



REPORT ON WOMEN DEPRIVED OF LIBERTY IN GHANA

**COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE, GHANA
NOVEMBER 2018**

**Prepared by: Lambert Luguniah, Rufina D. Pwoawuvi and Dorcas Tiwaa Addai
(International Cooperation Unit – CHRAJ, Ghana)**

I. Justice system

1. What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.

In Ghana, the main causes for which women come into conflict with the law are reported misconducts allegedly offending the criminal laws of Ghana (i.e. where a woman commits an act that is prohibited by law such as stealing¹ and/or omits to do an act required by law such as non-compliance with a duty to give access to the necessities of health and life²). In addition, there are other conducts that give rise to both civil and criminal actions (such as criminal assault³, which also constitutes a tortuous conduct that gives rise to a victim to bring a civil action against an offending party). The type of offences female prisoners often commit include; defrauding by false pretence, murder, robbery, stealing, dishonestly receiving, possession of narcotic drugs without any lawful authority, causing harm, and hindrance of inquest.⁴

The most vulnerable women groups in detention, including pre-trial detentions, are pregnant women, nursing mothers, the aged, and people living with HIV/AIDS (PLHIV). The reasons for their vulnerability include lack of adequate healthcare facilities to meet their regular and sometimes unplanned medical requirements as well as balanced meals. The generally applied daily feeding rate of GHS1.80 (about USD\$0.36) per prisoner is woefully inadequate to meet nutritional requirements of these categories of detainees. However, the Ghana AIDS Commission and Planned Parenthood Association of Ghana have been providing dietary supplements and anti-retroviral drugs to the vulnerable inmates. Furthermore, the District Hospitals and other facilities in which the prisons are located serve as referral centres in the event of any medical related emergencies.⁵

Below is a tabular representation of the age distribution of female prisoners (disaggregated into convicted and remand prisoners).⁶

No.	Age Range	Convicted Prisoners		Remand Prisoners	
		Tally	Percentage	Tally	Percentage
1	12-17	-	-	1	3.85

¹ Criminal Offences Act, 1960 (Act 29); Section 124.

² Ibid; Section 79.

³ Ibid; Section 84.

⁴ Information is derived from questionnaire report from the Ghana Prisons Service, November 15, 2018.

⁵ Supra, note 4

⁶ Ibid.

2	18-25	29	21.32	7	26.92
3	26-35	41	30.15	7	26.92
4	36-45	30	22.06	6	23.08
5	46-55	19	13.97	5	19.23
6	56-65	14	10.29	-	-
7	66-69	-	-	-	-
8	70+	3	2.21	-	-
	Total	136	100	26	100

2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.

There are some few instances in which women face detention in relation to civil actions. In particular, the Nsawam Medium Security Prison (the largest prison in the Country) has three (3) inmates whose detention arises out of civil law suits⁷.

3. What are the main challenges for women's access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?

Globally, women who seek justice are confronted with a complex landscape of laws, systems and institutions⁸. The situation of the Ghanaian woman is not different. In this context therefore, the main challenges⁹ facing Ghanaian women in their quest for justice are largely classified into three broad headings, namely; physical access, legal access, and financial access. Physical access consists primarily of the spatial location of Courts which in most cases are far removed from majority of women and so they would have to travel vast distances for legal services. The risk and cost associated with accessing the Courts serve as a disincentive to most women seeking justice. On legal access, many women are ignorant about their basic rights and responsibilities under the law and thereby restricting their access to justice. This ignorance results mainly from low levels of education¹⁰ among women population. Financial access relates to the funds required to pursue a matter in the Court or before any other adjudicating authority. This is arguably the greatest barrier to women's access to justice due to the high incidence of poverty¹¹ among women population coupled

⁷ Ibid.

⁸ UN Women et al, A Practitioner's Toolkit on Women's Access to Justice Programming, Module 1: The Theory and Practice of Women's Access to Justice Programming, p. 9 (2018 United Nations)

⁹ Cornell Daily Sun, Chief Justice of Ghana discusses women's access to justice – Available on <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKewjL4vyjucTdAhUJLcAKHfZfBvkQFjACegQICRAC&url=https%3A%2F%2Fwww.lawschool.cornell.edu%2Fwomenandjustice%2FAbout-Us%2Fupload%2FCornell-Daily-Sun-Chief-Justice-of-Ghana-Discusses-Women-s-Access-to-Justice.pdf&usg=AOvVaw1th493yWB7MJ2EFsAoBZBw> – (accessed on September 18, 2018)

¹⁰ http://www.statsghana.gov.gh/docfiles/2010phc/Census2010_Summary_report_of_final_results.pdf

¹¹ GLSS

with perceived¹² rising cost and slow character of justice delivery in Ghana. Other cross-cutting issues inhibiting women's access to justice include low level or lack of formal education¹³, judicial corruption, and rising incidence of client related professional misconduct by some lawyers including over charging and consistent failure to attend Court.

In Ghana there are some notable good practices that seek to promote women's access to justice. First, access to legal representation, especially for those who cannot afford legal services, has been made a constitutional and a statutory right.¹⁴ The Legal Aid Scheme is designed to provide legal representation to all persons in both civil and criminal actions whose income is equal to, or less than, the government of Ghana minimum wage or that person is otherwise determined by the Board of the Legal Aid Scheme to require legal aid.¹⁵ This scheme provides a valuable window of opportunity for poor and vulnerable women who are in conflict with the law to secure free legal representation in furtherance of their course.

The second good practice is the 'Justice for All Programme' instituted by the Ministry of Justice and Attorney General's Department, Ghana, in 2007 to help promote access to justice and for speedy trial of cases of remand Prisoners¹⁶. In this programme, court sittings are held in the prisons to hear cases of remand prisoners who have been behind bars for 5 years or more)¹⁷. This intervention is supported by Pro Bono Lawyers providing legal representation, and it has over the years resolved many remand prison cases.

The third is government of Ghana e-justice programme launched in 2018. "E-Justice, otherwise referred to as *the Paperless Courts* or *Electronic Case Management System (ECMS)*, forms part of the Government of Ghana e-Transform Programme that seeks to automate the manual filing systems within the Court's Registry, i.e. from filing of cases to the execution of court decisions. Turnaround time on the adjudication of cases would thus be improved and justice delivery, enhanced. As a registered Business Partner (BP), the e-Justice system will enable a court user to electronically file cases and complaints, and track their status, as well as make online and mobile money payments for court transactions. It also makes room for a court user to get instant notifications of all adjournments via short message service (SMS) and email, as well as receive instant alerts on all court-related transactions."¹⁸

4. What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non- custodial measures used, in accordance with the United Nations Rules for the Treatment of

¹² Human Rights Council, A Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to Ghana, June 2018 – A/HRC/38/33/Add.2

¹³ Ibid.

¹⁴ Legal Aid Scheme Act, 1997 (Act 542)

¹⁵ Ibid; Section 2(2)

¹⁶ Short: CDD, 2012/ Legal Resource Centre Annual Report, 2010 cited by Akuamoah (2012)

<http://ugspace.ug.edu.gh/handle/123456789/5414> - (accessed on 08/12/18)

¹⁷Judicial Service Annual Report, 2009 cited by Akuamoah (2012) Accessed on 08/12/18

¹⁸ <https://judicial.gov.gh/index.php/publications/news-publications/js-latest-news/item/365-judicial-service-kick-starts-paperless-courts.html> - (accessed on 08/12/18)

Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)?

The female prison population stands at 1.3 percent¹⁹ of total prison population in Ghana. There is evidence of a substantial decrease in the female prison population for the past decade. On October 31, 2018 the female prison population stood at 161, of which 136 were convicts and 25 remand prisoners; as against a female prison population of 297, representing 197 convicts and 100 remand prisoners as of October 31, 2008. This constitutes about 46 percent reduction in the female prison population for the 10-year period (2008 to 2018). Anecdotal evidence attributes the main reason behind the decrease in the female prison population to positive outcomes of Government of Ghana Prison reform initiatives, including rehabilitation programmes for persons in prison²⁰, and the ‘Justice for All Programme’²¹.

Although Ghana is yet to ratify the ‘United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders’ (Bangkok Rules), existing legislation makes provision for some non-custodial sentences. Presently, however, the non-custodial measures applied by the Courts are limited to court fines, bond of good behaviour, suspended sentences in the case of pregnant women²² as well as (diversion, probation and/or committal to a fit person)²³. Instructively, both state and non-state actors have generally recognised the potential of the Bangkok Rules in decongesting²⁴ the country’s prisons. Accordingly, there are ongoing stakeholder consultations and advocacy involving civil society groups and state agencies including the Commission on Human Rights and Administrative Justice, Judicial Service of Ghana, the Ministry of Justice and Attorney-General’s Department for a speedy ratification, by means of legislation, of the Bangkok Rules and application of same in Ghana.²⁵

¹⁹<http://www.prisonstudies.org/country/ghana> - (accessed on 22/11/18)

²⁰ Supra, note 4

²¹<https://www.graphic.com.gh/news/general-news/justice-for-all-programme-marks-10th-anniversary.html> - (accessed on 22/11/18)

²² Section 313A of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)

²³ This applies to females under 21 years. See Juvenile Justice Act, 2003 (Act 653)

²⁴<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Non-custodial-sentencing-to-decongest-Ghana-s-prisons-Denmark-Ambassador-692442> - (accessed on 22/11/18)

²⁵<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Chief-Justice-pushes-for-non-custodial-sentencing-691804> - (accessed on 22/11/18)

II Other Institutions

1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.

The main institution outside the justice system where women and girls are institutionalised on grounds of care, correction and prevention against potential harm is the Department of Social Welfare and Development (DSWD)²⁶. The DSWD operates under the Ministry of Gender, Children and Social Protection (MGCSP). Whereas there is a legislative framework²⁷ for institutionalised care and protection for Children in Ghana, none exists for women. By law²⁸, children requiring institutionalised care and protection include orphans, those deserted, neglected or ill-treated, by persons who have the care and custody of the child, and the destitute. The scope of institutionalised care and protection includes 'Residential Homes' (applicable only to girls), 'Medical Care' and 'Cash Transfers'.

The Residential Homes²⁹ typically provide shelter and maintenance to orphans and vulnerable children, including the girl-child. There are 2 types of Homes: Government, and Non-Governmental. In all, there are 5 government managed and sub-vented homes looking after 440 children.³⁰ The number of privately run residential care homes for children has increased dramatically from less than 5 in the 1990s to about 110 homes in 2010 with an estimated residential care population of 4,500.³¹ The law governing the establishment and operation of residential homes for Children provides the approval³² procedure, mechanism for monitoring³³ and inspection³⁴, and the conditions of admission into such homes.³⁵

The 'Cash Transfer' scheme is operated under the Livelihood Empowerment Against Poverty (LEAP) programme which transfers fix amount of cash to vulnerable individuals in Ghana, majority of whom are women³⁶. Moreover, provision has been made for beneficiaries of LEAP to access free medical care under the National Health Insurance Scheme. Apart from

²⁶ Formally, Department of Social Welfare (DSW)

²⁷ Children's Act, 1998 (Act 560); Part Six

²⁸ *ibid*: Section 18

²⁹ Popularly referred to as Orphanages in Ghana

³⁰ National Plan of Action for Orphans and vulnerable Children, Ghana (June 2010-2012)

³¹ *Ibid*.

³² *Ibid*; section 105

³³ *Ibid*; section 106

³⁴ *Ibid*; section 108

³⁵ *Ibid*; Section 109

³⁶ See <http://leap.gov.gh/downloads/> (56% of LEAP beneficiaries were female and 44% male, accessed on 12/11/18)

the LEAP and the free medical care, there is no known residential home care and protection for women at-risk of harm.

- 2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights?**

The approval for the setting up of any non-governmental Residential Home is made by the Minister of Gender, Children and Social Protection.³⁷ The determination of the custody and maintenance of a child, including being sent to a Residential Home, is the prerogative of the Family Tribunal.³⁸ Nevertheless, a probation officer or social welfare officer may recommend a temporal suitable home for the child pending the determination of the issue by the Family Tribunal.³⁹ The decision-making process allows for legal representation, and also takes into account the opinion of the girl-child.⁴⁰ With regards to LEAP, the eligibility is based on household poverty and having a household member in at least one of three demographic categories: households with orphans or vulnerable children, elderly poor, or person/s with extreme disability and unable to work. The targeting process is based on a community-oriented approach and then later verified centrally with a proxy means test.⁴¹ Thus, during the process of selecting beneficiary households, a community LEAP implementation committee identifies beneficiary households and then verified by the MGCSP. The leadership and management of the MGCSP since its establishment in 2001 have been women. Therefore, decisions concerning LEAP beneficiaries greatly reflect the interest of women and girls.

III Forced Confinement

- 1. What forms of forced confinement of women and girls exist in a private or social context sanctioned by family, community or group of individuals such as abduction, servitude, guardianship and “honor” practices, trafficking, home detention, “witch camps”, widowhood rites, etc.?**

³⁷ Supra, note 29.

³⁸ Supra, note 27; Section 35.

³⁹ Ibid.

⁴⁰ Ibid; Section 38.

⁴¹Handa, S., Park, M., Darko, R. O., Osei-Akoto, I., Davis, B., & Diadone, S. (2013). *Livelihood Empowerment Against Poverty Program Impact Evaluation*. Chapel Hill: Carolina Population Center, University of North Carolina.

Women and girls in Ghana experience varying forms of confinement. One case in point is the witch camps in the Northern region of Ghana. Both men and women, but most especially old women are victims of this practice. These women are accused of witchcraft and are mistreated to the point that they run away from their homes and communities to find safety in the witch camps. The witch camps serve as a safe haven for the victims who find solace with other victims in the camp as opposed to the mistreatment and threats on their lives by their family and community members. The liberty of people accused of witchcraft to continue with their normal lives and their movement are confined to these camps; since they are unable to freely and safely return to their communities.

Another form of confinement for women and girls in Ghana is the Trokosi⁴². This is a cultural practice that see women and girls taken as captive, ‘sacrificial lambs’ to a deity to atone for the sins of a relative⁴³. Although, there are cases of males who serve as ‘Trokosi’, it is mainly females that are given out to serve in the various shrines performing housekeeping chores, mat weaving, farming and selling of farm produce among others for the priests. The people among whom this practice is prevalent (the Ewes of southern and northern Tongu and Anlo, and the Dangmes of Greater Accra) are of the belief that the giving out of women and girls to serve in the shrines of the deities whom a family member might have wronged or is indebted to, is to help stop any misfortune that is/may befall that family. However, there are accounts of various forms of abuse (physically, spiritually and sexually) meted out to these ‘trokosis’ during their period of servitude at the shrine, which may be for a number of years or for life⁴⁴. Although, these women and girls are confined in the shrines, they are not forced to stay. However, the initial ritual practices performed when the ‘trokosis’ arrived at the various shrines, aid in making them obedient in staying and serving the deity instead of running away. Also, there are many cases where the girls and young women end up marrying the Priests of the shrines where they serve as ‘trokosi/fiashidi’. Widowhood rites performed mainly for women is yet another form of forced confinement for women/girls in some parts of Ghana. Widowhood rites may reveal and reinforce women’s lower status relative to men. However, it is worth noting that men in some cultural settings in the country are also made to undergo some rites with the passing of their wives. Widowhood rites are the ‘rituals or ceremonies that a widow or a widower performs as part of the culture or custom of the society to mourn the demise of a married partner’⁴⁵. It is a cultural obligation expected to be performed before, during and after the burial of the dead (husband on most occasions).

⁴²Note that there are various terms used to describe the practice depending on the specific deity/shrine or town in question, such as *Fiashidi*.

⁴³ CHRAJ (2008), ‘Trokosi as a Form of Customary Ritual Servitude’, p.7.

⁴⁴ Ibid.

⁴⁵Martin Q. Amlor and Xornam A. Owusu (2016) ‘Widowhood Practices of the Gbi Northern Ewe of Ghana: A curse or Blessing for African Womanhood?’ African Research Review, 10 (5), p. 70

Generally, a widow performs the following rituals; public crying/wailing for 15 days; reducing meals to once a day, cold water bathing three times a day, sleeping on a mat instead of a mattress for 40 days; and dressing in black and avoiding suitors for at least a year⁴⁶. More specifically, pre-burial rituals expected to be performed by the widow include; not bathing, eating and shaking hands in public. After the interment of the body of a husband, a widow's life is put on hold with various restrictions for 6 months to a year. A widow is not allowed, as part of the widowhood rites, to engage in any form of economic and social activities. There is also the shaving of hair and eating from cracked bowls⁴⁷. Widows are expected to perform these widowhood rites; which may vary from one part of the country to the other, to honour their dead husbands. Although most of the rites performed undermine the dignity of women; they are also considered necessary to protect, purify and heal the widow after the demise of the husband⁴⁸.

2. Please identify the groups of women and girls who are most affected by these situations

With regards to the case of witch camps, elderly women are mainly affected. Although, there are cases of men who are also accused of witchcraft and chased out of their communities; the majority of the people who find themselves in the various witch camps in Ghana are elderly women. Some of these elderly women may be weak, sick, disabled and economically dependent on their family members.

Secondly, in the case of 'Trokosi' practice; girls of school going age and young women are the main victims. Girls as young as 5 years old in the rural towns of Ghana, located in the prevalent areas (Volta and Greater Accra regions) are affected by this practice.

Widowhood rites mainly affect women. Most of the women that undergo the various rites required by them by culture are women with no/little formal education, middle/low economic status, not employed at all and mostly in the rural areas. All these factors combined to make women susceptible to the various cultural requirements under widowhood rites that may be degrading and undignified.

3. What is the role of law and policy (including customary law and authorities) in your country concerning these types of confinement?

⁴⁶Rose Korang-Okrah and Wendy Haight (2014) "*Ghanaian (Akan) women's experiences of widowhood and property rights violations: An ethnographic inquiry*" Qualitative Social Work, p. 5

⁴⁷Amlor and Owusu (2016), p. 74.

⁴⁸Supra note 46.

Many of the confinements (‘witch camps’, ‘trokosi’ and ‘widowhood rights’) in Ghana are largely rooted⁴⁹ in, and sanctioned by, customary law. Customary law is defined as “the rules of law which by custom are applicable to particular communities in Ghana”.⁵⁰ Therefore, the role of law and policy in this milieu must focus on making illegal such customary practices in Ghana as well as designing and implementing culturally sensitive policies targeting reforms within the traditional institution.

In this regard, although the supreme law⁵¹ of Ghana entitles every person to enjoy, practice, profess, maintain and promote any culture, such rights must be exercised within the confines of the law.⁵² Significantly, the Ghanaian legal regime expressly prohibits “all customary practices which dehumanise or are injurious to the physical and mental well-being of a person.”⁵³ So, by law these confinements are illegal yet they exist in practice. Therefore, the recommendation by the UN Special Rapporteur on Extreme Poverty and Human Rights that “The Ministry of Chieftaincy and Religious Affairs should thus take a leading role in promoting gender equality and facilitating debate about appropriate policies to eliminate these harmful practices”⁵⁴ is in the right direction, as a complementary measure to dealing with the phenomenon of women confinement in Ghana. This Ministry works closely with the traditional institutions through the Chiefs and ‘Queen-Mothers’ who are the custodians of the various customs.

IV. Migration and Crises Situation

1. What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes?

Ghana, like other stable countries in sub-Saharan Africa is host to a number of asylum seekers and refugees from across Africa and beyond. Asylum seekers as well as refugees face no risk of detention in Ghana. There are no detention centres in Ghana where asylum seekers are kept (like in the USA and Australia). Asylum seekers are free to move about the country while awaiting the results of their refugee status determination from the Ghana Refugee Board and the United Nations Refugee Agency in Ghana. This notwithstanding, asylum seekers and refugees alike are liable to the laws of Ghana and may face risk of detention and

⁴⁹ Supra, note 12.

⁵⁰ The 1992 Constitution of Ghana; Article 11 (3)

⁵¹ Ibid; Article 1 (2)

⁵² Ibid; Article 26(1)

⁵³ Ibid; Article 26(2)

⁵⁴ Supra, note 12

confinement should they come into conflict with the law. Thus, just like any other person in the country; an asylum seeker may be detained should they be alleged to have committed an offence under the laws of Ghana such as assault, rape, or murder.

Again, in the case of women who have migrated to Ghana; some of the risks they face of being detained and confined include prostitution. In the laws⁵⁵ of Ghana, prostitution is illegal. Thus, there have been many women who have come into conflict with this law and have been arrested and confined by the Ghana Police Service (GPS). Specifically, it is normal of the GPS to organise swoop exercises into certain parts of the city of Accra to arrest women who are allegedly engaged in prostitution. Most of the women who are usually arrested include women who have migrated to Ghana from countries such as Nigeria, Cote d'Ivoire, Liberia and Togo.

2. What is the policy relating to the administrative detention of women migrants including pregnant women and women with children?

In Ghana, there is no known policy on administrative detention. However, if such a policy existed, same would be inconsistent to the tenets of the 1992 Constitution and therefore void⁵⁶ in law. By law⁵⁷, any person who is alleged to have committed a criminal offence cannot be kept in custody for more than 48hours. It is only a court of competent jurisdiction that has the power to confine a person alleged to have committed an offence (whether criminal or otherwise) into detention pending a trial or an appeal.

⁵⁵Criminal Offences Act, 1960 (Act 29)

⁵⁶ The 1992 Constitution; Article 1(2)

⁵⁷Ibid; Article 14 (3)