that they can go to these villages. They are also afraid to into the shrines. And if you want to go into the shrine they put you to an ordeal Sometimes people are afraid to give out information about the practice. If you discuss details about the practice and your experiences the gods will be angry. You will die. Your *194 parents will die.⁸⁷

B. Cultural and Religious Arguments

More often than not, “states will protect their religious practices as a significant part of their culture and will decline to reprimand or prosecute those whose practices violate human rights standards.”⁸⁸ Ghana is no exception. Eradication of the Trokosi practice is a complex one because, although it began as a religious tradition, it has embedded itself within Ghanaian culture. Many supporters of fetish slavery tout this argument, claiming that any “campaign against Trokosi is a campaign against African culture.”⁸⁹ In fact, the entrenchment of the Trokosi religious tradition within Ghanaian culture may have greatly hindered any progress intended by the Criminal Code. This is because when a religious practice has become instilled within a nation's cultural tradition, “many states do not expressly recognize such practices as ‘discriminatory or biased’” because the practice has come to be viewed as “the ‘natural’ order of things.”⁹⁰ Therefore, although the Ghanaian government has succumbed to pressure from local and international organizations by outlawing the Trokosi slavery system, it is unlikely that the Ghanaian government can be convinced to enforce the Criminal Code in the near future.

*195 The challenges brought by the entrenchment of the Trokosi belief system in Ghanaian culture are further compounded by issues ranging from constitutional rights to religious freedom. Often, supporters of the Trokosi religious system cite Article 17(2) of the 1992 Ghanaian Constitution as overriding the Criminal Code. Under Article 17(2), “discrimination on the grounds of religion” is prohibited.⁹¹ Thus, adherents of the Trokosi religious system claim that any laws prohibiting engagement in practices believed to appease their gods are a violation of fundamental religious rights. Moreover, Ghana's government “[o]fficials have been hesitant to restrict [T] rokosi slavery due to [the on-going] constitutional debate.”⁹²

However, to succumb to the religious argument is to ignore the reality that religious customs sometimes clash with certain natural human rights. “It is for this reason that the right to freedom of religion . . . is not always guaranteed in absolute terms.”⁹³ Fortunately, the writers of the Ghanaian Constitution recognized this limitation on religious freedom. As noted in Part II, under Article 26(2), the government may interfere with any religious practice found to be “dehumaniz[ing] or [] injurious to the physical and mental well-being of a person.”⁹⁴ It is undisputed that the practice of offering pre-pubescent girls to fetish priests *196 is a dehumanizing action that is a clear violation of their right to be free.

C. Other “More Pressing” National Concerns

Although an economically and politically advanced nation, Ghana, like many African nations, is faced with numerous national concerns, including abject poverty. This has resulted in Trokosi slavery practice becoming a back-burner issue. Furthermore, as Trokosi shrines are often located in the least developed and “remote, inaccessible places”⁹⁵ of Ghana, it becomes even easier to sidestep the issue of the Trokosi slavery practice in political debates. Consequently, unless the government places the issue of child slavery at the forefront, thousands of Ghanaian children will likely become victims of fetish slavery in the years to come.

In a nation where “many who raise their own children face abject poverty,”⁹⁶ it is not unusual for families to attempt to unload the burden of feeding their children. In Ghana, it is not “unheard of for [the] poor [[families] to give up their children as maids . . . to persons they perceive as wealthy.”⁹⁷ Thus, the prospect of having a child become a live-in “worker” (and I use this term very loosely) for the most powerful man within the community (the fetish priest) may not appear so bleak to some, especially since those who subscribe to the Trokosi practice perceive it to *197 be their religious duty. Consequently, Ghana's poverty issue, “coupled with a lack of governmental resources,” has greatly crippled any governmental effort to combat the practice.⁹⁸

Furthermore, because many government officials ascribe to proclaimed divinity of the fetish priest, some of Ghana's most powerful men do not perceive fetish slavery to be a national concern. In fact, government ministers and senior members of Ghana's police and armed forces are said to visit fetish shrines seeking protection and promotions.⁹⁹ Without government condemnation, it is unlikely that a practice so embedded within the lives of those who ascribe to the Trokosi belief system will soon be eradicated. Sadly, the government's disinterest in the enslavement of children for religious purposes, although increasingly criticized, has been met with very little public backlash.

D. Victims' Unwilling Resignation

Unfortunately, one of the driving forces behind the continued perpetuation of the Trokosi slavery system is the fact that its victims often resign themselves to a life they view as inescapable. Because they are “[g]roomed from a very young age into accepting their servitude, the [Trokosi slaves] are not in a position to refuse” their status.¹⁰⁰ Furthermore, although unsatisfied with her life, *198 a Trokosi slave may not protest her position because she feels obligated to protect her family--after all, wouldn't unmentionable harms come to her family if she leaves the shrine of the fetish priest?

Another factor contributing to the passive resistance of the Trokosi slave is the bleak nature of any prospective future outside of the priest's home. “After the girls have been branded as Trokosi slaves, their families refuse to take them back, and they may become outcasts.”¹⁰¹ The fear of angering the gods, which led families to give up their daughters, is the same fear that prevents them from accepting their daughters back into these families. The few Trokosi women who are fortunate enough to leave the shrines must do so knowing that they will be alone in the world. In addition to being rejected by their families, “the ‘stigma is so strong that many men will have nothing to do with a former [T]rokosi.”¹⁰² Therefore, the Trokosi slaves have no hope of creating families of their own. Having lived in the shrines for most, if not all, of their lives, the fortunate few who are able to leave often face an infinite number of problems. “During their captivity they receive little or no education and many are illiterate, they often have several children and many cannot return to their own communities because of the stigma.”¹⁰³ In addition, the Trokosi slaves have very few skills essential for a *199 comfortable life outside the confines of the shrines.¹⁰⁴ These daunting factors all contribute to the female victims' unwilling resignation to their lives as slaves. In addition, as “the priest may demand her return at any time”¹⁰⁵ after her release, the Trokosi slave may see no point in leaving her prison. The obstacles imposed by the general public

against the Trokosi slave is so bad that, occasionally, those who have been freed often voluntarily return to the shrines because the stigma against them makes it impossible for them to create an independent life.¹⁰⁶

IV. How Extension of U.S. Asylum Laws Serves to Help Trokosi Slavery Victims Rebuild Their Lives

In addition to acknowledgement of the fact that “[in the law] there is always a gap or a lag between the principle aspiration and reality,”¹⁰⁷ it is important to recognize the need to implement another legal remedy for the Trokosi victims. This is not to say that the Ghanaian government's violations of its duties to the Trokosi victims should be ignored. It is simply to say that, when one avenue is ineffective, there must be a continued search for an alternate option. One such alternate legal option is granting asylum to the victims of Trokosi. Although there is not an extensive amount of case law particularly discussing the application of asylum rights to Trokosi, in recent history there has been an increased acknowledgment that victims of gender crimes abroad may rightfully be granted asylum under U.S. laws. Therefore, asylum protection should be extended to victims of Trokosi because such an extension is in accordance with U.S. legislation and existing case law.

A. Filing an Asylum Claim, Generally

The end of World War II brought about many changes, especially in regards to the relationships between nations and the ever-growing human traffic across national borders. Promptly after the creation of the United Nations, in response to growing concern about “thousands of refugees in Europe who had been driven from their homes [and] . . . had no country to protect them,” member states adopted a convention which outlines “specific rights and protections that nations should offer” to those individuals whose safety is either endangered by, or cannot be guaranteed by, their national government.¹⁰⁸ Although the United States ratified a UN treaty subsequently after the adoption of the convention, it did not adopt the asylum laws into its own legal system until 1980.¹⁰⁹ The Refugee Act of 1980 (“Refugee Act”) provides the statutory basis under which an immigrant already in the United States can apply for asylum.¹¹⁰ Because asylum is granted under the Refugee Act, an applicant must first show that that she meets the definition of refugee under the Act.¹¹¹ In the United States, a “refugee” is statutorily defined as:

any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . .¹¹²

The applicant's location at the time of filing determines whether the applicant receives an asylum status or a refugee status.¹¹³ Once an individual initiates an asylum claim, she must file one of two applications: (1) an affirmative application or (2) a defensive application.¹¹⁴ While an affirmative application is the appropriate form for those filing through the Office of the United States Citizenship and Immigration Service, those who have already been sentenced to deportation must file a defensive application with the immigration court.¹¹⁵

An immigrant already in the United States may apply for asylum if she is in danger of being persecuted in her native state because of “race, religion, nationality, membership in a particular social group or political opinion.”¹¹⁶ An asylum applicant has the difficult burden of proving her eligibility by showing that:

(1) an incident, or incidents, that rise to the level of prosecution; (2) that is ‘on account of’ one of the statutorily protected grounds; and (3) is committed by the government or forces the government is either ‘unable or unwilling’ to control.¹¹⁷

The asylum seeker may satisfy her burden of proof by providing evidence. However, as one might expect, those forced to flee their homes for their own safety rarely stop *203 to gather evidence. As occurs more often than not, an asylum-seeker may rely solely on her testimony to satisfy her burden of proof. However, this makes the asylum-seeker's burden even more difficult to meet as, when only her testimony is offered, she must “satisf[y] the trier of fact that [her] testimony is credible, is persuasive, and refers” to sufficient examples of particular incidents to prove her refugee status.¹¹⁸

In addition to making credibility determinations, the Immigration Judge presiding over an asylum case considers several other factors in determining whether to grant asylum status. The IJ's determination of the validity of asylum claims is guided by case law, statutory guidelines, and agency rules.¹¹⁹ From the most basic of observations, such as taking note of the asylum seeker's physical demeanor, to a more precise scrutinizing of the plausibility of the asylum seeker's testimony, the IJ takes into account a wide range of considerations in making a decision regarding the asylum application.¹²⁰ The IJ also takes in account factors such as whether there are any inaccuracies in the applicant's oral and written testimonies, and whether she has sufficiently proven that she is unable to obtain any relief from her native government.¹²¹ In instances where the IJ does not find that the applicant has met her burden, he renders a *204 negative credibility ruling.¹²² The applicant then has the option to appeal this decision to the Board of Immigration Appeals (“BIA”).¹²³ In some cases, an asylum applicant may choose to petition for review of the BIA's decision.¹²⁴

B. Gender-Based Asylum Claims

As noted earlier, an applicant is eligible for asylum only if she faces persecution based on religion, race, nationality, or her membership in a specific political or social group.¹²⁵ Although a victim of Trokosi slavery may attempt to argue that her persecution is based on her religion, this argument will unlikely result in a successful asylum claim. In fact, it would be extremely difficult to succeed on a religious claim in situations where the perpetrators of the harm subscribe to the same religious ideals as the victim. However, under U.S. policies and case law, a Trokosi slave can successfully argue an asylum claim by arguing that she was targeted because of her gender.

As a consequence of the universally agreed upon principle that the needs of displaced women must be addressed and met by the international community, the early 1990s saw a rise in the recognition of the validity of *205 asylum claims based on gender discrimination.¹²⁶ Around 1991, recognizing that women are members of a particular social group, “the INS [] determined that violence and oppressive acts against women can constitute human rights violations warranting asylum.”¹²⁷ To lend legitimacy to this recognition, the INS, in 1995, issued several guidelines, including one entitled “Consideration for Asylum Officers Adjudicating Asylum Claims from Women,” to aid asylum officers in the interpretation of asylum laws.¹²⁸ In addition to several other provisions, the guidelines note that sexual abuse falls within the same category as other forms of physical violence.¹²⁹ Precisely, the guidelines state that “[s]erious physical harm consistently has been held to constitute persecution. Rape and other forms of severe sexual violence clearly can fall within this rule.”¹³⁰ It is under these guidelines that gender-based asylum claims were scrutinized.

In *In re Kasinga*, a female genital mutilation case decided in 1996, the BIA recognized that, because female *206 genital mutilation “has been used to control woman's sexuality,” it constituted persecution based on the woman's “status

as a member of the defined social group.”¹³¹ Similarly, in *Longwe v. Keisler*, a case in which the petitioner sought asylum after being raped by members of her fiancé’s political opposition (the petitioner, herself, was not a politician), the Second Circuit found that the lack of a direct relationship between the petitioner and the political opposition party does not undermine a well-founded fear of prosecution.¹³² Although these two cases are not representative of all asylum claims based on gender discrimination, they do provide an illustration of the increasing acceptability of granting asylum applications based on gender claims. However, it is important to note that, in both cases, the applicants faced numerous instances of insensitivity and prejudice before finally succeeding on their petitions for review of the IJ’s ruling. Unfortunately, despite the fact that it is now becoming more accepted that women do constitute those “other targeted groups” eligible for asylum protection, women still continue to face numerous obstacles when petitioning for gender-based asylum.

These obstacles that women continue to face in the sixteen years since the INS first published its guidelines partially stem from the fact that the abuses women often face are typically “characterized as private or personal”¹³³ *207 affairs that do not require government intervention. Because of this categorization, in instances where the government is not the direct perpetrator, even when the presiding IJ may recognize that the female applicant was indeed a victim of gender-based violence, it is unlikely that the IJ will grant asylum. As a result of the hesitancy to grant asylum for gender-based claims, victims of domestic violence and sexual slavery have faced numerous obstacles in asylum proceedings.¹³⁴ This is further compounded by the INS’s decision to distinguish between sexual abuse inflicted by state actors and abuse inflicted by private actors for women asserting sexual abuse in their asylum claims.¹³⁵ As a result, in instances where the perpetrator of the sexual abuse is a private actor not affiliated with the government, courts are less willing to grant asylum status.¹³⁶ It is for this reason that it is necessary to establish a more streamlined process that recognizes the unique challenges female asylum applicants in general, and Trokosi slaves in particular, face in their asylum hearings under existing policies and case law.

*208 C. *Fiadjoe v. Attorney General of the United States*

Fiadjoe v. Attorney General of the United States provides a precise illustration of the obstacles Trokosi slavery victims currently face in immigration courts. Decided in 2005, *Fiadjoe* is the only U.S. asylum case that deals with an asylum application brought by a Ghanaian victim of the Trokosi slavery system. Ms. *Fiadjoe*, the asylum applicant, was the daughter of a fetish priest who, for the vast majority of her life, was physically and sexually abused by her father.¹³⁷ Similar to victims of domestic violence and female genital mutilation, Ms. *Fiadjoe*’s argument rested on the fact that, if she were returned to Ghana, the “government authorities [would have been] unable or unwilling to prevent” her continued enslavement.¹³⁸ Unfortunately, also similar to domestic violence and female genital mutilation victims, Ms. *Fiadjoe* was subjected to insensitive, and somewhat culturally biased, treatment by the presiding IJ.

Throughout her 2002 asylum hearings, Ms. *Fiadjoe* was aggressively questioned about the sexual abuse she endured. During the IJ’s questioning of Ms. *Fiadjoe*, it seems as though he became so frustrated at her inability to communicate clearly in English that he outright told her that she “was not making any sense” and that “rather than crying, [she] should just answer the question.”¹³⁹ A closer look at the transcript of the hearings shows that Ms. *209 *Fiadjoe* did answer his question - she just failed to answer in the grammatically “correct” English that the IJ would have preferred.¹⁴⁰ The IJ’s expressed frustration at Ms. *Fiadjoe*’s heavily accented English caused Ms. *Fiadjoe* such distress that, at times, she became so flustered that her responses were indiscernible.¹⁴¹ In response to these incomprehensible responses, the IJ deemed Ms. *Fiadjoe* to be “non responsive to the question[[s].”¹⁴² It appeared that the IJ seemed to have forgotten that, as a former slave, Ms. *Fiadjoe* had limited access to education.

Disregarding the psychological and emotional harm Ms. Fiadjoe had endured as a slave, the IJ “pursued with extreme insensitivity a subject that must have been particularly painful to Ms. Fiadjoe” - the murder of her fiancé at the hands of her father.¹⁴³ This insensitivity continued even after she began to cry. The IJ then took it upon himself to question Ms. Fiadjoe, using a tone that

was hostile and at times became extraordinarily abusive. If not by design, in effect, he produced the very atmosphere that Ms. Jansen [the psychologist assigned to the case] and the INS Guidelines anticipated would cause memory loss, blocking, dissociating and breakdown.¹⁴⁴

***210** Moreover, “Ms. Fiadjoe was drilled about the most minor details of her claim that her father forced her into religious and sexual slavery The IJ thought Ms. Fiadjoe's story was a mere fabrication.”¹⁴⁵ Not only did the IJ believe Ms. Fiadjoe's claims were false, but he treated them as such. In fact, while questioning Ms. Fiadjoe, the IJ admitted that, because she could not remember all the dates on which the abuses occurred, he thought Ms. Fiadjoe was “making up [her] testimony as [she was] going along.”¹⁴⁶ In effect, the IJ made a credibility determination based on his personal opinion that no such things could have occurred, rather than on the evidence that was presented before him. In addition, the IJ found that it was sufficient that the Ghanaian government had enacted a law against Trokosi slavery, even if the law had never been enforced.¹⁴⁷ Although Ms. Fiadjoe timely appealed the IJ's decision, the BIA dismissed her appeal.¹⁴⁸

Fortunately for Ms. Fiadjoe, the Third Circuit disagreed with the IJ's decision.¹⁴⁹ However, the Third Circuit's decision did not end Ms. Fiadjoe's ordeal. Her case was remanded back “to the BIA for further remand to a different IJ for a new hearing.”¹⁵⁰ After reliving and discussing her painful ordeal for over three years, Ms. Fiadjoe was again forced to become subject to another ***211** round of questioning in front of another IJ who would use the same factors as the previous IJ to make his credibility determination.

D. REAL ID Act & the Cultural, Gender, Language and other Barriers Faced by Trokosi Victims

Because of the uniqueness of their cases - as evidenced by Ms. Fiadjoe's ordeal - Trokosi victims may face a bigger challenge than typically faced by other female applicants of asylum. This is further compounded by the fact that, while domestic violence and female genital mutilation issues are widely known among immigration officials, the presiding IJ may be learning about the Trokosi practice for the first time during the asylum hearing. While it is important to improve the IJ's credibility determination of all gender-based asylum claims, as the IJ's unfamiliarity with the Trokosi slavery system makes it more likely that the IJ will find that the victim fabricated her story, it is especially important that the credibility determinations adopt a more culturally sensitive approach when dealing with Trokosi slavery victims.

The presiding IJ's cultural insensitivity forced Ms. Fiadjoe to spend numerous years recounting the rapes and physical abuses she was seeking to put behind her. Because IJs are given wide discretion in their credibility determinations, the insensitivity and bias displayed by the IJ in his questioning of Ms. Fiadjoe did not result in any sanctions. In addition, the REAL ID Act, enacted in 2005, ***212** allowed the IJ to base his credibility determination merely on the clarity of Ms. Fiadjoe's speech.¹⁵¹ A supplement to the asylum statute, the REAL ID Act of 2005 allows those acting in an official capacity in immigration cases, such as asylum officers and immigration judges, to base their credibility determination on: (1) the fluency and plausibility of the applicant's oral communications, (2) any discrepancies between the applicant's oral and written statements, and (3) the believability of the applicant's emotional state and physical demeanor.¹⁵²

Since the enactment of the Real ID Act, “judges [have] increasingly base[d] their [credibility] rulings on . . . the clarity and fluency of the claimant's speech.”¹⁵³ Consequently, credibility determinations are often “premised upon the assumption that political subjects with worthy claims to political refuge are modern, rational individuals who can tell logical, linear, plausible stories.”¹⁵⁴ Unfortunately, although such an assumption does make it easier for overworked and overburdened IJs to reach decisions, it does not prompt IJs to make asylum decisions based on the underlying asylum claims. In fact, the assumption that those with worthy claims have plausible stories greatly harmed Ms. Fiadjoe's claim. Even after acknowledging that the U.S. Department of State *213 has published an article on the Trokosi religion in Ghana, the presiding IJ in Fiadjoe “rejected the evidence that Trokosi was a form of religion” and instead, opined that it was merely a cult.¹⁵⁵ Such a determination reflects the IJ's belief that Ms. Fiadjoe chose to subject herself to a life of sexual and physical slavery and that she was free to walk away from it at any point.

In addition to credibility determinations made based on plausibility of speech, the Real ID Act also allows IJs to examine the consistency of all the statements given by the applicant. Although this is standard procedure in all legal hearings, because of the nature of the asylum claims, examination of the consistency between various statements made by the applicant warrants special consideration. As the Fiadjoe Court noted, in determining whether the discrepancies in an applicant's statements “constitute[] substantial evidence to support . . . [an] adverse credibility determination[], it is necessary to examine the circumstances in which the statement was given.”¹⁵⁶ However, the IJ who presided over Ms. Fiadjoe's case failed to do this. In fact, the IJ went so far as to accuse Ms. Fiadjoe of lying because she revealed to the court information she did not previously reveal to her psychiatrist.¹⁵⁷

The Third Circuit, however, noted that the inconsistencies between Ms. Fiadjoe's testimony and her statement to the airport immigration officer do not, on *214 their own, support a determination that Ms. Fiadjoe is not credible.¹⁵⁸ As the Third Circuit properly noted, initial immigration interviews, such as those taken at airports, are

likely to be hurried; language difficulties arise; . . . an arriving alien who has suffered abuse in his home country may be reluctant to reveal full information in his or her first meeting with the government.¹⁵⁹

However, although the Third Circuit did consider the circumstances under which the applicant made her statements, this is not the set standard for all IJs across the nation. In the case of the Trokosi slave victim, it is especially important that IJs take note, not only of the circumstances under which they made their statements, but also of the lack of control Trokosi slaves have over their lives. As Trokosi slaves are subjected to captivity since birth or early childhood, it is impossible to remember the precise date of every rape and beating they endured before they were able to escape. This was the case for Ms. Fiadjoe, who was berated for her inability to remember precisely when the rapes actually began.

The third factor listed in the REAL ID Act, the applicant's emotional displays and physical demeanor, further distracted the IJ from focusing on Ms. Fiadjoe's claims. In Fiadjoe, the IJ went so far as to admonish her for crying, only to later turn around and admonish her for *215 making “sounds as if [she was] crying [but her] eyes stay[ed] dry.”¹⁶⁰ The IJ's disbelief of Ms. Fiadjoe's testimony made it such that, regardless of Ms. Fiadjoe's physical and emotional demeanor at any given time, he was inclined to construe it as a false pretense purposely designed to elicit sympathy.

A. Trokosi Slaves As “Other Target Groups” Under Asylum Laws

As damaging as the IJ's employment of the credibility factors espoused in the Real ID Act were to Ms. Fiadjoe's case, they are even more damaging to future asylum applicants who are victimized by the Trokosi slavery system. In his decision, the IJ held that, “[t]he Court will not find that a Trokosi slave constitutes a particular social group, insofar as it

is rather a miniscule part of the general population of Ghana.”¹⁶¹ Not only did the IJ dismiss Ms. Fiadjoe's experiences as improbable, but he also dismissed the human rights abuses endured by all Trokosi slaves simply because they make up a small portion of Ghana's total population. Although Ms. Fiadjoe's case was remanded, the IJ's statement is troubling in that he made an asylum decision based on the number of people being harmed, and not the harm itself. His statement that Trokosi slaves cannot constitute “a particular social group” warranting asylum protection because they do not make up a large part of Ghana's population is inconsistent with the asylum statute. Rather than focusing on the number of *216 victims, asylum law focuses on why the harm was inflicted and whether the national government can prevent any future harm.

Under U.S. asylum laws, membership in a specific social group is established when it is proven that the applicant is a part of a “group that is cognizable, cohesive, and [whose] members are being singled out for persecution.”¹⁶² Membership in a particular social group for asylum purposes is determined under a four-part test established in *Sanchez-Trujillo v. Immigration and Naturalization Service*.¹⁶³ Under *Sanchez-Trujillo*, an asylum applicant qualifies as a member of “a particular social group” when: (1) she has identified the group requiring asylum protection, (2) she establishes that she is a member of this particular group, (3) the group's members have, in fact, been targeted for persecution based on the specific characteristics of its members, and (4) special circumstances exist which prohibit their deportation.¹⁶⁴ Once the asylum applicant has shown that all four components exist, she has met her burden of proof.

A Trokosi slave can easily satisfy the requirements set forth under *Sanchez-Trujillo*. The group requiring asylum protection in claims brought forth by Trokosi slavery victims are young, virgin, females who come from families that subscribe to the Trokosi belief system. Each applicant can, on an individual basis, establish her membership as a Trokosi slave through her oral *217 testimony. The third *Sanchez-Trujillo* requirement can be met through education about the Trokosi belief system. As has been noted by numerous legal and non-legal researchers, Trokosi slaves are chosen based on their age, sexual experience, and relationship to the alleged sinner. As for the fourth *Sanchez-Trujillo* factor, the Trokosi slave applicant can meet the “special circumstances” requirement either by showing that she was already a slave and will be forced back into slavery if returned, or that there is a high probability that she will be forced into slavery.¹⁶⁵

Conclusion

Asylum laws can be very complex, and oftentimes, their application to particular circumstances is contentious. It is even more contentious when dealing with gender-based asylum claims that are often regarded as private matters that do not require government interference. However, in keeping with the legislative intent, it is important that asylum decisions are made based on the requirements set forth under asylum laws, not based not on whether the crime occurred in a “private setting” or on the number of individuals affected by that particular human rights abuse.

As was evidenced in *Fiadjoe*, even after it has been ruled that women can constitute a “particular social group” under asylum laws, asserting a gender-based *218 asylum claim is often made more difficult by the unwillingness to extend asylum laws to the new groups of asylum applicants that continue to emerge. For unfortunate women who may find themselves before an IJ with a viewpoint similar to that of the IJ who initially heard Ms. *Fiadjoe's* case, this hesitancy to extend asylum laws to Trokosi victims may well be the difference between life and death. However, to deny asylum to an applicant with a valid claim, simply because the nature of the crime is so incredulous, contradicts the legislative intent of asylum laws.

Footnotes

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love and support. Most of all, to my mother and father, for their unconditional love and the countless sacrifices they made to afford me the opportunity to pursue my dreams. Special thanks to the Rutgers Race and the Law Review staff for their work in helping me publish this note.

- 1 There have been very few Trokosi slaves whose freedom has been bought by various human rights organizations. It is estimated that International Needs-Ghana, a non-governmental organization geared at freeing Trokosi victims, has negotiated the freedom of about 3500 slaves between 1997 and 2007. United Nations Population Fund, Ghana: Liberating Slaves and Changing Minds, Starting at the Grass Roots, in *Programming to Address Violence Against Women: 10 Case Studies* 85, 87 (2007), http://www.unfpa.org/upload/lib_pub_file/678_filename_vaw.pdf [hereinafter Grass Roots].
- 2 Humphrey Hawksley, Ghana's Trapped Slaves, BBC News, Feb. 8, 2001, http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/1158115.stm.
- 3 See Aziza Naa-Kaa Botchway, Abolished by Law-Maintained in Practice: The Trokosi as Practice in Parts of the Republic of Ghana, 3 FIU L. Rev. 369, 378 (2008).
- 4 Although this paper focuses on the United States, it is arguable that all nations should, if they have not already done so, extend asylum protection to Trokosi victims. However, because asylum laws of nations differ, the United States is the focus of this note because this focus will allow for precise application of asylum laws in regards to Trokosi victims.
- 5 Although commonly referred to as Trokosi, this religious practice is known by several different names. Trokosi is the Ghanaian-English translation of the practice. In certain districts in Ghana, it is known as Fiashidi, while in others it is known as Woryokwe. In Togo and Benin, both of which are French-speaking nations, the practice is generally referred to as Vudusi. Modern-Day Slavery: "Trokosi" Slave Children in Africa, Every Child Ministries, <http://www.ecmafrica.org/36223.ihtml> (last visited Sept. 5, 2011); see also Anita M. Heymann Ababio, Challenges to the Application of International Women's Human Rights in Ghana, 20 Can. Woman Studies 167, 167 (2000).
- 6 Trokosi is also practiced in parts of the Volta region, Togo, Nigeria, and Benin. Nirit Ben-Ari, Liberating Girls from "Trokosi": Campaign Against Ritual Servitude in Ghana, 15 Afr. Recovery 26 (2001), <http://www.un.org/ecosocdev/geninfo/afrec/vol15no4/154troko.htm>. However, because much of the available academic information on the practice comes from Ghana, this paper will focus mainly on Trokosi as it is practiced in Ghana. Despite this focus on Ghana, the argument that asylum protection should be extended to the Trokosi slaves applies to all victims, regardless of nationality.
- 7 Sofia Wiking, Thesis, From Slave Wife of the Gods to "ke te pam tem eng": Trokosi Seen through the Eyes of the Participants 17 (2009), <http://dspace.mah.se:8080/handle/2043/8392>.
- 8 Botchway, *supra* note 3, at 370.
- 9 Emma Brooker, Slaves of the Fetish, *Indep.*, June 16, 1996, www.independent.co.uk/arts-entertainment/slaves-of-the-fetish-1337314.html.
- 10 See Trokosi, Adoption.com, <http://famous.adoption.com/famous/Trokosi.html> (last visited Nov. 30, 2011).
- 11 See *id.*
- 12 Santuah Niagia, Atoning the Sins of Others Children, AfricaNews, Feb. 16, 2000, <http://freespace.virgin.net/asantedom.com/asantedom/archive/ewe.html>.
- 13 Slavery in Ghana: The Trokosi Tradition, Equal. Now, <http://www.equalitynow.org/node/185> (May 1, 2002) (quoting fetish priests interviewed).
- 14 See Botchway, *supra* note 3, at 383. It is also important to note that priests often denied the Trokosi women "even the small amount" of food they were able to obtain for themselves as a method of control. See Trokosi Dictionary / Encyclopedia, Trokosi dictionary, http://www.trokosidictionary.com/trokosi_dictionary_r-z (last visited Nov. 30, 2011) (defining starvation). This is an effective control mechanism because a starving slave is less able to retaliate against her master.
- 15 Although typically girls, in some very rare cases, a boy may become a Trokosi slave. Niagia, *supra* note 12. However, 99.99% of the time, girls are offered as atonement because "[b]oys are seen as problematic, less subservient to girls, and of course

unable to produce offspring.” Benjamin Rinaudo, African Studies Ass'n of Australasia and the Pac., *Trokosi Slavery: Injustice in the Name of Religion* 4 (2003), <http://www.afsaap.org.au/Conferences/2003/Rinaudo.PDF>.

16 A child fathered by a fetish priest automatically becomes his property, to be used for physical and sexual slavery. Botchway, *supra* note 3, at 370 n.1. Additionally, in some cases, a child who is the product of a rape is also offered to the fetish priests as payment for her father's crime of raping her mother. E.g., Equal. Now, *supra* note 13.

17 Niagia, *supra* note 12. Accord Sarah C. Aird, *Ghana's Slaves to the Gods*, 7 *Hum. Rts. Brief* 6, 6 (1999) available at <http://www.wcl.american.edu/hrbrief/07/1ghana.cfm>. The assumption is that, because of the difficulty the mother had in giving birth, the child would have died had it not been for the gods.

18 See *id.*

19 Wiking, *supra* note 7, at 13.

20 *Id.*

21 Sandra E. Greene, *Modern “Trokosi” and the 1807 Abolition in Ghana: Connecting Past and Present*, 66 *Wm. & Mary Q.* 959, 970 (2009), <http://www.jstor.org/stable/40467549>. It is also believed that the 1807 legislation which outlawed the Atlantic slave trade also influenced the “shift toward taking human as opposed to monetary or in-kind compensation for crimes” committed by followers of the Trokosi belief system. *Id.*

22 *Id.*

23 *Id.* at 971.

24 *Id.*

25 *Grass Roots*, *supra* note 1, at 87.

26 *Trokosi Dictionary / Encyclopedia*, *supra* note 14 (defining fetish priest or priestess).

27 *Id.*

28 Aird, *supra* note 17, at 6.

29 See Wiking, *supra* note 7, at 15. See also Niagia, *supra* note 12.

30 Hawksley, *supra* note 2.

31 See *id.*

32 Wiking, *supra* note 7, at 15. The libation is a mixture of flour and water that is often used in a variety of rituals by the fetish priest. *Id.*

33 *Id.*

34 Niagia, *supra* note 12.

35 See, e.g., *id.*; Wiking, *supra* note 7, at 15.

36 See, e.g., Niagia, *supra* note 12.

37 See, e.g., *id.*; Wiking, *supra* note 7, at 15.

38 Botchway, *supra* note 3, at 391.

39 Official Portal of the Ghana Gov't, <http://www.ghana.gov.gh> (click on “Ghana at a Glance” under “About Ghana,” scroll down and click “Read More”) (last visited Nov. 30, 2011).

- 40 Official Portal of the Government of Ghana, [http:// www.ghana.gov.gh/index.php/information/constitution](http://www.ghana.gov.gh/index.php/information/constitution) (last visited Jan. 11, 2012).
- 41 It is important to point out that the argument in this note concerns the abolition of slavery of young girls. The author makes no arguments intended to attack the religion itself.
- 42 Constitution of the Republic of Ghana (1992), art. 21(4)(e).
- 43 Dr. E. K. Quashigah, [Legislating Religious Liberty: The Ghanaian Experience](#), 1999 *BYU L. Rev.* 589, 602 (1999) (quoting Constitution of the Republic of Ghana (1992), art. 21(4)(e)).
- 44 Constitution of the Republic of Ghana (1992), art. 16(1)-(2).
- 45 *Id.* at art. 26(2).
- 46 Nicole C. Mullen, *Trokosi Freedom*, YouTube (Mar. 31, 2007), [http:// www.youtube.com/watch?v=w6vr5aHc8hg](http://www.youtube.com/watch?v=w6vr5aHc8hg).
- 47 Botchway, *supra* note 3, at 383.
- 48 Ghana: Family Health Project, Int'l Planned Parenthood Fed'n (2003), <http://www.ippf.org/NR/rdonlyres/F6AE208A-A1D3-42FA-95DE-A7835BE75DB7/0/ghana.pdf>.
- 49 *E.g.*, Ben-Ari, *supra* note 6.
- 50 Constitution of the Republic of Ghana (1992), art. 37 § 2(b).
- 51 Constitution of the Republic of Ghana (1992), art. 15 § 1.
- 52 Amy Small Bilyeu, [Trokosi - The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom vs. Human Rights](#), 9 *Ind. Int'l & Comp. L. Rev.* 457, 496 (1999).
- 53 Constitution of the Republic of Ghana (1992), art. 17 § 2.
- 54 Rinaudo, *supra* note 15, at 4.
- 55 Aird, *supra* note 17, at 8; Quashigah, *supra* note 43, at 606.
- 56 Aird, *supra* note 17, at 8.
- 57 Quashigah, *supra* note 43, at 606 (quoting Criminal Code (Amendment) Act, § 314(A) (Ghana)).
- 58 *Id.* Section 314(A)(2) of the Criminal Code provides an exhaustive list of all the individuals who may be criminally liable under the statute. *Id.*
- 59 Aird, *supra* note 17, at 8.
- 60 [Fiadjoe v. Att'y Gen. of the U.S.](#), 411 F.3d 135, 139 (3d Cir. 2005). Although 2000 is the most recent date that can be noted with certainty, all research indicates that there has yet to be any prosecution under the Criminal Code to date. *Id.*
- 61 Aird, *supra* note 17, at 8.
- 62 While this note only briefly discusses three such international agreements, it is important to point out that there are several other international agreements being violated by the Ghanaian government with its continued tolerance of the Trokosi slavery system. These include, but are not limited to, the (1) Universal Declaration of Human Rights, (2) Convention to Suppress the Slave Trade and Slavery, (3) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed and ratified by Ghana Sept. 7, 2000), (4) Convention on the Rights of the Child (signed on Jan. 29, 1990 and ratified on Feb. 5, 1990), and (5) Abolition of Forced Labor Convention. To view full text formats of all the preceding agreements, see *The Core International Human Rights Instruments & Their Monitoring Bodies*, Office of the U.N. High Comm'r for Human Rights <http://www2.ohchr.org/english/law/> (last visited Dec. 7, 2011).

- 63 Botchway, *supra* note 3, at 391 (noting that the United Nations is aware of the Trokosi slavery system, and that the enslavement of young women by the fetish priests had been a topic of discussion during “a 2006 meeting of Committee on the Rights of the Child.”).
- 64 Bilyeu, *supra* note 52, at 477.
- 65 *Id.* at 459 (citation omitted).
- 66 See African Charter on the Rights and Welfare of the Child, African Union (Nov. 29, 1999), http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20C#HILD.pdf [hereinafter African Charter].
- 67 *Id.* at art. 21 § 1.
- 68 Bilyeu, *supra* note 52, at 479 (citation omitted).
- 69 Ghana signed and ratified the Covenant on September 7, 2000. Status of Treaties: International Covenant on Civil and Political Rights, UN Treaty Collection (last visited Dec. 7, 2011), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.
- 70 Bilyeu, *supra* note 52, at 483.
- 71 See *id.* at 484.
- 72 International Covenant on Civil and Political Rights art. 8, adopted and opened for signature Dec. 16, 1966, 999 U.N.T.S. 171, <http://www2.ohchr.org/english/law/pdf/ccpr.pdf>.
- 73 Convention on the Elimination of All Forms of Discrimination Against Women art. 2(f), Dec. 18, 1979, 1249 U.N.T.S. 13, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> [hereinafter CEDAW]; see also Bilyeu, *supra* note 52, at 488.
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- 75 Bilyeu, *supra* note 52, at 488-89.
- 76 Grass Roots, *supra* note 1, at 87; Special Rapporteur on Violence Against Women, Promotion and Protection of All Human Rights, Civil, Political, Social and Cultural, including the Right to Development, U.N. Human Rights Council, UN Doc. A/HRC/7/6/Add.3 (Feb. 21, 2008) (by Yakin Erturk), <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm> (scroll down to “Mission to Ghana” and select language hyperlink to right) [hereinafter Promotion and Protection of All Human Rights].
- 77 Aird, *supra* note 17, at 6.
- 78 AFROL Gender Profiles: Ghana, AFROL News, http://www.afrol.com/Categories/Women/profiles/ghana_women.htm (last visited Dec. 7, 2011).
- 79 Truth about Trokosi & Shrine Slavery, Truth for Afr. Lovers, http://www.truthforafricalovers.com/truth_about_Trokosi_shrine_slavery (last visited Dec. 7, 2011).
- 80 Freedom and Healing for Trokosi Slaves, Health Partners Int'l of Canada, http://www.hpicanada.ca/hpic_at_work_print.cfm?hpicatworkID=102; see also I.N. Network USA, Slaves to the Gods: The Trokosi of Western Africa, YouTube, http://www.youtube.com/watch?v=Tu0j7c0RdSY&feature=player_embedded.
- 81 Aird, *supra* note 17, at 8.
- 82 Wiking, *supra* note 7, at 13.

- 83 Id. at 45; see also Raymond Archer, Ghanaian Women Demanding Protection from Violence, *Women's E-News*, Apr. 22, 2002, <http://www.womensenews.org/story/domestic-violence/020422/ghanaian-women-demanding-protection-violence>.
- 84 Promotion and Protection of All Human Rights, *supra* note 76, at P 48.
- 85 [Fiadjoe, 411 F.3d at 139](#).
- 86 Established in 1984, International Needs Network Ghana (INNG) is a non-governmental agency working in various regions of Ghana. INNG provides human rights services, including rehabilitation of victims of human rights abuses. *Wiking*, *supra* note 7, at 21.
- 87 Id. at 44-45.
- 88 Bilyeu, *supra* note 52, at 459.
- 89 Hawksley, *supra* note 2.
- 90 Bilyeu, *supra* note 52, at 459 (citation omitted).
- 91 Quashigah, *supra* note 43, at 599.
- 92 Aird, *supra* note 17, at 8.
- 93 Quashigah, *supra* note 43, at 601.
- 94 Id. at 602 (quoting Constitution of the Republic of Ghana (1992), art. 26(2)).
- 95 Id. at 467.
- 96 Botchway, *supra* note 3, at 392.
- 97 Id.
- 98 Id. at 378.
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- 100 Promotion and Protection of All Human Rights, *supra* note 76, at P 45.
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- 111 Daniel Forman, [Improving Asylum-Seeker Credibility Determinations: Introducing Appropriate Dispute Resolution Techniques into the Process](#), 16 *Cardozo J. Int'l & Comp. L.* 207, 212 (2008).
- 112 8 U.S.C. § 1101(a)(42)(A) (2002); see also Forman, supra note 111, at 212; Eligibility for U.S. Resettlement, Refugee Council USA, <http://www.rcusa.org/index.php?page=eligibility-for-u-s-resettlement> (last visited Dec. 7, 2011).
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- 114 Forman, supra note 111, at 211.
- 115 Id.
- 116 E.g., Political Asylum Eligibility, Julie C. Ferguson, PA: Immigration & Nationality law, <http://www.jcfimmigration.com/political-asylum-eligibility-faq.php> (last visited Dec. 7, 2011).
- 117 *Fiadjoe*, 411 F.3d at 164 (Smith, J., dissenting) (citing *Gao v. Ashcroft*, 299 F.3d 266, 272 (3d Cir. 2002)).
- 118 Forman, supra note 111, at 213.
- 119 Id.
- 120 Id.
- 121 See *Fiadjoe*, 411 F.3d at 137, 145-48.
- 122 Forman, supra note 111, at 214.
- 123 See, e.g., *Fiadjoe*, 411 F.3d at 136-37; Katherine E. Melloy, [Telling Truths: How the REAL ID Act's Credibility Provisions Affect Women Asylum Seekers](#), 92 *Iowa L. Rev.* 637, 648 (2007).
- 124 See generally *Fiadjoe*, 411 F.3d 135.
- 125 Melloy, supra note 123, at 644.
- 126 See Megan Annitto, [Asylum for Victims of Domestic Violence: Is Protection Possible After In Re R-A-?](#), 49 *Cath. U.L. Rev.* 785, 786-88 (2000).
- 127 Id. at 792.
- 128 Id. at 792-93 & n.51 (citing n.19). It is important to note, however, that these guidelines were not binding on Immigration Judges or the Board of Immigration Appeals. Id. at 793.
- 129 Id. at 793.
- 130 Memorandum on Considerations for Asylum Officers Adjudicating Asylum Claims from Women, Memorandum from Phyllis Coven, Office of Int'l Affairs to All INS Asylum Officers/HQASM Coordinators 9 (May 26, 1995), http://cgrs.uchastings.edu/documents/legal/guidelines_us.pdf.
- 131 *In re Fauziya Kasinga*, 21 I. & N. Dec. 357, at *366-67 (BIA June 13, 1996).
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- 133 Annitto, supra note 126, at 793 (citation omitted).
- 134 See generally *Fiadjoe*, 411 F.3d at 143-46 (IJ used hostile and abusive tone towards Trokosi slavery victim); *Longwe*, 251 Fed. Appx. 718 (victim initially denied asylum because she could not remember precise date of rape); *In re Kasinga*, 21 I. &

N. Dec. (female genital mutilation (FGM) victim initially denied asylum because IJ assumed that all women from her nation underwent FGM).

135 Anitto, *supra* note 126, at 794.

136 *Id.* at 793.

137 [Fiadjoe, 411 F.3d at 137.](#)

138 *Id.*

139 *Id.* at 143.

140 *Id.*

141 See *id.* at 145 (transcript of victim's testimony showing that many of her responses were inaudible).

142 *Id.* at 144.

143 *Id.*

144 *Id.* at 154.

145 Forman, *supra* note 111, at 208.

146 [Fiadjoe, 411 F.3d at 145.](#)

147 *Id.* at 145-46.

148 *Id.* at 136-37.

149 *Id.* at 163.

150 *Id.*

151 Sara L. McKinnon, *The Role of Speech in Seeking Asylum in the U.S.*, *Comm. Currents* (Aug. 2009), <http://www.natcom.org/CommCurrentsArticle.aspx?id=881>.

152 Melloy, *supra* note 123, at 641; see also McKinnon, *supra* note 151.

153 McKinnon, *supra* note 151.

154 *Id.*

155 [Fiadjoe, 411 F.3d at 146.](#)

156 *Id.* at 159.

157 See *id.* at 144.

158 *Id.* at 159.

159 *Id.* (citation omitted).

160 *Id.* at 143.

161 *Id.* at 148 (emphasis added).

162 Anitto, *supra* note 126, at 799 (citation omitted).

163 [Sanchez-Trujillo v. INS, 801 F.2d 1571 \(9th Cir. 1986\).](#)

164 [Id. at 1574-75.](#)

165 See [id. at 1575](#) n.4 (explaining that there must be an existing circumstance warranting fear of persecution).

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