



(NCWD)



FIDA (GHANA)

**"RIGHTS OF WOMEN  
UNDER  
NATIONAL  
AND  
INTERNATIONAL LAWS"**

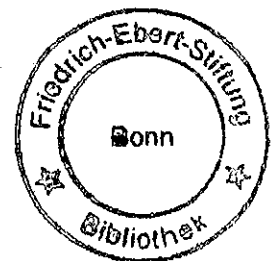
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**"RIGHTS OF WOMEN UNDER NATIONAL  
AND INTERNATIONAL LAWS"**

Proceedings of a workshop  
organised by FIDA and NCWD  
in collaboration with FES  
on 5th and 6th April, 1995  
in Accra, Ghana.

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Within the Foundation's activities, women's promotion schemes are intended as a contribution to improving the situation of women and strengthening their position in the development process of their respective countries.

The International Women's Decade, 1975–1985, proclaimed by the United Nations, the UN Women's Conferences in Mexico, Copenhagen and Nairobi, stirred up major public concern about the living conditions of women in Africa, Asia and Latin America and about their economic and social deprivation. Thanks to these initiatives the promotion of women is now seen as an important component of development policy.

Women are already contributing two-third of the work done in the entire world, they bear the main responsibility for food production and the upkeep of their families, and yet women's incomes are only one-tenth of the total.

In its worldwide activities the Foundation tries to meet these challenges. It helps to improve not only the economic situation of women but also to strengthen their political power.

It was in this light that the FES in Ghana was happy to have been approached by NCWD and FIDA to support a two-day workshop on the issue "Women's Rights Under National And International Laws". The ideas which were raised at the workshop are believed to be so valuable and important that it was decided to publish the papers presented including the rapporteur's report and the recommendations.

The views expressed in this book are those of the authors and not necessarily of the publisher.

On behalf of the Friedrich-Ebert Foundation, I thank all the women and committed men who contributed to the success of the workshop and all who will help in the future to improve on the situation of women.

**Dr. Peter Mayer**  
*Resident Director*  
**Friedrich Ebert Foundation**

## P R E F A C E I

The International Federation of Women Lawyers (FIDA), to which FIDA Ghana is affiliated, has the aim of enhancing and promoting the welfare of women and children.

In furtherance of its objective of empowering women through the law, that is, using law to strengthen the social political and economic means of women and the society at large, FIDA Ghana has been very active in sponsoring the reviews of laws and traditional practices which negate the development and aspirations of women and children in the civil, educational and business fields. Not content with fighting for reviews of laws FIDA Ghana felt the need to bring the expertise of its members right to the ordinary person who would otherwise be unable to afford the services of a lawyer.

FIDA Ghana holds seminars and symposia to educate the public on their rights and their responsibilities towards their children, their husbands, wives and also to the community. It has set up mobile legal aid clinics where it offers legal counselling services and advice to the public. It also provides legal representation in court for persons who cannot afford the services of a lawyer.

FIDA Ghana has also started a legal literacy programme whereby some of the existing laws which affect the day to day lives of the people especially women and children are reduced into simple English and then translated into some Ghanaian languages for easy understanding.

Its capacity, ability and willingness to come to the aid of our less fortunate sisters have been demonstrated. It is in the light of this that FIDA Ghana extends its sincere gratitude to Friedrich-Ebert Foundation for making it possible for such a workshop to be organised on the theme "Women's Rights Under National and International Laws". FIDA Ghana is convinced that such workshops will go a long way to generate awareness and improve the lot of women.

**Ms. Emelia Adjepong**  
*Administrator*  
**FIDA (GHANA)**

## PREFACE II

The year 1995 from all intents and purposes seems to be year of action and activity for all Women's organisations. All over, there are feverish preparations towards the 4th World Conference on Women which comes off in Beijing, China later in the year, in September. Apart from these a lot of groups are celebrating special anniversaries in the life of their organisations. The National Council on Women and Development (NCWD) and International Federation of Women Lawyers (FIDA) have been in the centre of these activities. While NCWD is celebrating its 20th Anniversary, FIDA is commemorating its 10th year since its establishment.

NCWD's status as the national machinery accords her the responsibility of co-ordinating all activities relating to women in this country. NCWD therefore have the mandate to educate women on their rights and responsibilities as citizens. It was in the light of this that the NCWD made a proposal to the Friedrich-Ebert Stiftung (FES) to assist in a programme with the theme "Women and the Law".

Just at that time FIDA also came with a similar request with "Ten Years of Legal Aid" as their theme. This was a beautiful opportunity for us to bring our ideas together and present them on a single platform. There is already healthy collaboration between the two organisations, so that working together simply enhanced the organisation and delivery of the programme.

The theme which came up after consultations between the three organisations, i.e. NCWD, FID and FES was "Rights of Women Under National and International Laws". Women have come a long way in the struggle for recognition and equality. Various international treaties have been passed that we need to take advantage of as a country. This can be done only by incorporating these treaties in our national laws. This is also possible only by giving a closer look to existing national laws, for new laws to be enacted and old ones adjusted to suit the present thinking and demands.

It was against this background that two very critical areas affecting gender relations were selected for indepth discussion. The are:

1. Property Rights, and
2. Violence Against Women.

The target group for the workshop was at the level of decision-makers. The conception here was that if the top people who are in decision making understand the issues then imparting the message to others down the ladder would be clearer and effective. The selection therefore brought together knowledgeable individuals like parliamentarians of both sexes, judges, managers, senior officers in all the law enforcement agencies, queenmothers and others such high level personalities.

This workshop was conducted with a difference, because of its effectiveness and the enthusiastic response from the participants. This is also reflected in the recommendations that came out of the workshop. There was an overwhelming consensus for follow-up action. For NCWD and FIDA these moves will go a long way to enrich our laws, enhance the situation of women and bring about the gender balance we are all craving to achieve.

The NCWD is most grateful to all who helped in making this workshop come out so successfully, particularly to Friedrich Ebert Foundation for providing the funds.

**Mrs. Rebecca Adotey**  
**Ag. Executive Secretary**  
**National Council on Women and**  
**Development (NCWD)**

## CHAPTER ONE

### INTRODUCTION:

*Keynote Address On*  
**THE RIGHTS OF WOMEN UNDER  
NATIONAL  
AND INTERNATIONAL LAWS**

**Prof. Florence Dolphyne**  
**Assoc. Professor, Linguistics Dept.**  
**UNIVERSITY OF GHANA, LEGON**

Twenty years ago, member states of the United Nations observed the year 1975 as International Women's Year, during which the whole world focused attention on the numerous issues that affect the lives of women, whether they live in an industrialised or a developing country, whether they have had formal education and professional training or not and whether they live in an urban or a rural environment. Since that time women have occupied centre stage in the research activities of academics, have been the focus of attention in the development projects of NGO's, have been the target group for international and local agencies concerned with population issues, have been the subject of discussion at international conferences on human rights, on agriculture and food production, on the environment, on population explosion, on health matters such as the spread of AIDS and on virtually every subject that is of concern to the human race. The good news about all this attention is that it has had the effect of making the sceptics, both men and women, who, twenty years ago, thought that women were drawing too much attention to themselves, realise that no society can achieve national development if it

ignores matters relating to the status, the education, the health and the emancipation of its women. The bad news however, is that in spite of this realisation, traditional attitudes and prejudices especially in Third World countries, have prevented women from benefiting fully from all the numerous resolutions, decisions and laws intended to have a positive impact on their lives. I believe that this is one of the reasons why the NCWD and FIDA (Ghana) in collaboration with the Friedrich Erbert Foundation have decided to organise this workshop to focus attention on legal matters that affect the lives of women.

Ghanaian women are affected by laws that have been passed by various governments from colonial times to the present, including legal rights granted under the four Constitutions that Ghana has had so far. Women are also affected by customary laws of the various ethnic groups in the country. In addition, Ghana as a member of the United Nations Organisation and its various agencies, is expected to be bound by international conventions that the government ratifies, and so Ghanaian women are also affected by international laws.

In this presentation, I will try to highlight some of the areas in which women's lives have been or can be affected by legislation and the effectiveness of such legislation, bearing in mind, of course, that I don't belong to the legal profession, and that more qualified people will be leading discussions on specific laws that affect women.

In Ghana, many people will say confidently that Ghanaian women have nothing to complain about because there are no laws in the statute books that are discriminatory against women. The colonial laws that required a woman to leave employment on marriage or on becoming pregnant or on having a child, have been abolished, and women now have equal rights as men to education, employment and remuneration, they have the same rights as men to vote and be voted into office and so on. All this is true; but it is also true

that there is glaring inequality between men and women when one looks at the number of women who have benefited from education, or the number of women in decision-making positions whether by election or by nomination.

It is not enough to guarantee in the constitution that no one will be discriminated against on the basis of sex, religion, race, ethnic identity and so on, in a society where the belief in the superiority of the male is taken for granted, and often reinforced by cultural practices and religious beliefs. For how else can one explain the fact that although at Primary One there usually is an equal number of boys and girls in school, the drop-out rate for girls is much higher at the primary level than it is for boys? A study of educational statistics done by North and others in 1975 showed that the highest drop-out rate for girls occurred between class 3 and class 6 when they were between 9 and 12 years of age. At this age, they were too young to make their own independent decision about the usefulness or otherwise of education to them and they were too young to have dropped out of school as a result of pregnancy. The fact is that parents are not convinced of the value of a girl's education, and mothers would therefore allow their daughters to stay away from school to baby-sit for their younger siblings or to help them in their trade. A woman's right to education therefore can only be ensured when there is a fundamental change in attitude by the society through an awareness of the value of women's education.

The same thing applies to a woman's right to employment. Women in the public sector earn the same salaries as men doing the same type of work. In the private sector, however, this is not always the case. Women often earn much lower salaries. The discrepancy between public sector and private sector employment is also evident in the terms of maternity leave granted to women employees. Some employers in the private sector do not pay full salary during maternity leave and sometimes do not pay any salary at all if the maternity leave occurs within the first 12 months of employment.



These discrepancies in conditions of service need to be documented and some action taken by the Chief Labour Officer, since Ghana has ratified various ILO Conventions regarding the employment of women and conditions of work. Unfortunately, given the limited avenues for employment, many women are only too happy to have a job and would not complain about lower salaries and unfavourable conditions of service.

While on employment, let me mention the thorny issue of maids or househelps. This is the only avenue for employment available to a large number of girls in the urban centres, and there must be a law governing their employment. I was quite impressed with the operation of such a law in Addis Ababa, Ethiopia, where employers are required by law to give maids below a certain age, time off for educational or vocational training. The law also stipulated a minimum wage for these girls. We are talking about the right of women, and I mention this if only to draw attention to the fact that these young girls should also have rights guaranteed by law to protect them from exploitation.

As regards the rights of women in relation to health matters, I believe there is no legislation except, may be, the law on abortion, since that affects women only. I know the 1979 Constitution enjoined Parliament to "enact such laws as will ensure that there are adequate medical and health facilities for all persons", and I suspect (although I should have checked this up) that this is also contained in the constitution of the Fourth Republic. When one considers the special health needs of women, especially during pregnancy and childbirth, and also the health needs of their infants, one would hope that such laws will be passed to set in motion efforts at providing adequate medical and health facilities for everybody.

Most women will agree, however, that the greatest source of worry relates to their rights within marriage. The laws and practices regarding marriage and women's rights within the family have always been a source of concern because for the majority of women in the rural areas and those in the urban

centres who do not work outside the home, these laws and practices can be very oppressive. When in 1985 the Intestate Succession Law was passed, providing a uniform system of inheritance in the country of a person's self-acquired property when he/she dies intestate, many of us were overjoyed by it because we knew it would put an end to the cruelty and the trauma that widows as well as their children suffer at the hand of their in-laws on the death of a husband. And indeed that law has saved a number of widows from being thrown out of the matrimonial home on the death of a husband. We also know that the law has not stopped some die-hard relations who will still want to extract what they can from their deceased brother's estate, and I must commend the members of FIDA for the legal aid that they have been offering such women. I can only hope that other lawyers, including men lawyers, would also provide such services, especially to women living outside the urban centres, since such women are the ones who are most likely to be pushed around by unscrupulous in-laws.

Although I have not really found out the problems that have arisen in the application of the Intestate Succession Law, I believe that there are residual matters relating to the details of the distribution of the property, and I hope that FIDA will help in bringing these to light and also make proposals that will help make for a more equitable distribution of property under the Intestate succession law.

Now that there is a law that gives protection to a widow, it has become clear that women have very little or no protection under the law when it comes to their right to property during marriage and on divorce. Invariably, such a woman must show evidence of having made a reasonable contribution to the acquisition of the property. In a society where many women are in petty trading, and use the income from it to feed the family, the women themselves will be the first to admit that they did not contribute towards the acquisition of the property, forgetting that by feeding the family with their income, they have saved the man that expenditure which has made it possible for him to

acquire that property. We certainly need a law in Ghana that guarantees a woman's right to property acquired during marriage while both parties are alive. A woman does not have to be widowed to enjoy that right.

Still on the laws and practices regarding marriage and women's rights within the family, one practice that generally condemns the majority of women to an inferior position is the 'dowry' bride-wealth that a man provides in cash or in kind in order to acquire a wife, especially in some patrilineal societies. This gives the husband unlimited rights over the woman, to the extent that some men feel they have every right to beat up their wives when they offend them, just as they would do to their children. Unfortunately, even matrilineal societies which traditionally only required a man to provide a token drink to acquire a wife, are now demanding substantial amounts of money from the husband-to-be. This is certainly not helping to improve the status of women in marriage, and I believe this is something that women themselves can do something about, especially queen mothers who wield considerable influence in such matters.

Still on marriage, the practice of child marriage which exists in almost all Ghanaian societies, is one that denies a woman the right to choose her spouse. Ghana has signed and ratified the United Nations Convention on the Elimination of all Forms of Discrimination Against Women which, among other things, requires member states to "ensure, on a basis of equality of men and women:

"the same right freely to choose a spouse and to enter into marriage only with their free and full consent".

(ARTICLE 16, 1(b))

However, we are yet to see a law banning child-marriage in Ghana. The practice has meant that some girls have had to stop their education and lose all hopes of professional or vocational training because they are considered

old enough to start married life as soon as they reach puberty. Others have suffered physical violence as their husbands and sometimes, their parents as well, have felt the need to beat them into submission when the girls have indicated that they are not interested in being married to the particular man. This brings up again the issue of bride-wealth, since in all cases of child-marriage, the husband-to-be or his father would have spent a considerable amount of money and given gifts to the girl's parents from the time she was promised in marriage. Custom demands that such money and gifts have to be returned if the girl refuses to enter that marriage, but invariably, her parents are not in a position to return them and so they use all means possible, including physical violence to ensure that the girl agrees to the marriage. This is an issue which should be of concern to both the National Council on Women and Development and the National Commission on Children, and working together with other women, especially women Parliamentarians, I am sure we may be able to have the necessary laws enacted.

The Trokosi system practised in parts of the Volta Region in which very young girls are made to work for and bear the children of the priests at certain fetish shrines to atone for the sins and crimes of older relatives they often do not know, is another traditional practice which denies women their fundamental human rights. Fortunately the practice has now been brought into the open and some efforts are being made to do something about it. However, I believe we need legislation to make it an offence for anyone to send a girl to such a shrine.

Let me say however that having laws alone does not necessarily mean that all will be well. I have already indicated the fact that the law on compulsory education has not really been enforced in the country. What we need is an awareness creation among the population about the value of education to the individual and to the society.

This is not to devalue the importance of laws, for they are a necessary tool that people can use to protect and defend themselves, such as the Law on Intestate

Succession. However, the law banning widowhood rites, which was also passed in the early 80's, has shown that laws that aim at changing certain deep-rooted cultural practices are effective to the extent that the wider society is prepared to conform to the provisions contained in them. In the case of widowhood rites, enforcement of the law banning them depends primarily on the willingness of the women, whom the law seeks to protect to be so protected. Some widows still willingly undergo the rites for fear of being haunted by the ghost of the dead husband, or in the belief that failing to perform the rites will mean they are dishonouring the memory of a good husband. The law of course gives protection to those who want to take advantage of it, but what is also needed is systematic education to make the society as a whole see the need for the change. I am sure a similar situation will arise with a law banning the Trokosi practice and also female circumcision which is practised in parts of the Northern and Upper East Regions. There is a need to educate women to disabuse their minds of the fears that they may harbour about what may happen to them if they refuse to conform to the particular cultural practice.

Finally, Madam Chairperson, distinguished ladies and gentlemen, I sincerely hope that all the participants to this workshop will discuss the issues with all the seriousness they deserve. Sometimes some men have tended to treat certain issues relating to women too lightly, as if some women are making a fuss about matters that the society as a whole does not consider a problem. I once chaired a symposium on rape in this Hall and there were three men who insisted, in their contribution, that men are provoked to rape women whose clothes are too lavish or expose parts of their body. When it was pointed out to them that a large number of girls who are raped are young girls living with relatives, or girls selling groundnuts or oranges who do not wear the so-called "provocative" clothes, they agreed that such men are sick, but they insisted that on the whole, the blame must be put on women for provoking the men.

A similar attitude of trying to trivialise issues relating to women was adopted

by some people when the law on bigamy was being discussed in Parliament some time ago. The law at the time stipulated imprisonment without the option of a fine for those found guilty, and because of that women had not taken advantage of it since they did not want to send the father of their children to prison. When during the discussion women suggested that the law should make provision for those found guilty of bigamy to pay a fine, some men teased that women were only interested in the money they would get from taking their offending husbands to court.

I believe that everybody here is here because you are concerned that the rights of women should be protected by law. I am very hopeful that at the end of this two-day workshop, you will come up with important recommendations as to what laws need amendment, what new laws need to be enacted and what strategies need to be adopted by women lawyers, women Parliamentarians and all other women to ensure that women are educated about their rights under the law, so that they can take full advantage of them. I wish you very fruitful deliberations.

Thank you for your attention.

## CHAPTER TWO

# VIOLENCE AGAINST WOMEN IN GHANA: A PERVASIVE YET IGNORED PROBLEM

Fitnat N-A Adjetey

ATTORNEY-GENERAL'S OFFICE, ACCRA

### 2.1 OVERVIEW

*"Breast bruised, brains battered,  
Skin scarred, soul shattered,  
Can't scream - neighbors stare  
Cry for help - no one's there."*<sup>1</sup>

Violence is physical force unlawfully exercised or overawe by causing apprehension of bodily injury<sup>2</sup>. Violence can be physical or psychological. Violence against women is as old as recorded history and cuts across all societies and socio-economic groups. There are few phenomena so pervasive and yet so ignored. Every day, thousands of women are beaten in their homes by their partners, and thousands more are raped, assaulted, sexually harassed and forced to undergo genital mutilation and cruel widowhood rites.

According to the U.S. Department of Justice, every fifteen seconds a woman is beaten in the United States<sup>3</sup> and each day at least four women are killed by

1 Stanza from a poem by Nenna Nehru, a battered Indian woman in Lori Heise et al. *Violence Against Women: The Hidden Health Burden*, 255 World Bank Discussion Papers at iii.

2 Funk and Wagnalls Standard Dictionary, 1402, (International Edition, 1967).

3 Susan Deller Ross et al., *The Rights of Women*, at 154 (3rd ed. 1993).

their batterers<sup>4</sup>. In Papua New Guinea, a law reform committee reports that sixty-seven percent of rural women and fifty-six percent of urban women have been victims of wife abuse<sup>5</sup>. In Nicaragua, forty-four percent of men admit to having beaten their wives or girlfriends<sup>6</sup>. In Peru, seventy percent of all crimes reported to the police are of women beaten by their partners<sup>7</sup>. In the United States, a rape is committed every six minutes<sup>8</sup>. A study in the biggest slums of Bangkok, Thailand, found that fifty percent of married women are beaten regularly<sup>9</sup>. In 1985, fifty-four percent of all murders in Austria were committed in the family, with women and children constituting ninety percent of the victims<sup>10</sup>.

In one study in the barrios of Quito, Ecuador, over eighty percent of women interviewed had been beaten by their partners<sup>11</sup>. And between 1986 and 1987, 18,000 cases of battering were reported to the police in Sao Paulo, Brazil<sup>12</sup>. In all these instances, women are targets of violence because of their sex. This is not random violence: the risk factor is being female.

Violence against women has evolved in part from a system of gender relations which posits that men are superior to women. The idea of male dominance - even male ownership of women, is present in most societies and reflected in their laws and customs<sup>13</sup>.

In the African setting there are several traditional practices and customs which keep African women in cultural subordination, and put them in such

4 Lorie Heise, *Crimes of Gender, World-Watch March* - April 1989, 12, at 13.

5 *Id.*

6 *Id.*

7 *Id.* at 14.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 Lorie Heise et al., *supra* note 1 at 21.

a low bargaining position, that they have little, if any control over decisions which affect their bodily integrity. Polygyny, bride-price, leviratic and sororate marriage<sup>14</sup>, child and forced marriage, female genital mutilation ("FGM"), female religious bondage and general traditional rules in relation to women, greatly impede a woman's ability to exercise her rights<sup>15</sup>. Violence against women is an infraction of the fundamental human rights of women.

The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), recognises the equal right of men and women to enjoy all economic, social, cultural, civil and political rights<sup>16</sup>. CEDAW enjoins States Parties to the Convention to take appropriate measures to modify the social and cultural patterns of conduct of men and women which are based on the idea of the inferiority or the superiority of either of the sexes<sup>17</sup>.

The African Charter on Human and Peoples Rights ("African Charter") provides that States Parties to the Charter shall ensure the elimination of every form of discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions<sup>18</sup>. The United Nations Convention on the Rights of the Child provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse,

14 These forms of marriage are explained later on in this paper, but suffice it to say for the moment, that these are marriages that treat women as chattel.

15 Fitnat N-A Adjetey, *Reclaiming the African Woman's Individuality: The Struggle Between Women's Reproductive Autonomy and African Society and Culture*, American University Law Review (forthcoming 1995).

16 The Convention on the Elimination of All forms of Discrimination Against Women, G.A. Res. 34/180, UN. A/34/46 (1979), Preamble [hereinafter referred to as CEDAW]

17 *Id.* art. 5.

18 The African Charter on Human and People's Rights, OAU Doc. CAB/LEG/67/3 rev. 5, reprinted in 21 I.L.M. 58 (1982) [hereinafter "African Charter"], art. 18.

while in the care of parent(s), legal guardian(s) or any other person who has the care of the child<sup>19</sup>.

Violence against women breaches several human rights norms. Rights such as the right to the highest attainable standard of physical and mental health<sup>20</sup>; the right to life, liberty, and security<sup>21</sup>; the right to freedom from customs that discriminate against women<sup>22</sup>, and the right of sexual non-discrimination<sup>23</sup> are all infringed by violence against women.

Ghana has ratified all three International Conventions. The Government of Ghana is thus under an obligation to take all legislative, administrative, social and educational measures to eradicate violence against women in Ghana.

In this paper I will appraise several forms of violence against women in Ghana. The list of forms of violence given here is by no means exhaustive. This paper reviews the action taken to combat violence against women through International Law and National Legislation in Ghana. Even though the Ghanaian Constitution seeks to provide for the protection of women from all forms of violence, efforts made to set up the administrative, social and

19. The United Nations Convention on the Rights of the Child, GAOR, 34th Sess, Supp. No. 46 at 193 UN Doc reprinted in 28 I.L.M. 1448, art 19(1).

20. International Covenant on Economic, Social and Cultural Rights [hereinafter "Economic Covenant"], U.N.G.A. Res.2200 (XXI), 21 U.N. GAOR Supp. (No. 16) 49. U.N. Doc. A/6316, reprinted in I.L.M. 360 (1967), art. 12(1); art. 10, 12(1), 14(2) & 16(1); African Charter, supra note 18, art. 16(1).

21. The International Covenant on Civil and Political Rights [hereinafter "Political Covenant"], U.N.G.A. Res. 2200 (XXI). 21 U.N. GAOR, Supp. (No.16) 52, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 368 (1967), art. 8(1) & 9(1); Universal Declaration of Human Rights [hereinafter "UDHR"], G.A. Res. 217A (III), U.N. GAOR, 3rd Ses., U.N. Doc A/811 (1948), art. 3; African Charter, supra note 18, arts. 4 & 6; Constitution of the Republic of Ghana 1992, [hereinafter "Ghanaian Constitution"] arts. 14 & 15.

22. CEDAW, supra note 16, arts. 2 & 5; African Charter supra note 18, arts. 2 & 18(3); Ghanaian Constitution supra note 21, arts. 15(2) & 26(2)/

23. CEDAW, supra note 16, arts. 1 & 2; UDHR, supra note 21, art. 2; Political Covenant, supra note 21, art. 2(1); Economic Covenant, supra note 20, art. 2(2); African Charter, supra note 18, arts. 2 & 18(3); Ghanaian Constitution, supra note 21, art. 17(2).

educational processes that will control and eventually eradicate violence against women have been negligible. Lastly, I will suggest action that might be taken to address the issue of violence against women in Ghana.

## 2:2 FORMS OF VIOLENCE AGAINST WOMEN IN THE GHANAIAN SETTING

### Female Genital Mutilation

FGM or what is commonly known as Female Circumcision, is the name given to several traditional practices which involve the cutting and removal of female sexual organs. FGM has its origin in the male desire to control female sexuality. FGM is commonly referred to as female circumcision, but this is a misnomer. Circumcision implies an analogy to non-mutilating male circumcision, in which the foreskin from the tip of the penis is cut off without damaging the organ itself.<sup>24</sup> Most of the penis would be amputated if the equivalent of clitoridectomy were to be performed on men. Removal of the whole penis, its roots of soft tissue and part of the scrotal skin would be equivalent to infibulation<sup>25</sup>. Thus in FGM, the degree of cutting is more extensive. Likening FGM to male circumcision therefore understates the extent of physical and other damage caused by FGM. For this reason I shall use the term FGM to collectively describe the three genital operations since that term best depicts the process.

There are three different types of FGM namely, clitoridectomy, excision, and infibulation or "pharaonic circumcision." Clitoridectomy is the removal of

24 In his paper, *Female Circumcision in Indonesia: A Synthesis Profile of Cultural, Religious and Health Values*, presented at the International Seminar on Female Circumcision, 13-16 June, 1988, Dr. Ahmad Watick Pratiknya speaks of three kinds of female genital manipulation which are practiced in Indonesia. They are the cleaning and application of substances around the clitoris, the symbolic (but not actual) cutting of the clitoris, and the light puncturing of the clitoris. Obviously FGM existed here in the past, but has been done away with. These manipulations are the only procedures that may be said not to damage the female sexual organ.

25 Nahid Toubia, *Female Genital Mutilation: A Call for Global Action*, 9 (1993).

the clitoral prepuce or tip of the clitoris.<sup>26</sup> Excision is the removal of the clitoris and the inner lips of the female external genitalia or labia minora. Infibulation or "pharaonic" circumcision is the most extreme of these operations and involves the removal of the clitoris, labia minora and parts of the labia majora. The two sides of the vulva are sewn together, usually with catgut. A small aperture, the size of the head of a match stick or the tip of a finger, is left open for the flow of urine and menstrual blood<sup>27</sup>. The girl's legs are then bound together from thigh to ankle for several weeks to enable scar tissue to form covering the urethra and most of the vagina. FGM is performed on a female from the age of only a few days to the age of sixteen. In some instances FGM is performed on adult women during the seventh month of the first pregnancy<sup>28</sup>.

The short-term effects of FGM are acute pain, post operative shock, urine retention and bladder infection from cuts in the bladder, cuts in the anal sphincter, urethra, vaginal walls and Bartholin's glands, haemorrhage, tetanus, septicemia and infection (that could lead to death), and vulva abscesses. Some of the long-term effects are keloid formation, infertility as a result of infection, chronic infections of the uterus and vagina, incontinence, painful sexual intercourse (dyspareunia), retention of blood, painful menstrual periods (dysmenorrhoea), growth of implantation, dermoid cysts, fistula formation leading to incontinence, and obstructed child-birth.<sup>29</sup>

Several reasons have been given for the practice of FGM. These reasons include maintenance of tradition, enhancement of fertility, promotion of social and political cohesion, prevention of promiscuity, maintenance of feminine hygiene, pursuit of aesthetics, preservation of virginity and fulfilment of religious requirements<sup>30</sup>.

26. Id.

27. Id at 10

28. Sam Eferaro, *Why we Circumcise Our Pregnant Women*, Vanguard, Jan. 19 1993, at 10, 11. Cited in Harvard Law Review Association, Note, *What's Culture got to do With it? Excising the Harmful Tradition of Female Circumcision*, 106 Harv. L. Rev. 1944 (1993).

29. Efiu Dörkehob and Scilla Elworthy, *Female Genital Mutilation: Proposals for change*, A Minority Rights Group Publication (3rd ed. 1992)

30. Harvard Law Review Association, *Supra* Note 28.

The World Health Organisation has called female circumcision "a serious health risk"<sup>31</sup>. The Inter African Committee on traditional practices affecting the health of women and children has called female circumcision "a violation of the basic human rights of health and life"<sup>32</sup>. Female circumcision denies female children and future adult females the right to freedom from cruel, inhuman and degrading treatment, the right to health and reproduction and the right to liberty and security of person.

The Criminal Code (Amendment) Act, 1994, (Act 484) makes it a second degree felony, punishable by a term of imprisonment of not less than three years, to practice FGM. However, the practice still goes on as evidenced by the Daily Graphic report on March 17, 1995 of the commission of FGM on an eight day old female infant. It was also distressing to note in this newspaper report, the absence of a police investigation into the matter.

## Rape

Rape is the carnal knowledge of a female without her consent<sup>33</sup>. Over the past few years there have been several newspaper and police reports of rape. Females ranging from the age of only four years to adults are raped daily in Ghana. Rape is highly under-reported because of the stigma that female victims and their relatives feel will be attached to them thereafter. As such silence is kept over a majority of rapes and it is this same silence that protects rapists and gives them the opportunity to repeat these offences over and over again. I shall give two examples of the hundreds of rape cases being handled by the police and the Attorney-General's Office.

31. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection Minorities, Working Group on Slavery, 8th Session, Statement of WHO on female circumcision, U.N. Doc. E/CN.4/Sub.2/AC.2/1982/4/Add.1, 11.

32. Commission on the Status of Women, 38th Session, U.N. Doc. E/CN.6/1994/NGO/1 (1994), 2.

33. The Criminal Code of Ghana 1960, (Act 29) [hereinafter "Criminal Code"] as amended by Act 458, sec. 98.

In February 1994, a thirteen year old girl<sup>34</sup> was sent on an errand one morning. On her way back the first suspect accosted her, threatened her with a knife, took her to his room and had sex with her. Later, the two other suspects, the brothers of the first suspect, took turns having sex with her. The three brothers detained the young girl from Friday morning till Sunday when they released her, during which time they had sex with her repeatedly. Upon her release the young girl immediately reported the matter to her parents who lodged a complaint with the police. During the police investigation, all the other inhabitants of the suspects' house denied any knowledge of the incident and until now the three suspects have not been prosecuted.

In April 1994, a four year old girl fell asleep in the room of an adult male who lived in the same building as she did. Upon returning home and finding the little girl asleep on his bed the suspect allegedly raped her. The infant later came out of the suspect's room weeping and asking to use the bathroom. Her mother noticed clots of blood in her stool and also realized that the girl was bleeding from her vagina. The girl's mother reported the matter to the police after the little girl pointed out who her assailant was. The rapist has until now not been prosecuted.

This violence is going on unreported mostly because of the attitude of society in general and law enforcement agencies towards victims of rape. More often than not rape victims are treated as suspects, right from the police station to the courtroom. This treatment is a great discrimination against women.

Females are accused of wearing revealing clothing and of leading men on thus inviting these assaults. Rape victims are also accused of falsely accusing men of rape to extract revenge. They are told that a female must physically resist an attack to demonstrate that she does not consent. The biggest problem

34. Names of the victims and suspects in these cases cannot be disclosed since the cases have not yet been prosecuted.

in successfully prosecuting rape cases is where the victim was afraid to resist and did not do so because of such factors as the man's larger size, his greater age or authority, his threatening appearance and manner, the isolation of the spot, or threats that he might harm her in various non-physical ways. In such situations, even if her explicitly "no" makes it clear that she did not consent, her lack of resistance has been interpreted to mean a false consent<sup>35</sup>.

According to Susan Estrich the standards used to obtain a rape conviction protect men who ignore women who say "no" but do not fight back physically. It assumes that women do not always mean it when they say "no", do not know what they want, lack honesty and integrity, enjoy physical struggle as a sexual stimulant, and will abuse the power they have in relationships at the expense of innocent men<sup>36</sup>.

"Acquaintance" rape cases remain the most difficult to obtain convictions for and each of the aforementioned notions has made it difficult to convict men of rape<sup>37</sup>. However prosecuting the cases is one matter and obtaining convictions and appropriate deterring sentences is another matter altogether.

Discrimination is seen in the sentences given to the accused persons. What can be more gender discriminating than an adult male who rapes a ten year old girl getting a sentence of eighteen months imprisonment in hard labour and an adult male who commits sodomy on a ten year old male child getting a sentence of ten years in hard labour. I do not think it can ever be said that the pain and agony that a ten year old girl undergoes when she is raped is any less than that which a ten year old boy undergoes when sodomized. Neither can it be said that the internal damage and mental trauma in these cases is any different.

35. Ross et al., supra note 3, 222.

36. Estrich, *Real Rape*, at 38-40 (Harvard University Press 1987).

37. Id.

## Sexual Harassment

Sexual Harassment is another form of violence against women. Sexual harassment is unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature, whether or not directly linked to the grant or denial of an economic consideration where such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. The people most affected by this form of violence against women are subordinate officers in offices such as secretaries, typists and lower administrative staff or househelp, for whom the work place is the home.

## Domestic Violence

In Ghana and in most parts of the world, home is often not the safe nurturing place pictured in the popular media. Domestic violence, which takes place within the home, often makes a home less safe than the streets. Domestic violence is assaultive behaviour usually involving adults in an intimate and usually cohabiting relationship<sup>38</sup>. It represents a pattern of behaviour rather than a single isolated event<sup>39</sup>. Approximately ninety-five percent of the victims of domestic violence are women. Domestic violence can involve pushing, punching, slapping, choking, stabbing, forcing sexual activity or using the threat of violence to control another's behaviour. It can lead to serious injury or death. An example of the result is seen in the Daily Graphic<sup>40</sup> report of the case of a jealous husband who butchered his wife and their infant daughter to death for his wife's alleged infidelity.

38. Domestic Violence Intervention Program Resource Booklet, 1993, Domestic Violence Intervention Program, Washington, D.C.

39. Id.

40. Nana Yaw Barimah, *Jealousy: Man Butchers Wife and Child*, Daily Graphic, March 27, 1995 at 1.



## Rape Within Marriage

Women are raped within the sanctitude of their own homes. The marriage laws of Ghana allow a man to rape his wife with impunity. Indeed, the conceptual idea that a wife in a marriage can be raped by her husband does not even exist because all sex within such a marriage is considered consensual whether the woman wants it or not<sup>41</sup>. This is because some traditional marriages involving the payment of bride-price result in a woman's physical person and her sexuality becoming part of her husband's property<sup>42</sup>. In other traditional marriages even though in theory customary law did not incorporate the very existence of a woman into that of a man's upon marriage, in practice women were treated as though this were the case<sup>43</sup>. This was mainly due to ignorance of women on the protection the law accorded them<sup>44</sup>. It is moreover a general rule all over Africa that a man can never be said to rape his own wife. Also the Criminal Code of Ghana states that the consent given by a husband or wife at marriage for the purposes of marriage cannot be revoked until the parties are divorced or separated by a judgement or decree of a competent court<sup>45</sup>. This provision falls under the part of the code that deals with the use of force against a person being justified on the grounds of consent. This provision lays down a general proposition that the husband cannot be guilty of rape upon his wife because, by their voluntary coming together by law as man and wife, they are deemed to have accepted the legal incidence of such a contract, namely the right of the husband to have sexual intercourse with his wife and the latter's consent to the exercise of such right, which consent cannot be revoked extrajudicially<sup>46</sup>. As such, forced sex within marriage does not constitute an offence either under customary or statutory law. As another author observed "The marital rape exemption

41. Beatrice Akua Duncan, *Marital Rape as a form of Domestic Violence and the Need for Law Reform in Ghana*, (1994) (unpublished LL.M. dissertation, Georgetown University Law Centre, Washington D.C.).

42. Comment, *The Charter and Family Law*, incorporated in *Family Law in Canada: New Directions*, 27 at 28 (1985).

43. Duncan, *supra* note 41, at 14.

44. *Id.*

45. Criminal Code, *supra* note 33, sec. 42(g)

46. P.K. Twumasi, *Criminal Law in Ghana*; 282 (1982).

creates, fosters and encourages not marital intimacy, harmony, or reconciliation, but a separate state of sovereignty ungoverned by law and insulated from state interference<sup>47</sup>".

Women suffer from other forms of sexual abuse other than rape in intimate relationships. A man may make his partner do sexual things against her will, physically attack the sexual parts of her body or treat her like a sex object.

## Wife Beating

Today's cultures have strong historical, religious and legal legacies that reinforce the legitimacy of wife beating. Under the British common law, which was adopted by Ghana, the law recognised the husband as ruler of the home. As part of the husband's authority the common law authorized his use of violence against his wife as long as he used a stick no broader than his thumb<sup>48</sup>. The provisions under the Ghanaian Criminal Code for the use of justifiable force may also be interpreted to mean that a husband cannot be said to have committed an offence if he beats his wife with a switch no broader than his thumb for defying his authority. For the African woman, the most severe violations of her human rights are rooted deeply within the family system, bolstered by community norms of male privilege and frequently justified by religious doctrines or appeals to custom or tradition<sup>49</sup>. This early common law backed by tradition still has ramifications today in the outright refusal or reluctance of police and other agencies to intervene in the "private" home to give women the protection and assistance they need<sup>50</sup>. Wife beating is one of many forms of physical abuse in the home such as twisting arms, biting, pushing, shoving, hitting, slapping, pulling of a woman's hair, throwing her down and using weapons.

47. R. West, *Equality Theory, Marital Rape and the promise of the Fourteenth Amendment*, 42 Fla. L. Rev. 45, 64 (1990)

48. Ross et al., *supra* note 3, at 154.

49. Sonia Correa & Rosalind Petchesky, *Reproductive and Sexual Rights: A Feminist Perspective* Population Policies Reconsidered, 107 at 110.

50. Ross et al., *supra* note 3.

## Child Marriage

Females in certain societies are betrothed to men of their parents' choice during their infancy. Upon reaching the age of puberty, they are sent to live in their husband's homes and are forced into having sex at an early age. Such girls get pregnant at tender ages and are particularly vulnerable to complications of childbirth such as vesicovaginal fistula. This disability is the result of a ruptured uterus with tearing of the intestine or bladder caused by obstructed labour<sup>51</sup>. Without corrective surgery, the girls sometimes as young as twelve are rendered incontinent for life<sup>52</sup>. An estimated 20,000 women in predominantly Moslem Northern Nigeria suffer from the problem<sup>53</sup>. Another example comes from Botswana, where 28% of women who have ever been pregnant were pregnant before reaching the age of eighteen<sup>54</sup>. In Nigeria, one-quarter of all women are married by the age of fourteen, one-half by the age of sixteen and three-quarters by the age of eighteen<sup>55</sup>. Unfortunately, no statistics are available for Ghana, however, anecdotal information has it that the practice exists in Ghana.

## Incest

Incest is sexual intercourse between persons regarded as too closely related to marry each other<sup>56</sup>. The Criminal Code of Ghana makes it a second degree felony to commit incest<sup>57</sup>. Thus, any male who has carnal knowledge of a female whom he knows to be his grand-daughter, daughter, sister, half-sister

51. Naomi Wimborne, *Customs and Taboos Hinder Progress of Women in Modern Africa*, Reuters News Service, December 11, 1989.

52. James Brooke, *A Nigerian Shame: The Agony of the Child Bride*, N.Y. Times, July 17, 1987, at 4, Col.3.

53. *Id.*

54. W.G. Manyang et al., *Botswana Family Health Survey 1985*, 0111, quoted in Rebecca J. Cook, *International Protection of Women's Reproductive Rights*, 24 N.Y.U. J. Int'l L. & Pol. 645.

55. National Population Bureau, *The Nigeria Fertility Survey 1981/82, Principal Report 1984*, quoted in Cook, *supra* note 54.

56. *The Concise Oxford Dictionary of Current English*, 544 (6th ed 1977).

57. Criminal Code, *supra* note 33, as amended by NLCD 398, sec. 105A(1).

or mother is guilty of incest<sup>58</sup>. Likewise, any female above the age of fourteen who permits a male whom she knows to be her grandfather, father, brother, half-brother or son to have carnal knowledge of her is guilty of incest<sup>59</sup>.

Although many people like to pretend it does not exist, incest does take place in Ghanaian homes. One example is the newspaper report of a policeman and an occultist who had repeated sex with the policeman's daughter. The purpose of this assault was to use the resulting discharge from the girl's vagina for some occult purpose. Another example is seen in the case of a woman who came to the FIDA Ghana legal aid clinic to try to claim child support from the father of her daughter. In the course of interviewing her we found that on one of the child's visits to her father for her vacation, her father had sex with her several times. Despite FIDA's recommendation that the woman file a complaint with the police and have the man prosecuted, our client did not do so.

Incest like rape is highly under-reported mostly because it takes place within the family and the family members who should report it are either reluctant to "wash their dirty linen in public" or are intimidated by the perpetrator of the offence.

## Widowhood Rites

There are certain customary and traditional mourning practices which society demands must be observed by a widow on the demise of her husband. Widowhood practices involve rituals ranging from the seclusion and general isolation of the widow from the wider community, to causing physical harm to the widow.

Section 88A(1) of the Criminal Code of Ghana, 1960, as amended by PNDCL 90, states that whoever compels a bereaved spouse or a relative of

58. *Id.*

59. *Id.* sec. 105(2)

a bereaved spouse to undergo any custom or practice that is cruel in nature shall be guilty of a misdemeanour. To remove any uncertainty that might exist as to the definition of a cruel custom, the Criminal Code goes on to state that a custom or practice shall be deemed to be cruel in nature if it constitutes an assault, an assault with battery, or imprisonment within the meaning of the Criminal Code<sup>60</sup>. This amendment to the Criminal Code seeks to do away with the problematic aspects of widowhood rites but stops short of doing away with the tradition of widowhood rites altogether.

### **Mental and Other Forms of Domestic Abuse**

There are other forms of abuse used by batterers as tools to have control and power over women. Emotional abuse consists of putting a woman down, name calling, making her think she is crazy and playing mind games with her. Economic abuse consists of trying to keep a woman from working or getting a job, making her ask for money and taking her money. A man may also use the children to give messages and use visitation of the children as a way to harass the woman if they are living apart. A man may further make and/or carry out threats of suicide and threaten to take the children away. Another means of control and power is achieved by using the concept of male privilege to treat the woman as a servant, make all the "big" decisions, and act like the "master of the castle." He may also intimidate her by putting her in fear by using looks, action, gestures, shouting or by smashing objects or destroying her property. Additionally, he may keep her in isolation by controlling what she does, whom she sees and talks to and where she goes.

Gender bias which supports and reinforces the notion that women have no rights and can be violently treated is often hard to detect because it is so embedded in certain traditional institutions. These traditional notions and institutions treat women as chattel.

60. Criminal code, supra note 33, sec. 88A(2)

### **General Traditional Rules**

African female children are taught from a very early age that the man is the head of the household and are advised by their mothers to remain in complete subjugation to their husbands. As married women obedience to their husbands and hard work are the two important virtues that they must exhibit, because society demands it of them. There are no such corresponding values imposed on male children, so they grow up believing they are free to behave as they please, and that women have to shape their behaviour to suite their desires and whims. Prior to marriage, girls are taught to be ready for sex with their husbands at all times and never to say no to his advances<sup>61</sup>. Boys also receive instruction from their fathers and are told that it is their absolute privilege to have sex. Thus to the African male, a woman's refusal to have sex is not material<sup>62</sup>.

### **The Culture of Silence**

The discussion of sex related issues in Ghanaian society is considered taboo. This culture of silence keeps many of the hardships women suffer under cover of custom and tradition hidden, and prevents discussion of the matter with a view to solution. A woman who would like to discuss the issue of marital rape for instance, would be told she must not wash her dirty linen in public. There is the need to break all the myths and barriers about discussion of sex related matters and move towards a discussion of the issues involved.

### **Polygyny**

This is a tradition by which a man has more than one wife. Polygyny exists

61. Akua Duncan supra note 41.

62. Id.

all over Africa and denies a woman her sexual freedom and her right to equality in matters relating to marriage. Polygyny is discriminatory against women because while men can have more than one wife, women are not allowed more than one husband. The effect of this custom is to put women in a very low bargaining position in marriage and family relations.

### **Bride-Price**

The bride-price system is one in which a prospective husband gives the parents of a prospective bride, valuable property in exchange for the bride. This property is usually in the form of livestock, kola or other gifts and usually, has to be returned if the bride decides to leave the marriage. Often, this is after many years, and the bride-price would by then have been used for other purposes<sup>63</sup>. Married women are thus trapped within restrictive marriages, unless the bride-price is returned. The bride-price system reinforces the notion that women are chattels that can be passed on from one male to another. I say this because before marriage, women are under the control of their father or other male guardian, and after marriage this control is passed on to her husband in return for the brideprice that is paid. The effect of the brideprice system is to literally transform a woman's person and reproductive capabilities into part of her husband's property.

### **Leviratic Marriage or Widow Inheritance**

This is the custom of marriage between a man and the widow of his brother<sup>64</sup>. This system perpetually restrains the widow from marrying any other person except the customary successor of her dead husband or a member of his family. The effect of this custom is to thrust many women into unwanted marriages and results in forced marriages and forced sex within marriage.

63. Doris M. Martin & Fatuma Omar Hashi, *Women in Development: The Legal Issues in Sub-Saharan Africa Today*, 16, (June 1992) (Working Paper No. 4 Poverty and Social Policy Division, Technical Department, Africa Region, The World Bank.

64. Funk and Wagnalls Standard Dictionary, supra note 2, at 733.

Widow inheritance treats women as chattel, instead of human beings who have rights equal to those of a man<sup>65</sup>. A widow who resists being inherited will most likely be evicted from her home by her in-laws, particularly if she is living on what is regarded as family land<sup>66</sup>. Since most rural women are dependent on their husbands for their livelihood, the threat of eviction from their homes compels them to comply with the traditional practice.

### **Sororate Marriage**

This is the custom of marriage of a man with the sister or sisters of his wife or with other close female relatives<sup>67</sup>. This is the result of the idea that a woman has been purchased by the payment of brideprice or bridewealth. This practice also results in forced marriages and forced sex within marriage.

### **Female Religious Bondage**

Female religious bondage is a practice by which young female virgins are given away as "gifts" to oracles and shrines to pacify gods for offences said to have been committed by other members of her family. Such an example can be seen in the Trokosi system where a female, often as young as ten, is left completely at the mercy of the chief priest of the shrine, who becomes her husband and master. In such instances these girls are forced into marriage and forced to have sex. This practice is a form of discrimination against women, for it is interesting to note that in these shrines which are scattered all over the Volta Region of Ghana, never have any males had to pay for the iniquities of their family members.

65. *Akominga v. Akavagre*, (1987 - 1988) GLRD 101 at 247.

66. Esther Mayambala, *Women and HIV Transmission in Uganda: An Evaluation of Safer Sex Strategies*, 20, (1994) (Unpublished manuscript, Georgetown University Law Centre, Washington D.C.).

67. Funk and Wagnalls Standard Dictionary, supra note 2, at 1198.

The above customs and practices reinforce the notion that women belong to men and can therefore be treated by men in any manner that pleases them. These are some of the underlying notions which lead to violence against women and the violation of women's rights.

### 2:3 ACTION TAKEN TO ADDRESS VIOLENCE AGAINST WOMEN THROUGH THE USE OF INTERNATIONAL AND NATIONAL LAWS

Ghana is party to one United Nations Treaty and one regional agreement which make provision for the protection of women from violence. These are the United Nations Convention on the Elimination of All Forms of Discrimination against Women<sup>68</sup> and the African Charter on Human and Peoples' Rights<sup>69</sup>. CEDAW and the African Charter guarantee women freedom from discrimination<sup>70</sup>, freedom from cruel, inhuman and degrading treatment<sup>71</sup>, the right to respect for their life and integrity,<sup>72</sup> the right to liberty and security of person<sup>73</sup>, the right to the highest attainable state of physical and mental health<sup>74</sup> and freedom from customs and traditional practices that discriminate against women<sup>75</sup>. By ratifying these international law instruments, Ghana has agreed to be bound by the provisions in these instruments. The Ghana government is therefore under an obligation to take *all appropriate measures*, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women<sup>76</sup>.

68. CEDAW, supra note 16

69. African Charter, supra note 18.

70. CEDAW, supra note 16, arts., 2(b), 2(d), 2(e) & 15(1); African Charter, supra note 18, arts., 2 & 18 (3).

71. African Charter, supra note 18, art. 5.

72. African Charter, supra note 18, art. 4.

73. African Charter, supra note 18, art. 6

74. CEDAW, supra note 16, art. 12; African Charter, supra note 18, art. 16(1).

75. CEDAW, supra note 16, art. 2(f) & 5(a)

76. CEDAW, supra note 16, art. 2(f) [emphasis mine].

Ghana is also under an obligation to 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<sup>77</sup>. The Ghana government is therefore under an international and national obligation to eradicate all forms of violence against women in Ghana. This would entail adopting all appropriate measures to modify the social and cultural patterns of conduct of men and women by raising awareness, providing education on gender relations and development of women to their full potential and encouraging the communication media to enhance respect for the dignity of women as persons. It would also involve taking the measures necessary to ensure the gender-sensitive training of all officials who implement the policy of preventing, eradicating, investigating and punishing violence against women.

In December 1993, the United Nations General Assembly passed Resolution 48/104, entitled "Declaration on the Elimination of Violence Against Women (hereinafter "Declaration on Violence"). In its preamble to the Declaration, the General Assembly states that it is acting out of its conviction that "there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by states in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women."

United Nations General Assembly resolutions technically lack the binding force of law. They are still important, however, as evidence of what international law is. Over time, through state reliance on them and other usage, they may come to acquire the status of binding, customary international law. At least some provisions of the Universal Declaration on Human Rights, for example, are widely acknowledged to have attained that status<sup>78</sup>.

77. CEDAW, supra note 16, art. 2(d)

78. See generally, Thomas Buergenthal, *International Human Rights*, at 29-33, (1991) West Publishing Company, St. Paul, Minnesota.

The Declaration on Violence defines violence against women as any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Article 2 of the Declaration on Violence states that violence against women shall be understood to encompass, but not be limited to:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Although international law is gender-neutral in theory, in practice it interacts with gender-biased municipal law and social structures that relegate women to separate spheres of existence; both in public and private life<sup>79</sup>. Furthermore, international law does not in any way purport to govern the context of municipal law, it simply says that certain things are not valid according to international law and that if a state in the application of its municipal law acts contrary to international law, it will commit a breach of its international obligations<sup>80</sup>.

79 V. Spike Peterson, *Whose Rights: A Critique of the "Given" in Human Rights Discourse*, *Alternatives* XV, (1990) 303, 308-310.

80 Moore, *The Alabama Claims Arbitration (1872)*, *International Arbitrations*, Vol.1, 653.

There are two schools of thought that relate to the application of international law in domestic situations, namely the monist and dualist theories. The monist theory believes that international law and municipal law form one single legal system. Some monists further hold that international law is supreme in that municipal law derives its legitimacy from international law. The dualist theory believes that international law and national law are two distinct legal systems with each one being dominant in its own sphere<sup>81</sup>.

In states with dualist approaches, (such as Ghana), international law must be specifically adopted into municipal law before it can have legal effect in the domestic legal system<sup>82</sup>. The application of international instruments in domestic courts is also torn between the doctrines of incorporation and transformation. While the incorporation approach stipulates that the rules of international law are incorporated into the domestic law automatically, the transformation approach stipulates that the rules of international law could not be considered as part of domestic law except they have been adopted by act of parliament or decision of judges or established custom<sup>83</sup>.

Ghana follows the dualist theory and transformation approach to the application of international law. As such international law does not automatically become domestic law in Ghana. Ghana must pass its own legislation based on and in line with international treaties which it has ratified or adopt the principles of international law through court decisions, for the provisions of those international treaties to be applicable in Ghana.

Realising the same need in Ghana for a clear and unambiguous statement on the rights of women, and in line with the provisions in the Ghanaian Constitution, Ghana passed amendments to the Criminal Code making the commission of FGM and the commission of cruel widowhood rites offences. In the light of the multitude of other forms of violence against women in

81. J.G. Starke, *Monism and Dualism in the Theory of International Law*, *British Yearbook* (1936) 74.

82. J.G. Starke, *The Relationship Between International Law and State Law*, 68-76

83. J.G. Starke, *Introduction to International Law*, 74-76

Ghana including its supporting customary forms, this is just a scratch on the surface of the problem we have before us.

## 2:4 A PLAN OF ACTION FOR THE ERADICATION OF VIOLENCE AGAINST WOMEN IN GHANA

The first and most important way of addressing the issue of violence against women is by showing the extent to which paternalistic control of women's behaviour affects violence against women. This can be done through the collection of empirical data. The Committee on the Elimination of Discrimination Against Women has suggested in General Recommendation Number Nineteen, that state parties should encourage the compilation of statistics and research on the extent, causes and effects of violence against women. This would enable the states to identify the nature and the extent of violence against women and formulate effective measures to combat the violence. This endeavour should be taken on by non-governmental organisations [hereinafter "NGOs"] and where necessary, they must seek the help of their state governments in collecting the data. I propose that NGOs take on this responsibility because this issue is vital for the success of the plan of action to ensure the eradication of violence against women, and should not be left to state governments alone, who can easily be sidetracked by political issues.

Second, states are responsible for bringing their domestic law and practice into conformity with their obligations under international law to protect and promote human rights<sup>84</sup>. This responsibility applies not only to laws enacted by formal legislative organs of the state but also to those attributed to religious and customary sources<sup>85</sup>. Parliament must change our laws to conform to the requirements of international treaties that our government has signed onto.

84. Abdullahi a. An-Na'im, *Problems of Universal Cultural Legitimacy*, in *Human Rights in Africa: Cross-cultural Perspectives*, (Abdullahi A. An-Na'im & Francis Deng, eds 1990)

85. *Id.*

Specific legislation must therefore be passed banning traditional and other practices that reinforce violence against women. For example, article 26(2) of the Ghanaian Constitution states that "all customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited". However, there is the need for explicit laws banning specific acts of violence against women for the sake of clarity.

In Abdullahi An-Na'im's view, the constructive approach to this problem of negative customs is to seek to enhance the supportive elements and redress the antithetical or problematic elements in ways that are consistent with the integrity of the cultural tradition<sup>86</sup>. An example of such an approach is seen in Section 88A(1) of the Criminal Code of Ghana, 1960, as amended by PNDCL 90, which abolishes cruel widowhood rites. This amendment to the Criminal Code seeks to do away with the problematic aspects of widowhood rites but stops short of doing away with the tradition of widowhood rites altogether.

Women's rights should also be pursued at the domestic level through the use of existing penal statutes where traditions inimical to women would fall within the applicable definitions of crimes in those statutes. This can be done by prosecuting perpetrators of violence against women under the assault, rape, kidnapping and abduction clauses of the Criminal Code even where the behaviour complained about would fall within the sphere of tradition or custom.

Domestic courts can serve as a missing link between promulgation and realization of international human rights norms to the benefit of both international and domestic law<sup>87</sup>. An example comes from the case of *Akorninga v. Akawagre*<sup>88</sup>. The appellant, (A), appealed against the decision

86. *Id.*

87. Anne F. Bayefsky, *General Approaches to Domestic Application of International Law*, in *Human Rights of Women: National and International Perspectives*, (Rebecca J. Cook ed. 1994)

88. (1987 - 1988) GLRD 101.

of the Chief of Yorugu, awarding damages against him for failing to hand over his adult daughter to the respondent, (R). R had brought this action, eleven years after his elder brother's death, claiming that the appellant's daughter (F), who was the widow of R's elder brother, was now his wife under customary law.

The Court of Appeals of Ghana held that award of damages against A was wrong because A was in effect being penalised for his failure to obtain possession of a grown up woman who was an independent person in her own right with rights equal to those of R. The court stated that the claim was clearly against the general law of the land for it sought to treat F as a chattel instead of a human being<sup>89</sup>. The court went on to say that since R's stance was blatantly discriminatory against women, it could not under modern conditions be considered part of the customary law of the country. R's claim showed no respect for F's fundamental human rights. Accordingly it was contrary to section 1(1)(b) of PNDCL 42, which enjoins respect for human rights and the dignity of the human person, and would for that reason be dismissed. This decision effectively outlaws the practice of the leviratic form of marriage in Ghana. Women's rights activists should thus bring test cases in the local courts on traditional practices that impinge on women's rights to seek court declarations which would effectively outlaw these practices. They should argue that the interpretation of specific words and phrases of international conventions given by United Nations agencies, should be of persuasive effect in local courts.

In addition to seeking change through law, it is imperative to seek change through education. The African woman's inability to assert her rights is partly due to illiteracy. African women have only 57% of the educational opportunities of males<sup>90</sup>. Without the enlightenment which comes with general education, local religious and cultural values shape women's

89. *Id.*

90. Martin & Hashi, *supra* note 63.

attitudes toward concepts that may be essential to ensure women's rights. One of the ways, and a very important one in rural areas, to implement human rights at the local level is to educate a woman to a level at which she can feel confident enough to assert her rights. Education is one of the most important means of empowering women with the knowledge, skills and self confidence necessary to participate fully in a development process<sup>91</sup>. As a member of FIDA (Ghana) working at our legal aid clinic, I have experienced the frustration of trying to convince an illiterate woman that she can assert her rights when she cannot understand or believe she has these rights. Rights activists should embark on massive education on international human rights norms in relation to local laws, to re-orient the thinking of society in general on socio-cultural issues relating to women's autonomy. NGOs must also begin dialogue with indigent women to break the myths and barriers about the discussion of sex related matters, so that they can be easily discussed by women with a view to solution of related problems.

Law is only as good as its enforcement and it is in implementation that the legal response to violence most notably fails. Initiative must be taken to improve the response of the justice system to gender-based violence. Judges, magistrates, local police, prosecutors and medical personnel must be sensitized to issues of violence against women. Violence against women is an extremely complex phenomenon, deeply rooted in gender-based power relations, sexuality, self-identity and social institutions. Any strategy to eliminate gender violence must therefore confront the underlying cultural beliefs and social structures that perpetuate it. To be effective, such a strategy would have to draw on a wide range of expertise and resources, both governmental and non-governmental<sup>92</sup>.

Local Queenmothers, Chiefs, Imams, and traditional headmen are respected in traditional societies and it is essential to change their views about women

91. Programme of Action of the United Nations International Conference on Population and Development, 1994.

92. Heise et al., *supra* note 1, 29.



to get the other citizens of those communities to follow suit. A programme of formal and informal education should be conducted by local NGOs and activists to change peoples' attitudes about the necessity or desirability of continuing to define women as inferior and considering the right to dominate women as an essential aspect of being male.

The education system must also remove gender bias and gender stereotyping from school curriculum and teaching materials. Conflict resolution should also be introduced in school curriculum to teach the youth that violence is not the best way of resolving conflict. To this end teachers and educators must receive gender-awareness training and learn to recognise the signs of abuse.

An effort to change religious and customary laws in accordance with international human rights law should seek to persuade people of the validity and utility of the change<sup>93</sup>. For instance WILDAF<sup>94</sup> Ghana and its associate member organisations<sup>95</sup> have embarked on a rights awareness programme for grassroots women leaders on leadership skills and legal education on four laws that are of particular interest to women in Ghana, namely; Intestate Succession Law, Wills Act, Marriage Laws and Maintenance of Children Act<sup>96</sup>. As a result of the legal education carried out by these participants in their various communities, they have identified the need for an information office in their various district capitals where women can go to seek information and advice on all issues relating to them; including law, health, and family planning. The realization of the need for change now emerges from within

93. Abdullahi Ahmed An-Na'im, State Responsibility Under International Human Rights Law to Change Religious and Customary Laws, in Human Rights of Women: National and International Perspectives, (Rebecca J. Cook ed, 1994).

94. Women in Law and Development in Africa, WILDAF, is an NGO which promotes networking among women's organisations and activists in Africa and collaborates with other human rights organisations and networks outside Africa. Its headquarters is situated in Harare, Zimbabwe.

95. One such organisation is FIDA Ghana, which is the Ghana chapter of the International Federation of Women Lawyers. Among its projects are a legal literacy programme and a legal aid clinic for indigent women.

96. Country Report of WILDAF Ghana at the WILDAF general assembly, 27-30 June 1994.

the communities after the introduction of the concept from outside the communities. This signifies that the people within the community have been persuaded of the utility of the change.

## 2:5 CONCLUSION

Violence against women has evolved in part from a system of gender relations which posits that men are superior to women. The idea of male dominance is present in our society and reflected in our laws and customs.

Combating violence against women requires challenging the way that gender roles and power relations are articulated in society. It also requires challenging social attitudes and beliefs that reinforce male violence and renegotiating the meaning of gender and sexuality and the balance of power between men and woman at all levels of society. Deeply embedded attitudes about male-female relations and social taboos against discussing "private matters" in public work against finding a solution to the problem.

Breaking the cycle of abuse will require concerted action across several sectors, including education, mass media, the legislative system, the judiciary, the police and the health sector. Local statistical data will have to be collected on how violence against women affects the rights of women. This should be done to put the issue of violence against women on the discussion table at the local level. NGOs should present these statistics and their implications in relation to women's rights to Parliament in an effort to get laws passed banning these practices as being in violation of the Ghanaian Constitution and press to get declarations from the Supreme Court and High Court that these practices violate women's rights stipulated within the Ghanaian Constitution.

In addition to these steps, human rights education of grassroots women leaders is essential for re-orienting the thinking of indigent women and the way in which they perceive their own roles in society. Widespread educational campaigns to transform the thinking of traditional rulers, opinion leaders and whole communities on women's rights is an absolute requisite to make communities realise the utility of change. For, to effectively eradicate traditional practices and norms that lead to violence against women any legislative action will have to be backed and supported by general education and action on other fronts to re-orient the thinking of people. This will serve to erase the notion that a woman is a piece of property and inferior to a man, and will help us make progress in the right direction and towards the eradication of violence against women.

## CHAPTER THREE

# PROPERTY RIGHT OF WOMEN IN MARRIAGE IN GHANA: NATIONAL AND INTERNATIONAL PERSPECTIVES

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### 3:1 INTRODUCTION

*"...a wife by going to live in a matrimonial home, the sole property of the husband, does not acquire any interest therein. The law does not recognise any such interest"<sup>1</sup>.*

The above statement sums up very neatly the general situation of the law regarding matrimonial property in Ghana.

It has been observed that when a couple gets married they become one, and as observed by a U.S Supreme Court Judge, "this rule has worked out in reality to mean that though husband and wife are one, the one is the husband<sup>2</sup>."

Marriage is one of the most important institutions within the society and it has attached to it many formalities and rituals. It is a contractual relationship that most people strive to enter into. However, unlike all other contracts, its

<sup>1</sup> Abban J. J in *Achiampong v Achiampong* (1982-83) GLR 1024.

<sup>2</sup> Justice Black in *US v Yasell* (1966) 382 US 341 at 359.

terms and conditions are almost unknown to the parties at the time that they enter into it – at the time of marriage. The provisions are unwritten, its penalties are unwritten and unknown. Yet parties freely enter into this contract accepting by their actions, terms and conditions of which they know nothing. The terms and conditions of the marriage contract are mostly based on assumptions whose validity are rather suspect.

This paper will attempt to examine that part of the marriage contract which relates to property which the couple acquire either singly or jointly during the course of their marriage and what happens to that property, especially when the marriage breaks up. The property to be examined here is property that is acquired for the benefit and enjoyment of the family, that is, husband, wife and children, if any. In doing this, the paper will examine national laws as interpreted by the courts in the cases and also the obligations assumed by the state in ratifying relevant international conventions. At the end of the paper suggestions would be put forward which would help to resolve some of the problems that would be apparent from the discussions.

### **The Position Under Customary Law**

Under Customary law, a woman has the right to own property in her own name, and it is accepted that marriage as such has no effect on property which the parties own in their individual rights. However, it is a fundamental principle of customary law that a wife is dependent on the husband, and family life requires that a wife should work with or for her husband, and the property acquired with such assistance is the individual property of the husband.

Marriage, under customary law, has a limited effect on the property which the spouses acquire individually before marriage or even during marriage. Neither spouse has the right to interfere with the enjoyment of the property of the other spouse.

However, the situation is very different with respect to property that is acquired by the couple during marriage, for the benefit and use of the family. This is when some of the terms of the unwritten marriage contract come into play. The basic assumption is that the husband is the head of the family and the principal provider. Thus, customary law takes the position that a wife is duty bound to assist the husband in whatever he undertakes, and whatever property he acquires with her assistance belongs exclusively to the husband.

In a number of decided cases the courts in this country have taken the view that in the absence of evidence to the contrary, any property a man acquires with the assistance or joint effort of his wife is the property of the husband.

The late Mr. Justice Ollennu had this to say in one such case:

“By customary law, it is the domestic responsibility of a man’s wife and children to assist him in carrying out the duties of his station in life, eg farming or business. The proceeds of this joint effort of a man and his wife and/or children, and any property which the man acquires with such proceeds, are by customary law the individual property of the man. It is not the joint property of the man and the wife and/or children. The rights of the wife and her children are rights of maintenance and support from the husband<sup>3</sup>.”

This absolute position has, however, been somewhat modified in recent times, especially where there is clear evidence of financial or other material contribution to the acquisition of the property by the customary law wife<sup>4</sup>.

### **The Situation of Marriage Under the Ordinance**

The position under the ordinance is no better in this respect. In a decided case, the High Court, in giving a ruling on a divorced wife’s claim to continue to

3. *Quarley v Martey & Another* (1959) GLR 377 at 380

4. *Abebresch v Kaah* (1976) 2 GLR 46 *Debora Tekyiwaa v Kwaku Adu* - Unreported judgement at the High Court, Sunyani, Suit No. LC 7/66, May 8th 1977.

occupy a flat bought by her former husband, said "there is no doubt that the property bought by one spouse with his own money belongs to that spouse to the exclusion of the other. Therefore if the house is purchased out of the husband's earnings the whole beneficial interest rests in him. Also if the parties set up home in a house already owned by the husband, the wife will have no interest in it in the absence of an express agreement<sup>5</sup>." The premise of this kind of argument both at customary law and under the ordinance, is that the husband is the sole breadwinner of the family. The law therefore presumed and to a large extent continues to presume that any property acquired during the subsistence of the marriage for the use and benefit of the family is the sole property of the husband in the absence of evidence to the contrary.

The truth, however, is that most, if not all married women engage in gainful financial activities and participate effectively in the running of the household economy. Married women in the labour force are contributing basic financial support to their families. Most work full time, and contrary to the myth that married women work for pocket money or extras, the wages of these women are a vital component of the family economy. All families, these days, need two or more incomes to make ends meet.

More importantly, thinking on the role of women within society has changed and the movement towards equality has ensured a recognition that the contribution of women to the society in general and the family in particular, is substantial and cannot be treated as a mere after-thought.

Thus, it has been recognised elsewhere, that even if a married woman stayed at home and looked after the family, by cooking, cleaning and generally overseeing the well-being of the family, her work can be quantified in terms of cash so as to give her a share in the matrimonial property upon the dissolution of the marriage.

5. *Bentsi-Enchill v Bentsi-Enchill* (1976) 2 GLR 303 at 308

Therefore the question as to what interest a married woman has in the property acquired by the couple during the subsistence of the marriage, when such a marriage breaks up, can no longer be resolved on a presumption, which is no longer valid, that a husband is the principal provider of the family.

### 3:2 LEGISLATIVE PROVISIONS AND CASE LAW

The Matrimonial Causes Act, 1971 Act 367, which regulates divorce and ancillary reliefs, provides in Sec. 20 as follows:

- (1) The Court may order either party to the marriage to pay the other party such sum of money or convey to the other party rights or in lieu thereof or as part of financial provisions as the Court thinks just and equitable.
- (2) Payment and conveyances under this section may be ordered to be made in gross or by instalments."

The Act vests in the Court a discretion to determine what share, if any a spouse has in matrimonial property upon the dissolution of the marriage. The Act, however, does not provide any guidelines for the exercise of the discretion by the Courts.

Sec 41 (2) of the Act also provides as follows:

"On application by a party to a marriage other than a monogamous marriage, the Court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may:

- (a) have regard to the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

- (b) grant any form of relief recognised by the personal law of the parties to the proceedings, either in addition to or in substitution for the matrimonial reliefs afforded by this Act.

In applying Secs 20 and 41(2) or the Matrimonial Causes Act, Act 367, the Courts have applied the principle that a spouse claiming a portion or all of the matrimonial property upon the dissolution of the marriage, must show either an agreement between the parties giving the spouse a beneficial worth towards the acquisition of the property.

The Court in *Achiampong v Achiampong*<sup>6</sup>, per Abban JA in giving examples as to the kind of contribution that would suffice for this purpose said "For example making direct financial improvements, renovations or extensions in respect of the matrimonial home or applying her income for the common benefit of both of them and their children so as to enable the husband financially to acquire the property in dispute".

It is obvious from the recent cases mentioned above that where the wife is able, upon the dissolution of the marriage, to show that she made a substantial contribution to the acquisition of the property in question, then the beneficial interest would be held to be vested in her and her husband, even if the legal title is vested solely in the name of the husband. This is the case whether the marriage is a customary or an ordinance marriage<sup>7</sup>.

In a rather radical departure from the attitude of the courts that have looked at contribution in strictly cash terms, the court, presided over by Brobbey J, in the case of *Mary Oparebea v SA Mensah*<sup>8</sup>, decided that a woman who spent 28 years of her married life working in her husband's stores for no remuneration, had made enough contribution to the acquisition of the family assets to

6. See *Achiampong v Achiampong* (1982-83) GLR page 1017 at 1025.

7. *Ibid* at page 1025.

8. See *Mary Oparebea v S.A No. Mensah* - Unreported judgement of the High Court suit No. D&mc 1608/88 of 14th Dec 1989.

merit the vesting of one house in her upon the dissolution of her marriage. This is in spite of the fact that the husband had five other wives and numerous other children.

This was a case decided under Sec 41 of the Matrimonial Causes Act which enjoins the court in dealing with marriage other than monogamous marriages, to have regard to the peculiar incidents of that marriage in determining appropriate reliefs, financial provisions and child custody arrangements.

The court was of the opinion that the requirements of justice, equity and good conscience dictated the position that it took in this case since the interest of the other five wives and their children were in no way jeopardised by giving one house out of the many to the wife in this case.

The judgement in the above case reflects reality and the spirit of the moment. Note, however that where a wife is unable to prove to the court that she made a substantial contribution, either directly or indirectly to the acquisition of the property, the courts are not so quick to use the principles of equity to do justice.

In the case of *Bentsi-Enchill v Bentsi-Enchill*<sup>9</sup> the court observed: "In recent times, the wife is very often a wage earner and makes contribution towards the common expenses by buying for and running the home. Judicial opinion today shows that the trend is to give credit to the wife for her services in kind as a house keeper or for the use of her own income or savings in such a way as to enable the husband to use his for the purchase of a house".

These pronouncements have largely remained that. The courts have demanded evidence of agreements and clear contribution, thus depriving many women of any share in matrimonial property after years of toil. A typical example is the case of *Odoteye v Odoteye*<sup>10</sup> where husband and wife had been married

9. 1976 2 GLR 302

10. (1984 - 1986) GLRD 61

for over 30 years before their divorce. The wife brought an action after the divorce for ancillary reliefs and for the transfer into her name of an estate house for herself and her children. The wife did not lead any evidence as to her contribution to the acquisition of the property. The husband, however swore to an affidavit in which he resisted the claims of the wife to the estate house.

The court, presided over by Griffiths-Randolph J. held that even though it was not inconceivable that a wife would contribute to the cost of property being acquired by the husband, in the absence of evidence of the wife's actual financial contribution to the cost of the acquisition of the house, the court could not order the transfer of the house to her. There are a number of cases along the same theme<sup>11</sup>.

Even though we have referred to the situation upon divorce, it must be noted that the situation of the women, during the subsistence of the marriage, can be just as precarious. As noted earlier, either party has the right to own property and so long as these properties are kept separate and distinct, there are no problems.

However, in relation to the family property or matrimonial property being referred to in this paper, there are many problems. A lot of married women are vulnerable because their contribution to the family wealth, even though acknowledged is not given recognition in such a way as to assure them that they do not need "hard" evidence in order to benefit from the matrimonial assets. Thus, many a woman lives a life of humiliation in her matrimonial home, where from time to time she is ordered out of the house by the husband because she is not considered as having any vested interest in the family assets, and she is taken back only upon others coming to beg the husband on her behalf.

11. See *Domfe v Adu* (1984-86) GLRD 77  
*Yeboah v Yeboah* (1974) 2 GLRD 114  
*Bentsi-Enchill v Bentsi-Enchill* (1976) 2 GLR 303

It is submitted that a situation where every woman is assured of a fixed part of matrimonial property should the marriage break up, would go a long way in reducing the vulnerability of the women alluded to above.

### 3:3 INTERNATIONAL DIMENSIONS

The 1992 Constitution provides in Art 22(2) that "Parliament shall, as soon as practicable after the coming into force of this constitution, enact legislation regulating the property right of spouses." 22(3) "with a view to achieving the full realisation of the rights referred to in clause 2 of the article:

- (a) Spouses shall have equal access to property jointly acquired during marriage
- (b) assets which are jointly acquired during marriage shall be distributed equitably between spouses upon dissolution of the marriage"

The discussion on the state of the law above, perhaps, helps to explain the constitutional provisions which have been reproduced above.

Ghana is a signatory to various International Instruments aimed at gaining equality for women within the society. In 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women. The convention has been described as the single most important international document on the rights of women. In many ways the Convention reflects the extent of the exclusion and restriction practised against women solely on the basis of their sex. The Convention calls for national legislation to ban discrimination, recommends temporary special measures to speed up equality in fact between men and women and action to modify social and cultural patterns that perpetuate discrimination. The Convention came into force on 13th September, 1981.

In 1981, the Assembly of Heads of State and Government adopted the African Charter on Human and Peoples' Rights which came into force on October 21, 1989.

The Charter also established a regime of rights, duties and responsibilities for the State Parties and exhorts them to put into place legislation that will enable citizens enjoy the benefits of those rights.

Ghana ratified the Convention on the Elimination of All Forms of Discrimination Against Women in January, 1986. It is also a State Party to the African Charter on Human and Peoples' Rights.

At the time that the 1992 constitution was being drafted, Ghana had assumed definite international obligations that needed to be fulfilled. Hence Art 22 and others on the rights of women.

When a country ratifies an international convention like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), it undertakes very specific legal obligations and it is obliged to report periodically to the appropriate UN body on measures that it has taken to implement the Convention. In this case the appropriate body is the Committee on the Elimination of All Forms of Discrimination Against Women. By ratifying the Convention, Ghana undertook to adapt its legislation and introduce new legislation where necessary, in order to translate the rights contained in the Convention into national rights for the women of Ghana.

Article 2 of the Convention embodies the policy measures needed to be taken by a State Party, upon ratification, these include:

- embody the principle of equality in national constitution, codes or other laws and ensure its practical realisation.
- establish institutions to protect against discrimination.

ensure that public authorities and institutions refrain from discrimination.

abolish all existing laws, customs and regulations that discriminate against women.

The Convention is a legal instrument which sets certain standards for States Parties to adhere to.

How does the convention affect the property rights of women in marriage, one may ask?

Article 16(1) of the convention provides: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations..."

Article 16(1)(h) "The same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for valuable consideration".

Article 16(1)(c) "The same rights and responsibilities during marriage and at its dissolution."

It is in the area of family law that it has been most difficult to develop international standards. This is because family law rules are most often based on traditional and/or religious practices that ascribe different roles to men and women within the society.

These distinct roles for men and women explain the rights or no-right of men and women with the family structure.

Article 16 of the Convention cover sensitive areas of private law that have hitherto be kept "private" and not subject to international rules and standards.

It attempts to bring in line with the general thrust of the Convention on the issue of equality between men and women in all areas including marriage and family relations.

All that Article 16 does is to require States Parties to examine specific provisions of private law to ensure that they reflect the principles of the equal rights of women and men. Each state is invited to take steps towards achieving non-discrimination in the important but delicate area of family law. In line with the above comments, therefore we are required or invited to amend our law or introduce new legislation that would eliminate the present discriminatory consequences of the law as it presently operates, demonstrated in the few cases examined above.

The African Charter on Human and Peoples' Rights, also sets up a human rights regime and detailed provisions on women's rights meant to enhance the status of women in Africa. The Charter reaffirms faith in fundamental human rights, the dignity and worth of the human person and proclaims the equal rights of men and women. Specifically, it provides in Article 18(3):

"The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions."

By creating a deliberate linkage between it and other international human rights documents like the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, the Charter has created a legal obligation for States Parties. This is as a result of Art 1 of the Charter which provides:

"The Member states of the Organisation of African Unity shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them."

Article 23(4) of the International Covenant on Civil and Political Right (ICCPR)<sup>12</sup> provides:

"States Parties to the present covenant shall take appropriate steps to ensure equality of rights and responsibility of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

The article envisages that men and women would be accorded equal treatment within the family, even though it does not define the concept of family. Ensuring such equality may require States Parties to either adopt legislation or amend legislation.

The argument here is that by virtue of Art 18(3) of the African Charter, all States Parties are bound by the provisions not just of the charter, but also all other international instruments, such as the ICCPR on the right of women.

It is against this background that Art 22(2) and (3) of the 1992 Constitution of Ghana are to be viewed. Ghana has assumed legally binding international obligations relating to the property rights of women within marriage, especially upon the dissolution of the marriage. The need to put in place the necessary legislation envisaged by Art 22(2) and (3) of the 1992 Constitution is obvious from the preceding discussion on the present state of the law.

It is true that in a few cases that have come before the courts, some of the judges have been progressive enough to realise that the services that a woman renders in the house as a mother, wife, housekeeper, etc, is enough to secure her a portion of the matrimonial property without her having to prove in strict terms that she made financial contributions. The truth is that many women do not bother to pursue their claims because they do not keep the evidence, they are not aware that such evidence is necessary until it is too late.

12. At the time of writing the writer is not aware that Ghana has ratified the International Covenant on Civil and Political Rights.



The fate of a lot of women is left to the discretion of judges who are not necessarily gender sensitive, and who are products of a process of socialisation which does not see the woman as anything else but a minor partner in marriage. This is a very unsatisfactory situation which must be corrected and quickly, if Ghana is to move towards achieving equity as between spouses upon the dissolution of their marriages. The Constitution has already provided the way forward in Art 22(2) & (3).

Divorce is not and should not be a part of marriage. The Matrimonial Causes Act 1971, Act 367, sees divorce as a measure of last resort. It lays strong emphasis on reconciliation. Sec 8(1) of the Matrimonial Causes Act, 1991, Act 367 provided: "On the hearing of a petition for divorce, the petitioner or his counsel shall inform the court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceeding to effect a reconciliation. If at any stage of the proceedings for divorce it appears to the courts that there is a reasonable possibility of reconciliation the court may adjourn the proceedings for a reasonable time to enable attempt to be made to effect reconciliation and may direct that the parties to the marriage, together with representatives of their families or any conciliator appointed by the court naturally agreeable to the parties, attempt to effect a reconciliation." The truth of the matter, however, is that divorce has become an integral part of marriage. Given the fact that many marriages will flounder at some point during the lifetime of the parties, the present state of the law is totally out of touch with reality.

The trend in other parts of the world is that the domestic skills of a wife count as much as any monetary contribution that she makes, and proper recognition is given to such skills. It has been recognised that in most, if not all marriages, it is the concentration of the wife on the domestic chores that frees the husband to engage successfully in his business so as to make money. Thus, in many parts of the world today, legislation has been adopted that takes into consideration the socio-economic realities, in settling the question of property rights between spouses, upon the dissolution of their marriages.

There is however, a disturbing aspect of Art 22(3) which needs to be looked at, so as to achieve full equality. Whereas Art 22(3)(a) provides that spouses shall have equal access to property jointly acquired during marriage, Art 22(3)(b) says that upon the dissolution of the marriage, the property is to be distributed *equitably* (emphasis mine).

One would like to believe that the choice of words is not deliberate and that the word *equitable* used in Art 22(3)(b) is used to mean equally. This is because giving a Court the discretion to distribute equitably gives the Court a discretion which leaves too much to chance. That is the situation that we have had to live with under the Matrimonial Causes Act, and which has resulted in the present unsatisfactory state of the law.

Therefore any legislation that is passed in pursuance of Art 22(3) of the 1992 Constitution must clearly stipulate the principle of equality in treatment and avoid the use of terms like equity which would give the Court the opportunity once again to exercise their discretion to the detriment of women.

In thinking of the legislation envisaged by Act 2(2)(3) of the 1992 Constitution certain factors ought to be taken into consideration, such as:

- the length of the marriage
- the activities undertaken by the spouses
- if the wife assists the husband, by for example, keeping his shops or minding his business, the length of time she has spent doing this.
- even if the woman does not engage in any activities to earn income, (and this is doubtful) her housekeeping duties, her duties as a mother and wife should all be taken into account.

It is suggested that the legislation to be introduced, taking into account the factors listed above, could do the following:

- (a) guarantee 1/3 of all matrimonial properties to the wife should marriage break up. This should be done regardless of whether the matrimonial home, for example, was already in existence at the time of the marriage. This should be the absolute minimum which any woman faced with divorce should be entitled to. The figure can then be adjusted upwards taking into account the financial status of the woman and her contribution to the household.
- (b) Where a wife has an earning capacity equal to that of the husband or very nearly so, then unless the husband can prove beyond doubt that such a wife did not use her earnings towards the common good of the family, she should be entitled to 50% of all the family property upon the dissolution of the marriage.
- (c) Where the couple engage in business together, then they should be entitled to equal shares of the business and matrimonial property upon divorce, i.e. 50% each.
- (d) where the wife assists the husband in his business then the minimum figure of 1/3 could be adjusted upwards taking into consideration all the circumstances of the situation like the length of the marriage and the level of assistance as well as any relevant matters.

These suggestions could be the first step in the attempt to achieve equality between men and women in the area of what happens to matrimonial property upon the dissolution of the marriage. They are by no means perfect and they would need a lot of thinking and refining in order to arrive at an acceptable and workable solution. They are offered here to start a debate, a debate which is long overdue, and which needs to be undertaken urgently and seriously.

There are other possible options. One such option is the radical option of moving away from the common law concept of separate property in marriage and adopting the concept of "Community Property" in marriage. The basic premise of this concept, is that property acquired during marriage is owned by both parties, irrespective of the party who actually purchased it. This concept also has its own problems, one of the most notable being that in some countries where it operates, the property is solely managed by the husband during the marriage. The consequences of this arrangement are just as devastating, most often, as there are situations where the husband would ensure that there is no property by the time the marriage comes to an end.

### 3:4 CONCLUSION

The above discussion has been an attempt to take a look at the current situation of the law as it relates to property rights of women, what the international dimensions are, in the light of the obligations assumed by Ghana under International Instruments, and what could be the way forward towards achieving equality between spouses in this most important area. The law allows parties to a marriage to acquire and keep separate property throughout the subsistence of the marriage. Such property remains that of the spouse who acquired it. What happens in reality, however, is that for most women, this idea of owning separate property ceases to operate for them as soon as they get married. All their efforts are channelled towards the common good of the family. Secondly, the very nature of marriage makes it imperative that property be acquired by both spouses for the common household.

Thus, the concept of matrimonial property is not one that can be done away with. If so, then it follows that when the marriage breaks up, the property should be distributed in an equal manner so as to help both parties pick up the pieces of their lives.

It is only when this is done that women would begin to feel secure in marriage and Ghana would be firmly on the road to achieving equality between men

and women in marriage, as required by Art 16 of the Convention on the Elimination of All Forms of Discrimination Against Women as well as other international Human Rights Instruments.

However, as it is well known, putting a law in place is only an aspect of the process of achieving equality.

Laws on the statute books can only help in the process of equality if they are well disseminated, understood and utilised by the people.

Therefore the quest for the appropriate laws must be accompanied by a process of education that would involve all stakeholders in the debate. When all interested parties are part of the debate towards the search for the solution, an awareness would have been created on the issue of property rights within marriage.

Such an awareness is crucial to the final goal of equality within the family especially as it relates to matrimonial property.

## CHAPTER FOUR

### REPORT ON WORKSHOP ON RIGHTS OF WOMEN UNDER NATIONAL AND INTERNATIONAL LAWS

ACCRA, GHANA - April 5-6, 1995

Prepared by:

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#### 4:1 INTRODUCTION

The Workshop on the Rights of Women Under National and International Laws was a joint initiative of NCWD and FIDA and was sponsored by FES.

#### Aim

The main aim of the workshop was to establish a forum to inform law makers, decision makers, opinion leaders and law enforcement agencies about the rights of women under national and international laws with an in-depth analysis on violence against women and property rights of women in marriage.

## Specific Objectives

- To make concerted efforts to urge law enforcement agencies to be aware of existing laws affecting women.
  - \* Actual enforcement of the law
  - \* Devise effective means of ensuring the enforcement of the law
  - \* To see how national laws can reflect the concerns expressed in International treaties
  - \* How best opinion leaders and decision makers can disseminate information to the grassroots
  - \* To begin the documentation of gender related laws for easy access.
- To identify and discuss some of the salient issues involved in ensuring the main realization of the Rights of Women under the 1992 Constitution.

## Participants

Participants were drawn from law makers, decision makers, opinion leaders, law enforcement agencies and various institutions and organisations involved in the promotion of women's rights. These included Amnesty International, National Commission on Human Rights and Administrative Justice, National Commission on Civic Education, Prisons Service, The Ahmadiya's Movement, Ghana Moslem Mission, The AG's Office, the Judiciary, Parliament, The GBC, DAWS, 31st December Women's Movement, the Queen Mothers Association, ASWIM, The Ghana Law Reform Commission, FIDA, NCWD and FES, etc.

## Papers Presented

Ms. Fitnat Adjetei - State Attorney, AG's Department and a member of FIDA presented a paper on "Violence Against Women in Ghana: A Pervasive Yet Ignored Problem".

Mrs. Akua Kuenyehia - Senior Lecturer - University of Ghana and a member of FIDA presented a paper on "Property Rights of Women in Marriage; National and International Perspectives".

## 4:2 OPENING CEREMONY

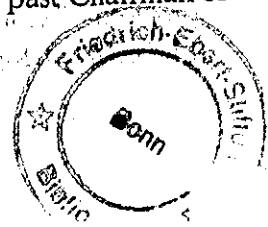
The opening ceremony was chaired by Mrs. Eleanor Arthur, a renowned lawyer and Director of Women's World Banking. In her opening remarks she expressed her gratitude to the organisers for the confidence reposed in her. She espoused on the relevance of the theme for the workshop and exhorted all the participants to come out with practicable and pragmatic recommendations. She further commended FES for sponsoring the workshop and congratulated the organisation on its 25th anniversary.

Dr. (Mrs) Mensah Quainoo, a Member of the Council of NCWD, welcomed all the participants to the workshop. She congratulated the NCWD and FIDA on their collaborative efforts in organizing the workshop and thanked FES for sponsoring it. She entreated the participants to work assiduously to achieve the aims and objectives of the workshop.

Dr. Mayer, the Resident Director of FES, in his statement stressed the relevance of the workshop as part of the preparatory activities towards the 4th World Conference on Women in Beijing. The topics, according to him, are very important and universal and should be explored in all their facets with a view to finding lasting relief to women.

## Keynote Address

The keynote address was given by Prof. Florence Dolphyne, Head of the Linguistics Department, University of Ghana, Legon and past Chairman of NCWD.



Her address dealt with a number of pertinent issues affecting the right of women under national and international laws. She was particularly enthused about the achievements of women since 1975 - The International Womens' Year. She lamented, however, over certain negative aspects of customary law and practices that are used to perpetuate the subordination of women and systematic violations of their basic human rights. She expressed concern over the high illiteracy rate among women, Women's Rights of Employment, Sexual and Reproductive Rights, the issue of Maid Servants, Widowhood Rites, Bride Price, Child Marriage, Female Genital Mutilation (FGM), etc.

She called for a change in the attitude of the society and women towards these negative cultural practices and urged them to take advantage of the existing laws that have been passed to protect women. Law, she stated, is but a tool; the society should be receptive to the laws - know their existence and appreciate their efficacy before they can be of benefit.

The Chairman, Mrs. Eleanor Arthur, in her closing remarks advocated for responsibilities as well as rights of women. She expressed the need for gender-desegregated data, and a package of practical laws affecting the rights of women. The vote of thanks for the opening ceremony was given by Mrs Angelina Wood of NCWD.

#### **4:3 SUMMARY OF PROCEEDINGS ON VIOLENCE AGAINST WOMEN**

The first session was chaired by Mrs. Dora Glover-Tay, a lawyer, and Council Member of NCWD. Ms Fitnat Adjete, a State Attorney of the Attorney General's Department presented a paper on "Violence Against Women; A Pervasive Yet Ignored Problem". She dilated on the global nature of the problem of violence against women and provides data to illustrate the point. She then catalogued the various forms of violence practised in Ghana.

These include:

**Female Genital Mutilation (FGM):** She preferred this terminology to Female Circumcision which to her is a misnomer. Female circumcision, she states in no way bears any resemblance to male circumcision. Quoting from Nahib Tonbia - Female Genital Mutilation - A call for Global Action, "Most of the penis would be amputated if the equivalent of clidectomy were to be performed on men". The ill-effects of FGM are presented vividly to show the cruelty and the harmful nature of this form of violence against women.

**Rape:** Is still very much alive and rampant because of society's perception of women. Rape victims are often treated as the culprits. Law enforcement agencies do not attach any serious attention to the offence.

**Domestic Violence:** An ignored phenomena: rape within marriage should be critically considered. She likens it to the use of force being justified on account of consent. Does a wife consent to forced sex on marriage? Is marriage an institution insulated from State's interference?

She then goes on to refer to a host of cultural practices that constitute violence against women: child marriage, widowhood rites, polygyny, bride price, leviratic marriage, sororate marriage, trokosi system, etc.

**International Law:** She refers to the Convention on the Elimination of All Forms of Violence Against Women and the African Charter on Human and People's Rights and states that Ghana's ratification of both treaties enjoins her to promulgate laws to eradicate violence against women. She also makes mention of the Declaration on the Elimination of Violence Against Women.

#### **Plan of Action**

- (1) Data collection on violence Against Women as basis for effective action.

- (2) Specific laws should be passed under Article 26(2) of the 1992 Constitution.
- (3) The Domestic Courts should be used for declaration and realization of International Human Rights.
- (4) Education to change society's perception of women.
- (5) Law enforcement agencies should be responsive to gender violence.

### Issues Raised From The Discussion On Violence Against Women

- (a) On the issue and suggestion that violence against men should be considered, it was agreed by the participants that that was a non-issue - it is just in the minority of cases. Affirmative action is needed by women who are always the underdogs.
- (b) There is the need to sensitise policy makers, legislators and decision makers to enable them legislate and implement laws that enhance and promote the Rights of Women.
- (c) Specific Laws on Violence Against Women should be passed - spouse beating, rape within marriage - Consent to marriage does not mean consent to beating and rape within marriage.
- (d) Data on the physical and psychological effects of violence against women should be made available to law makers and law enforcement agencies to make them aware of the pernicious nature of the offence.
- (e) Education in all its facets should be intensified to remove all vestiges of gender stereotyping and build confidence and self-esteem in women. Culture and religion have enslaved women.

- (f) Amendments of laws and enactment of Laws to give effect to the provisions of the 1992 Constitution and International Declaration and Conventions guaranteeing the Rights of Women.

### Syndicate Session

Participants were divided into three groups and requested to deliberate on how education, legislation and enforcement could be used as tools to combat violence against women. Each group was assigned one of the said tools to allow for in-depth discussion.

The facilitators for the groups were Ms Angelina Laryea, lawyer, FIDA; Mrs. Owiredu Gyampoh, lawyer, FIDA; and Mrs. Glover-Tay, lawyer, NCWD.

**Education:** The group advocated for an increase in the enrolment, retention, and transition of girls in schools. Formal as well as informal education of women was sorely needed. Education to counteract the harmful effect of cultural perception and practices was particularly stressed.

**Legislation:** The need to enact and amend laws to promote the dignity of women was particularly emphasized. Specific mention was made of defilement, spouse beating, rape within marriage - all customary practices that are inimical and injurious to persons - Article 26(2) of the 1992 Constitution.

**Enforcement:** The need to sensitize law enforcement agencies, opinion leaders, and traditional rulers on the seriousness of violence against women was stressed.

#### 4:4 SUMMARY OF PROCEEDINGS ON PROPERTY RIGHTS OF WOMEN IN MARRIAGE IN GHANA - NATIONAL AND INTERNATIONAL PERSPECTIVES

The second session was chaired by Mrs Iris Heward-Mills of the Judicial Service. Mrs Akua Kuenyehia, a Senior Lecturer in Law, University of Ghana and a Member of FIDA, presented a paper on the "Property Rights of Women in Marriage in Ghana - National and International Perspectives".

Mrs Kuenyehia, in her paper analyses the topic under the following: customary law, ordinance, legislative provisions and case law and international dimensions.

**Customary Law Marriage:** The presenter relied on decided cases to illustrate the concept of ownership of property acquired by spouses under Customary Law Marriage. Each party to a marriage can acquire property in his or her own right. However, the situation is very different with respect to property that is acquired by the couple during marriage. The basic assumption is that the husband is the head of the family and the provider, consequently the wife is duty bound to assist him, and whatever property he acquires with her assistance being exclusively to the husband. This absolute position has been modified in situations where there is proof of financial or material contribution to the acquisition of the property by the customary law wife. The burden of proof - which is not an easy one - is nevertheless on the wife.

**Ordinance Marriage:** The situation is not different from that pertaining under customary law marriage. The concept of the husband as the provider and lord of the manor still prevails.

**Legislative Provision and Case Law:** The presenter reviewed the Matrimonial Causes Act 1971, Act 367 with special attention to section 20

and section 41(2) and deplored the heavy reliance placed on the "discretion of the Court". She advocated for clear cut provisions on factors that should be taken into consideration by the Court when determining the property rights of spouses upon dissolution of the marriage.

**International Dimension:** The presenter refers to the Convention on the Elimination of All Forms of Discrimination Against Women and the African Charter on Human and Peoples' Rights and relates them to Article 22 of the 1992 Constitution which guarantees the property rights of spouses. She reiterated the concept of equality during the determination of property rights of spouses in marriage and at the dissolution of marriage.

#### Recommendations

She further recommends that any envisaged legislation under Article 22(3) should consider:

- (a) the length of the marriage
- (b) the assistance rendered by a wife in keeping the family, ie. as a mother, wife, minding the family's business, etc.,
- (c) an absolute minimum of one-third of all matrimonial properties should be given to the wife at a dissolution of marriage, this should be adjusted upwards taking into consideration the financial status of the wife and the contribution made to the matrimonial property.

## Issues Raised During Discussion - Property Rights of Women in Marriage:

1. Women should know the law affecting property rights in marriage - the need to have evidence of "contribution" in whatever form - witnesses, receipts, etc.
2. Judges should be sensitive to the plight of women during dissolution of marriage.
3. Lobby groups, FIDA, NCWD and the Women NGO's to assist parliamentarians in their effort to enact laws under Article 22 of the 1992 Constitution.
4. The need for regular seminars on the implications of the marriage contract.
5. Data on divorce cases - to show the importance and urgency of issue of property rights within marriage.
6. Any legislation under Article 22 of the Constitution should do away with the Court's Discretion and come up with mandatory provisions regarding access to property acquired during marriage.
7. Prenuptial contract should be discussed.
8. A debate should be opened on the property rights of women in marriage - to subject the recommendations that will come out of this workshop to a wider audience.

9. Community of Property system as opposed to the concept of separation of property under Common Law.
10. Property here should not be restricted to houses acquired during marriage but also to all other immoveable properties - rented premises included.
11. Seminars should be organised for the moslem community and Imams by FIDA & NCWD on the issue of property rights of women.
12. Emphasis on legal education - the need to utilise the well-established organisations, institutions, churches, Commission on Civic Education - drama, durbars, media, etc.
13. The institution of marriage as a subject should be included in the school curricula.
14. Judges, as final arbiters in divorce proceedings, should be invited to seminars such as these.

## Syndicate Session

After the discussion on the property rights of women in marriage participants went into syndicate session. They were directed to come out with appropriate and effective proposals for legislation to regulate the property rights of spouses during and upon dissolution of the marriage.

The groups in their reports affirmed the principle of equality as a factor in the determination of property and rights of women during and at the dissolution of the marriage. Specific pieces of legislation under Article 22(3) were proposed.



## CHAPTER FIVE

### RECOMMENDATIONS

#### 5:1 VIOLENCE AGAINST WOMEN

1. The Law on Defilement of a female under fourteen years of age – Criminal Code Amendment Act, 1993, should be amended to show the gravity and inhuman nature of the offence and reflect society's outrage and abhorrence of its commission.
  - a) The crime should be a 1st degree felony with a minimum sentence of 5 years plus a fine not exceeding ₦500,000.00 and in default of the payment of the fine to a further term of imprisonment not exceeding the minimum term of imprisonment so specified.
  - b) Defilement of a female child under 5 years should attract a minimum sentence of 10 years plus a fine not exceeding ₦500,000.00 and in default of the payment of the fine to a further term of imprisonment not exceeding the minimum term of imprisonment stipulated.
2. Spouse beating should be made a specific crime under the Criminal Code.
3. Forced sex in marriage or rape in marriage should be criminalised under the Criminal Code. This is very essential if women are to be protected from the AIDS pandemic and sexually transmitted diseases. Women need to have rights over their sexuality and be able to say "No" when a husband refuses to use condoms.

4. Specific laws should be enacted to give effect to the provisions of Article 26(2) which states: "All customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited."

#### The customary practices include:

The Trokosi system, Child Marriage, Bride Price, Levirate and Sororate Marriages, etc.

5. Special police stations and or special units in the police services and special courts/tribunals should be established to deal specifically with the issue of Violence Against Women. These stations, units and courts should be gender sensitive and friendly to encourage women to seek redress.
6. Parliamentarians should be supported in their effort to enact laws that promote and safeguard the rights of women.
7. Education as an effective tool in changing the attitudes of perceptions of the society towards women should be intensified. Girls education should be given added emphasis.
8. All sectors of the society including women NGOs, human rights activists, religious organisations, opinion leaders, queen mothers, law enforcement agencies should be involved in the fight against violence perpetrated on women.
9. The media should be recognised as an important ally in the fight against violence perpetrated on women.

#### 5:2 PROPERTY RIGHTS OF WOMEN IN MARRIAGE

1. Any legislation contemplated under Article 22(2) of the 1992 Constitution should state in clear and unambiguous terms the principle of equality as the underling factor in the determination of property rights of spouses in marriages and at the dissolution of marriages.

2. The matrimonial home is the sanctuary of the spouses and should be jointly owned by the parties of the marriage, during the subsistence of the marriage or at its dissolution.
3. The matrimonial property or property acquired during marriage should be distributed among the spouses equally having regard to the following:
  - a) The length of the marriage;
  - b) The activities undertaken by the spouse;
  - c) The assistance of a spouse - keeping spouse's business, home, baby sitting, and rendering of spousal duties;
  - d) The earning capacity of spouses;
  - e) Actual financial contribution of the spouses in the acquisition of the matrimonial property.
4. Full disclosure of property owned by parties to a marriage should be made to ascertain properties that are acquired during marriage.
5. Any Legislation passed should have the welfare and interest of children at heart.
6. Legislation to protect women and children from hardships arising out of the breakdown of marriage during divorce proceedings.
7. There should be a clear definition of the property rights of the wife/wives within monogamous and polygamous marriages.
8. Special matrimonial courts should be established to deal humanely and expeditiously with cases concerning property rights of women in marriage.
9. A special ministry for women with wider powers than NCWD should be established.