

# **The Role of Parliamentarians in Addressing Early and Forced Marriage as Legislators, Community Leaders and Facilitators of Positive Change**

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## **Parliamentary Democracy and MPs**

In a parliamentary democracy, it is the role of Members of Parliament (MPs) to represent the social values and best interests of all the constituents in their electorates, giving voice to their needs during the consultative processes through which public policy is engineered. It is likewise incumbent upon Members of Parliament to be conversant with the obligations that International Law and the United Nations system of treaties impose upon member States, and to convey that broader perspective to their constituents as community leaders in socially progressive change. In sum, **MPs bridge the gap between State House and each citizen's house in fulfilling their legislative function.**

Chairperson, Members of Parliament, Ladies and Gentlemen. The main task of this paper is to look at the role of a **Member of Parliament** (MP) in curbing early and forced marriage in Ghana with focus on their roles as legislators, community leaders and facilitators of positive change. Before I do that, I will like to take a quick look at the phenomenon of early and forced marriage from both global and Ghanaian perspectives.

## **EFM in the Ghanaian Context**

In Ghana, marriage is often conceived as a consensual union between a man and woman of marriage age. The minimum age for lawful marriage is 18 years, under section 14(2) of the **Children's Act, 1998 (Act 560)**. It provides that:

“14(2) the minimum age of marriage of whatever kind shall be eighteen years”.

What this means is that for any type of marriage to be lawful, be it Christian, customary or Islamic, the parties should be 18 years and above.

Forced marriage may be described broadly as a marriage in which one or both of the parties are married without the consent of the other. Such a marriage is against the will of the parties either of both or one of them. Forced marriage is still practiced in parts of South Asia, East Asia and Africa and among migrants of these regions to Europe and other parts of the world.

Early marriage, as the term suggests, is marriage that is entered into prior to the legal age of marriage. It must be noted however that many of the early marriages tend to have the characteristics of forced marriage, often starting as betrothals or arranged marriage without the consent of the girl child.

Many of incidences of forced or early marriage that have come to the attention of the **Commission on Human Rights and Administrative Justice**, where I work, have had to do with situations where young girls are abducted and held in pre-determined places against their will, and often times subjected to violence and inhumane and degrading treatment until they capitulate.

According to United Nations Population Fund (UNFPA) Report, Ghana has one of the highest child marriage prevalence rates in the world. The report states that on the average one out of four (4) girls will be married before their eighteenth Birthdays. It also indicates that while child marriage is common in Ghana, prevalence is highest in the Upper East Region (60%) followed by the Upper West (39%), Northern (36%) Volta (32%), Brong Ahafo (33%), Central (28%) Ashanti (23%), Western (15%), Eastern (18%) and Greater Accra (11%) regions.

Considering that the 3 Northern Regions top the list, it is not difficult to surmise that child marriages occur more frequently among girls who are least educated, poor and living in rural areas. The impact of early and forced marriages are well documented and have been discussed by the previous speakers, which brings me to the role of MPs in eradicating.

### **Role of MPs**

Historically, it has been Parliaments in democracies that have overseen the extension of rights and freedoms beyond the *élites* to the greater mass of the world's populations. In the post-World War II era which has seen the development of strong international human rights movement, countries' economic prosperity has flowed from increasing the human capital of its citizens; and as women make up half the population, guaranteeing their access to education and control over the decisions affecting their economic and social capacity has had a direct and measurable impact on national growth.

In Ghana, the Ghana National Commission on Children (GNCC) is the principal government institution for advancing the general welfare and development of children. It has the key advocacy role in the country relating to children's rights and is the institution charged under the National Plan of Action to monitor the

implementation of the **Convention on the Rights of the Child**. However, the important role of the MP, especially as oversight and as the peoples' representatives, cannot be over emphasised. Members of Parliament are elected by adult men and women; children do not have a vote. Nevertheless, Members of Parliament have always seen themselves as representing the best interests of children as well as adults in their electorates.

### **Legislative Role of MPs**

The primacy of the parliamentary legislature as the lawmaking body in democracies, charges MPs with the responsibility of balancing sometimes conflicting interests of sections of their electorates with difficult political issues. The society vests in its parliament the responsibility of rebalancing the scale of advantage, by legislative action, to ensure that unfairness and disenfranchisement are redressed for the benefit of the marginalized and consequently the community as a whole. Ghana is required to respect and domesticate international treaties it has assented to or ratified. Among them are:

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## **International Instruments**

- (a) *The Universal Declaration of Human Rights*: Provides that 'Marriage shall be entered into only with the free and full consent of the intending spouses'
- (b) *The International Covenant on Civil and Political Rights*: Provides that no marriage shall be entered into without the free and full consent of the intending spouses.
- (c) *The Convention on the Elimination of All Forms of Discrimination Against women (CEDAW)*: requires state parties to eliminate discrimination against women in all matters relating to marriage and family relations and provides that the 'betrothal and the marriage of a child shall have no legal effect and all necessary action including legislation shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.
- (d) *CEDAW General Recommendation No 21*: Provides that 'a woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being'. It calls for the prohibition of forced marriage in the name of custom, religious beliefs or ethnic origins.
- (e) *The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*: provides that no marriage shall take place without the free and full consent of both parties; that the minimum age of marriage for women shall be 18 years and that every marriage shall be recorded in writing and registered in accordance with national laws in order to be legally recognized.

**The Convention on the Rights of the Child:** requires that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

### **Other Developments**

(a) The UN Human Rights Council in Geneva, Switzerland, unanimously adopted a resolution in September 2013 dedicated to the issue of child early and forced marriage, recognizing child marriage as a human rights violation and called for a UN panel discussion and a report on challenges, achievements and best practices for preventing and eliminating child marriage.

### **Domestic Law**

On the State level, there are several legislations dealing with the rights of children and women, as well as others that deal with cultural practices. The 1992 Constitution forms the bedrock for human rights in Ghana, and is supported by other national laws, as well as by human rights instruments to which Ghana is signatory. Article 15 (1) of the Constitution provides that **‘the dignity of all persons shall be inviolable’**, whilst 15(2) (b) prohibits **‘any condition that detracts or is likely to detract from the dignity and worth of the human person’** within the Ghanaian society.

Finally, Article 26(2) of the 1992 Constitution of Ghana prohibits:

**“All customary practices which dehumanize or are injurious to the physical and mental well-being of a person...”**

### **Children’s Act, 1998 (Act 560)**

Section 14 of the Children’s Act provides that:

**(1). No person shall force a child –**

**(a) to be betrothed;**

**(b) to be subject of a dowry transaction; or**

**(c) to be married.**

**(2). The minimum age of marriage of whatever kind shall be eighteen years.”**

The growing incidence of forced and early marriage in spite of legislation against it suggests that there is the need to take a second look at the adequacy of the law. Is it the case that there is not sufficient deterrence or we are not enforcing the law? Whatever the reason may be, the MPs' role does not end with law making; they must have the additional conviction to provide oversight for the enforcement of the laws to achieve the purpose for which they are passed.

The United Kingdom, for example, responded to the incidents of forced marriages among immigrants by passing the **Forced Marriage (Civil Protection) Act, 2007** that empowered victims of forced marriage to bring action in court for protection. Ghana could adopt a similar approach, to encourage victims of early or forced marriages to bring action in court for protection, including having the said marriages dissolved or set aside.

Recently, Uganda passed into law a bill imposing a sentence of life imprisonment on LGBT practice. Despite international criticism of the law, it is significant to recognize the extent to which law makers in that country were prepared to go against a practice that they considered unacceptable. If it is accepted that early and forced marriage is inimical to development, the question is, how far are we prepared to go to root it out of the Ghanaian society?

### **Facilitators of Positive Change**

Members of Parliament in Ghana lead social change in their efforts to harmonize funding from Development Partners and the international community with government policy and action plans. Members of Parliament are instrumental in aligning local understandings and practices with global rights protections to ensure international donor support.

During the 68<sup>th</sup> Session of the United Nations General Assembly in November 2013, Ghana co-hosted a parallel event on Child, Early and Forced Marriage to draw attention to the violations of the rights of child brides, as well as the grave implications for their health. The Hon. Hanna S. Tetteh, Minister for Foreign Affairs and Regional Integration of the Republic of Ghana, stated that the government is committed to finding solutions and changing the way people think, given that 1 in 4 girls in Ghana is married before the age of 18.

Is the country really taking the necessary steps to eradicate these practices? It is expected that MPs will follow up and hold government accountable to its



international and national obligations, and ensure that they do not end up as mere political stunts.

### **MPs as Community Leaders**

Members of Parliament are expected to provide leadership on the pressing moral and social issues of the day. Then of course, they need to devote substantial portions of their share of the Common Fund towards Girls' empowerment and socio-cultural transformation. They need to use their influence at the District Assembly levels, since by law they are members of their respective assemblies, to encourage more spending on girls' schooling, life skills, literacy and health information and social support.

For girls who are already married, and who may not be minded to secure their freedom for obvious reasons, there will be the need to expand access to sexual and reproductive health services including family and maternal health services.

It is important that MPs take the fight against early and forced marriage to the communities and mobilize the communities against such practices. I am looking forward to a day when early and forced marriage would become election issues in the sense that politicians would make the eradication of the practice a priority in their election campaigns. MPs are accountable to their electorates by the democratic process of election and only by ensuring their responsiveness to social justice issues can their legitimacy to represent the people be demonstrated.

### **Concluding Remarks**

While there are legal provisions at national, regional and international levels prohibiting the practice of EFM, a cursory review of media reports<sup>1</sup> and examination of CHRAJ's complaints records reveal that the practice continues, and an unknown number of cases go unreported. There is a need for leadership from Members of Parliament in public sensitization on EFM and other harmful cultural practices, and a clear need for resourcing for institutions like CHRAJ to step up public education campaigns, especially in those regions where the practice continues to be a known threat.

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<sup>1</sup> For example "CHRAJ rescues 14-year-old girl from forced marriage". Date Posted: February 20, 2013: 17:16 accessed at <http://edition.radioxyzone.com/pages/news/02202013-1716/10220.stm>

Often the designation of cultural practice is a misnomer for what is in fact a criminal attempt to exploit a girl child for material advantage and the practice is in some cases indistinguishable from child trafficking and ‘conjugal slavery’.

There is a need, as noted in South Africa’s submission to the United Nations Committee on Early and Forced Marriages<sup>2</sup> to recognize that “**patriarchy has strong roots within custom and customary practice which are often invoked as justifying the perpetuation of practices**” which clearly infringe on the constitutional, legal and human rights of women and girls.

Finally, MPs must provide leadership of conviction, not convenience, for the elimination of early and forced marriages in Ghana. If they will approach the subject with half the zeal and dedication with which they apply themselves to their election campaigns, we should be seeing the back of EFM sooner than later.

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<sup>2</sup> Legal Resource Centre submission accessed at <http://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/LegalResourceCentre.pdf>