

The Legal and Policy Framework for the Prohibition of Early and Forced Marriage in Ghana – Prospects and Challenges

1 Introduction

One of the most sacred institutions in Ghanaian social and cultural life – and indeed akin to many other societies in Africa – is marriage. Marriage has served as the bedrock of our society and being the means through which it has propagated itself throughout the ages. This can be seen in the Ghanaian conceptualisation of marriage which extends beyond the two persons entering into marriage to their families. Put another way, we in Ghana literally say, ‘you do not marry an individual; you marry a family’. Accordingly, our customary and secular practices lay down various guidelines for the celebration of a marriage, its continuity and where necessary, its dissolution. So sacrosanct is marriage, that at the international level, the Universal Declaration of Human Rights (UDHR) of 1948 – the foundational document of the normative development of human rights in modern history – provides in article 16 for the right of a person to marry and establish a family. Article 16 of the UDHR goes further to establish three key elements for marriage, namely:

- That *men and women of full age*, without any limitation of race, nationality or religion can enter into marriage (emphasis mine);
- That spouses have equal rights to the marriage, during its pendency and upon its dissolution; and
- That marriage will be entered into *only with the full and free consent* of the intending spouses (emphasis mine).

These elements in article 16 of the UDHR as also captured in articles 1 and 2 of the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962. ~~Under this Convention, State Parties~~

The Constitution of Ghana, 1992 provides for the fundamental rights of all persons living on the territory of the Republic in Chapter 5 and as a signatory to the UDHR

and other key international and African human rights instruments, the right to marry forms part of our body of human rights, as provided for in articles 22 and 33(5) of our Constitution. Recognising the special needs of women and children, the Constitution also makes provision for their rights in articles 27 and 28 respectively.

In spite of these normative standards, one of the banes of the Ghanaian society is early or forced marriage. Of the many definitions of the early or forced marriage, I select that given by the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe for our discussion. In a 2005 Report of the Committee,¹ (which forms the basis of Resolution 1468 of the European Parliamentary Assembly) forced marriage is defined as, ‘... the union of two persons at least one of whom has not given their full and free consent to the marriage.’ Child marriage is defined by the Committee as ‘... the union of two persons at least one of whom is under eighteen years of age.’ Although this second definition does not use the term ‘early’, there is significant global recognition of the fact that child marriage constitutes early marriage. Hence the terms ‘early’ and ‘child’ in the context of marriage have been used interchangeably.

Against the background of this definition, the practice of women being compelled to marry men they do not wish to marry and children – particularly young girls – being force into marriage is unfortunately part of our social and cultural discourse in Ghana. In this presentation, I would give a brief overview of the situation, highlight the legal and policy framework for the prohibition of early and forced marriage, identify the gaps in the prevention of this practice, and the opportunities available for ending it.

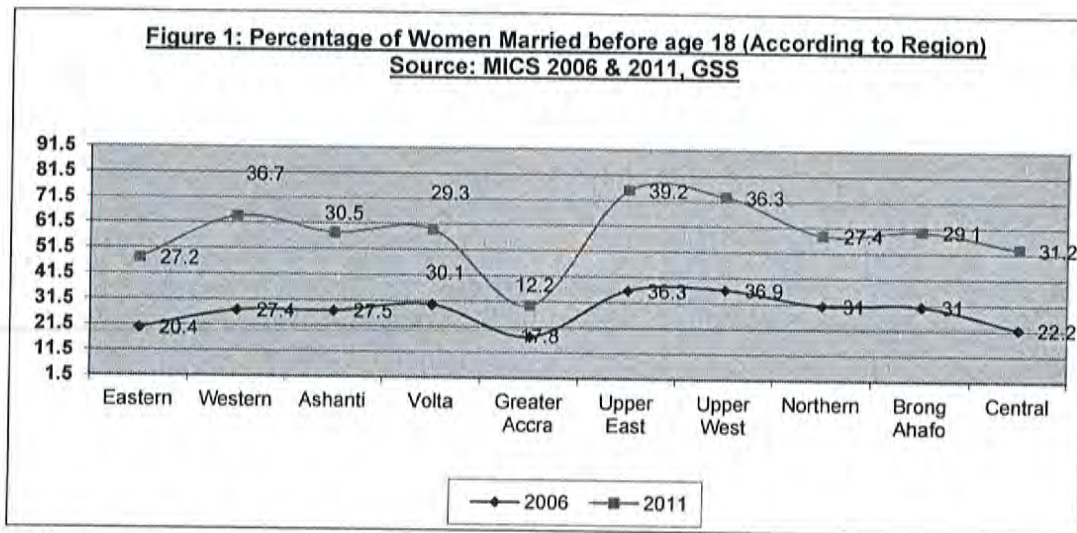
2 The situation of early and forced marriage in Ghana

With regard to early or child marriage, according to the Multiple Indicator Cluster Survey (MICS) of 2006, 22 percent of women aged 20 to 29 years in Ghana got married before the age of 18 years. For women in the 30 to 44 years category, 30 percent married before the age of 18 years. On the average, this presents us with nearly one out of four women getting married while still a child. The 2006 MICS further showed

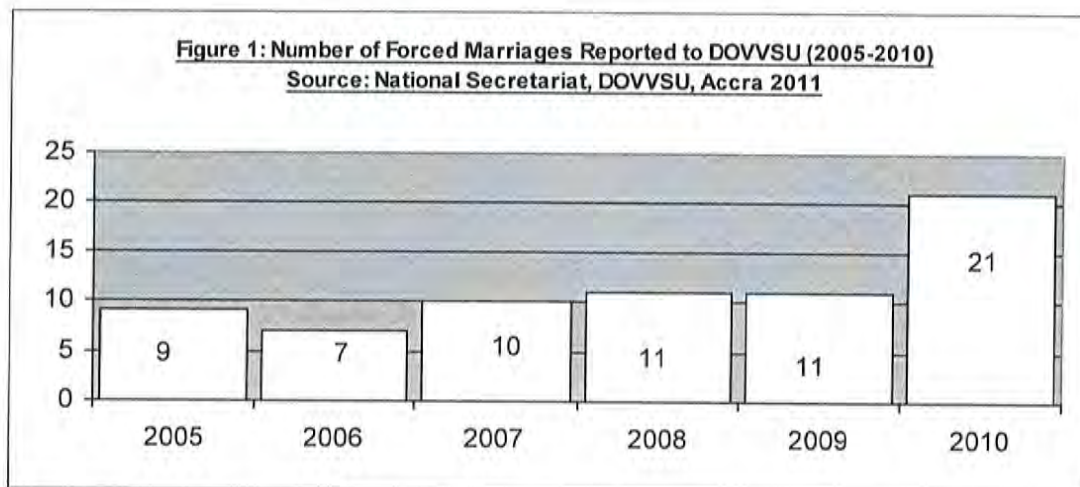
¹ Parliamentary Assembly, ‘Forced marriages and child marriages’, Doc 10590, 20 June 2005. Available at <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10969&Language=en> (Accessed on 2nd March 2013).

that about 4.4 percent of women aged 15 to 49 years first got married before the age of 15 years. The rural areas presented a higher rate of 5.5 percent compared to 3.3 percent of women from the urban areas getting married before 15 years.

The situation seemed to worsen from the 2011 MICS data. The results of the survey show that 6 percent of women aged 15 to 49 years got married before 15 years of age, while 27 percent got married before 18 years. In the rural areas, the prevalence of women marrying before 15 years rose to 8 percent, while in the urban areas it stood at 4 percent.



Statistics from the Domestic Violence and Victim Support Unit (DOVVSU) of the Ghana Police Service indicate that between 2005 and 2010, 69 cases of forced marriage were handled by the Unit. The figures show an increasing trend with 10 cases handled in 2007 rising to 21 cases by 2011. These statistics also show that the bulk of the cases are not reported to the relevant authorities, leaving the practice of early and forced marriage a deliberately concealed practice. It has also been observed that the bulk of the few cases that are reported to the Police are settled out of court. In effect, the practice of early and forced marriage is difficult to track and curtail, although its prevalence is wide.



A cultural practice that has been notoriously associated with forced marriage is the *trokosi* system. *Trokosi* is a broad system of customary jurisprudence among a section of the Ewe population in Ghana in the south-eastern part of the country. An aspect of the *trokosi* system is the penal system which requires the family of an offender to make reparation through the provision of a female family member to serve in the shrine of a deity. Unfortunately, this aspect of *trokosi* has assumed an abusive dimension. Women, mostly young girls given up as reparation are subjected to all forms of violations of their fundamental rights. The young girls are forced to marry the priests of the shrine. They are often denied a right to education, health care, and are subjected to perpetual bondage in labour on the farms for the shrine and the priests. The young girls are denied a right to recreation and leisure. Forced to become wives and concubines, they have little or no access to reproductive health care and have no negotiating power when it comes to sexual relations.

The cumulative effects of early and forced marriage in Ghana presented above are not far off. From the MICS data, poorer and less educated women and girls are most vulnerable to early and forced marriage. Girls who are married are less likely to have an education. Often driven by poverty, families sacrifice the education of a girl-child for that of a boy-child and force the girl into marriage to relieve their financial burdens. In some cases, the girl is expected to 'put up the best of behaviours', to keep her husband interested in her and consequently provide for the needs of the girl's

family. She therefore become the economic bait for her family, with no regard for her dignity and well-being. Women and girls forced into marriage under customary practices such as *trokosi* face higher risks of death in childbirth, malnutrition, hazardous work, and the worst forms of child labour to name a few.

On the bright side, the Commission for Human Rights and Administrative Justice (CHRAJ) and various non-governmental organisations have been actively involved in public awareness campaigns on negative traditional practices, such as *trokosi*. Some *trokosi* victims have been liberated as a result and assisted to acquire training. They have also been reintegrated within their communities. Sadly, these efforts are still a drop in the pan as the practice of early and forced marriage is still prevalent. Recent media reports indicate that some children in Ghana are trafficked to *trokosi* shrines across the border in Togo, an indication that much more work needs to be done in order eradicate the practice completely.

3 Legal and Policy Framework

As noted previously, the Constitution protects the rights of women and children. Particularly for children, article 28(3) proscribes the ill-treatment of children. The Children's Act, 1998 (Act 560) also criminalises the cruel, inhuman degrading treatment or punishment of children. Section 14 of the Act provides for the right of the child to refuse betrothal and marriage, while section 15 makes it a criminal offence to force a child to be betrothed or married. The Criminal Code, 1960 (Act 29) also makes it an offence in section 109 to compel a person to marry. The Criminal Code (Amendment) Act, 1998 (Act 554) also makes ritual enslavement – such as occurs under *trokosi* – an offence, and requires that such cases be reported to directly to the CHRAJ, the Police or the local authorities.

While the legislative framework has been strengthened with the criminalisation of these practices, the policy framework is slightly weaker. Until recently, Ghana did not have a clear child protection policy. The Ministry of Gender, Children and Social Protection has however put in place measures to strengthen the policy framework. The Ministry currently has a draft Child and Family Welfare Policy aimed at addressing the plethora of issues facing children and to give greater effect to the Children's Act and other legislation relevant to the wellbeing of children. The draft Policy however

still needs to be improved with regard to clear strategies for the protection of children against early and forced marriage. While the current draft identifies the problems clearly, more work needs to be done on the remedial measures.

4 Challenges to and Opportunities for eradicating early and forced marriage in Ghana

The key challenges that can be identified in the fight against early and forced marriage in Ghana include the following:

- Lack of reporting of cases to the Police;
- Collusion and condoning of the practice with the support of some traditional leaders;
- Inadequate sanctions. Currently, even though early marriage has been criminalised, it is only a misdemeanour. Offenders can therefore only be sentenced to a term of up to three years imprisonment at the maximum; and
- Weak policy framework.

The opportunities available to us to address this phenomenon would cover the following:

- The existence of a Ministry on children's issues to lead the Government's response to the phenomenon;
- The support of the CHRAJ, the Police and other relevant law enforcement agencies;
- The support of the National and Regional Houses of Chiefs to begin to change negative social and cultural practices;
- The willingness and keen interest of Parliament in the issue to strengthen the legal framework; and
- The opportunity now to amend the Children's Act to provide better safeguards for children and stiffer punishments for persons who compel children to get married.

5 Conclusion and Recommendations

In this brief presentation, I have sought to highlight the value of marriage to our society and the need to preserve its sanctity. Marriage is recognised as the building block of our society, however it has been marred by the negative practice of early and forced marriage. In Ghana, we recognise the prevalence of the practice and have put in place the necessary legal and policy framework to address this. However, our efforts need to be improved to meet the force of the tide of this practice. In so doing, I would humbly make the following recommendations:

- Establishment of a strong social protection system to alleviate the acute poverty that compels parents and caregivers to give up their children in marriage;
- Vigorous public education on the harmful effects of early and forced marriage;
- Share positive stories of women and girl empowerment as an incentive for people to invest in their girl children;
- Prosecute without delay, all persons – including parents – who are found to have pushed their children into marriage;
- Education of young girls on adolescent reproductive health should be encouraged with particular emphasis on the disadvantages of early and forced marriage;
- Encourage reporting of cases of early and forced marriage to DOVVSU since it constitute a criminal offence;
- As *trokosi* is a customary practice, criminalisation alone will probably not eradicate the practice. Consequently, a multi-sectoral approach, which will, for example, expand access to vocational centres, is therefore required. It is necessary to include family members in the liberation process to facilitate the rehabilitation of *trokosi* victims;
- It is also important to increase advocacy programmes and provide alternates for reparation instead of bonded labour; and
- Awareness raising campaigns focusing on the ill-effects of *trokosi* ought to be intensified with active participation of *trokosi* practitioners.

I thank you for your attention.