

VU Research Portal

Religion and Human Rights

Atiemo, A.O.

2010

document version

Publisher's PDF, also known as Version of record

[Link to publication in VU Research Portal](#)

citation for published version (APA)

Atiemo, A. O. (2010). *Religion and Human Rights: Towards the Inculturation of Human Rights in Ghana*.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal ?

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

E-mail address:

vuresearchportal.ub@vu.nl

8. TOWARDS THE INCULTURATION OF HUMAN RIGHTS IN GHANA: ROOTING A SECULAR IDEA IN A RELIGIOUS WORLDVIEW

8.1 Introduction

Human rights have become an important and most acceptable approach to securing respect for, and protection of, human dignity in the world. The superiority of this approach to other known approaches lies in the fact that it empowers the individual or groups to claim respect and protection from governments, institutions and society as a matter of moral and legal duty devolving on them. It treats its subjects in ways that do not leave them with a sense of humiliation, as was potentially the case with other humanitarian approaches that depended on the charity and benevolence of other individuals and institutions.¹ It also has a higher potential of certainty and sustainability. Both in the context of ruler-subject relations within a country and in the context of international relations, the human rights approach has the potential to ensure that parties engage each other in ways that enhance, rather than diminish, their sense of dignity.

In proclaiming the UDHR, the international community presented it as ‘a common standard of achievement for all peoples and all nations’ and charged that ‘every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for their rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.’² But the realisation of this vision, for most people, would require justification in a ‘validating foundation’ and a cultural embedding that will render the idea and associated practices integral to the local culture. Against this background, this chapter explores how human rights are already embedded or may be embedded in Ghanaian culture, employing our proposed model of inculturation.

8.2 Rooting a Secular Idea in a Religious Worldview

Forms of inculturation of human rights have already been going on in many regions of the world and among several religious and secular groupings. Documents that have stamps of specific religious traditions such as Judaism, Islam, Christianity and Buddhism, or even ecumenical groupings have been developed.³ Although most of these documents express human rights visions, and may be considered documents in solidarity with the UDHR or documents intended to offer alternative perspectives to the UDHR, they signify a basic universal acceptance of human rights. They are all part of the ongoing inculturation process aimed at broadening the legitimacy base of human rights and thus vindicating their claim to universality.

One example with direct relevance for our present purpose is the African regional mechanism for the protection of human rights and its founding document, the African Charter on Human and Peoples’ Rights (ACHPR). Specific provisions of that document, which presumably, gave it its

¹ Goldewijk & Fortman, *Where Needs Meet Rights*, 55 & 56.

² The Preamble of the UDHR (final paragraph).

³ Examples are: the Universal Islamic Declaration of Human Rights (1981), Rabbis for Human Rights Principles of Faith (2003), a Universal Declaration of Human Rights by the World’s Religions (2000) and the United Religions Initiative Charter (2000). See Gerrie Ter Haar and James Busuttil (eds.) *Bridge and Barrier: Religion, Violence and Visions for Peace* (Leiden/Boston: Brill, 2005) 299 – 369.

peculiar African character, have also become the features that have exposed it to scathing criticisms.⁴ However, some of such criticisms have been rebutted by African scholars, including the Kenyan lawyer, Makau Mutua, who prefers to see the document as an ‘African cultural fingerprint;’ a distinctive African contribution to the international regime of human rights. As he puts it, ‘To be sure, the fingerprint belongs to Africa, although it is also human and thus aspects of it reveal universal characteristics.’⁵ The involvement of religious constituencies in this development is evidence that the concept of human rights is not incompatible with religion.

Inculturation has not been widely used in relation to human rights, although Gerrie ter Haar used the phrase, ‘inculturation of human rights’ in her inaugural lecture in 2000;⁶ and scholars such as An-Na’im⁷ and Lindholm⁸ have employed models close to it. As a model employed mainly in Christian theology, eyebrows may be raised legitimately about our attempt to apply it to the study of a secular subject such as human rights. Our answer to any such query is that we find the model appropriate because the ‘universality-particularity’ question to which inculturation is offered as a response in Christian theology besets human rights discourse in a more intense manner. We use the inculturation model to explore how the secular idea of human rights, as contained in the United Nation’s system, is being or may be localised in the Ghanaian context.

8.2.1 Inculturation and post-colonial theory

Since inculturation deals with thematic concerns that also provide the main critical data for post-colonial theory, it can be said that the two are closely linked.⁹ For example, both seek to address the impact of colonialism and related forces such as the missionary enterprise on the social and cultural life of formerly colonised peoples and their responses.¹⁰ However, in our present case, we employ inculturation not strictly as a variation of post-colonial discourse but as a model within which apparent incongruities between international human rights concepts and practices and local human rights norms, or local norms related to human rights, may be addressed. Our interest has to do, mainly, with the engagement of relevant local ideas with the ideas underlying the international system of human rights.

Post-colonial theory tends to be oppositional, rejecting almost everything thought to be of Western origin and approving almost everything perceived to be originally African. We cannot achieve our objectives for this study by treading such a path. It is a path that hides subtle pitfalls

⁴ In our view, criticisms leveled against what have been termed its ‘claw-back’ clauses are legitimate because of their vagueness. The ‘distinctive African features’ we refer to are the duties the document prescribes for individuals, which have also attracted severe criticisms from scholars and human rights workers. See for example, Amnesty International, *Amnesty International’s Observations on Possible Reforms of the African Charter on Human and Peoples’ Rights* (New York: Amnesty International, 1993); C. Flinterman and E. Ankumah, ‘The African Charter on Human and Peoples’ Rights’ in H. Hannum(ed.), *Guide to International Human Rights Practice* (Philadelphia PA: University of Pennsylvania Press, 1992) 166 -167.

⁵ Makau Mutua, ‘The Banjul Charter: The Case for an African Fingerprint’ in An-Na’im, *Cultural Transformation*, 75.

⁶ Gerrie ter Haar, *Rats, Cockroaches*, 5.

⁷ Abdullahi A. An-Na’im (ed.) *Cultural Transformation and Human Rights in Africa* (London/ New York: Zed Books, Ltd., 2002).

⁸ Tore Lindholm, *The Cross-Cultural Legitimacy of Human Rights: Prospects for Research* 4 (1990).

⁹ Edward P. Antonio (ed.), *Inculturation and Post-Colonial Discourse in African Theology* (New York: Peter Lang, 2006) 1.

¹⁰ Antonio, *Inculturation*, 1&2.

of cultural relativism. It can also lead to a romanticisation of the African past and culture, ignoring the fact that these were not free from oppressive and other negative elements.¹¹ African inculturation theology itself has not been free of criticisms, especially, from feminist theologians. It has been accused of aiding and abetting the violation of human rights of women. Mercy Oduyoye, for example, argues that most of ‘Africa’s progressive theologies,’ including inculturation, are ‘nothing but a smokescreen from under which Western Christian patriarchy and African Christian patriarchy engage in a combined offensive against women.’¹² This observation must serve as a nudging mechanism to keep us alert and prevent us from ignoring subtle differences of advantage and disadvantage between and within various segments and groups in the present study.

While we do not employ inculturation strictly as a variant of post-colonial theory, we take account of how colonial policy helped, in certain cases, to entrench a culture of human rights violations that continue to affect the post-colonial state in Africa.¹³ Claude Welch identifies three ways in which colonialism affected human rights in Africa.¹⁴ First, the state organisation reflected European administrative convenience rather than the interest of the colonised. The policy was not favourable to the creation of modern political entities covering a geographical expanse beyond the boundaries of the traditional local states. For example, the British stopped attempts by the Mfantse people on the Gold Coast to establish an Mfantse Confederacy with its headquarters in Mankessim, arresting and charging its leaders with treason at a time when there was no formal colonialism.¹⁵ Similarly, the Asante Confederacy, which had a semblance to the modern nation-state, was disrupted by the British and its king carried into exile.¹⁶ It was only as the time of independence drew near that the colonial authorities quickly put together the former separate political units – the Colony, Asante and Trans-Volta Togoland - as one nation. The concept of a modern nation-state was not properly nurtured.

Secondly, most of the period of colonial rule was marked by authoritarianism. In the policy of indirect rule the colonialists co-opted the traditional chiefs and supported them with the force of their administrative machinery to apply indigenous customary laws with respect to certain kinds of offences. This laid the foundation of the legal pluralism that we referred to in the previous chapter. The idea of democracy was not nurtured until the closing years of colonial rule. Thirdly, different law codes were applied to different sections of the country. In the urban areas, European law codes were applied, while traditional legal codes, treated as inferior¹⁷ to the former, were used in the rural areas. Such policies negatively affected the growth of modern institutions and the transformation of traditional ones. For example, the system of indirect rule assumed for the chiefs, powers they did not originally have, and the treatment of indigenous

¹¹ Antonio, *Inculturation*, 174.

¹² Oduyoye, *Daughters of Anowa*, 180-181.

¹³ Dunstan M. Wai, ‘Human Rights in Sub-Saharan Africa’ in Adamantia Pollis and Peter Schwab (eds.) *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger, 1979) 115-144.

¹⁴ Claude E. Welch, Jr., ‘Human Rights as a Problem in Contemporary Africa’ in Claude Welch, Jr. and Ronald Meltzer (eds.), *Human Rights and Development in Africa*, (Albany, NY: State University of New York Press, 1984), 11-13.

¹⁵ Harvey, *Law and Social Change*, 353.

¹⁶ Harvey, *Law and Social Change*, 353.

¹⁷ G. Mikell, ‘Culture, Law, and Social Policy: Changing Economic policy of Ghanaian Women,’ *The Yale Journal of International Law* 17/1, (1992), 225 – 239.

customary laws as fixed legal codes led to the entrenchment of customs that were meant to serve specific purposes in specific periods.¹⁸ However, it is also important to recognise that while colonialism carried with it a big load of injustice and human rights violations, it also, in several ways, intentionally and unintentionally, created the environment for the emergence and growth of ideas friendly to human rights. Both aspects of the colonial history have to be kept in mind.

8.3 Translating Human Rights: ‘freedom,’ ‘equality,’ ‘way,’ ‘inheritance,’ ‘due portion’?

We could not find direct mother-tongue equivalents of human rights in our research areas. Nonetheless, there were cognate terms and phrases. The absence of exact linguistic equivalents of human rights in the various mother-tongues does not signify the absence of the idea of human rights in Ghanaian traditional cultures. As Gewirth maintains, ‘...persons might have and use the concept of a right without explicitly having a single word for it.’¹⁹ The universal idea of human rights preceded its explicit expression and formal articulation by several hundred years, even in the West. In Ghanaian traditional culture, rights ideas and language were invoked in settling issues of contention in litigation and arbitration. This is illustrated in the Mfantse maxims: *nyia adze yE ne dze na odzi na nyE nyia* [k]m dze n’a (it is the rightful heir who inherits; not the one hungry for inheritance); and also *nyi a* [d]ze n’adze no [d]ze ne benkum gye (the rightful owner takes it with the left hand).²⁰ Implicit rights language is known in traditional Ghanaian culture; hence the normative concept with its explicit language finds a basis in the indigenous culture to build on for its local expression.

Cognate concepts such as freedom, equality, and way, inheritance, due portion and human needs, that are offered as local renditions of universal human rights illustrate the difficulty in finding an explicit term for human rights in any of the Ghanaian mother tongues. Describing human rights in terms of freedom or equality, or one’s due portion, or one’s right of way or the ‘authority one has in society to act in certain ways without constraint because it is permitted by law or by custom,’ is not woefully wrong. The historical conditions that have shaped the human rights regime in Ghana are actually reflected by some of these designations. While the most critical issues in the country’s history include slavery and the slave trade, the most recent development that is still alive in the collective consciousness of the people is colonialism and the resistance it provoked.²¹

The struggle for independence was a struggle for freedom, and the elite leaders of the struggle presented it in such terms. In the end, ‘freedom and justice’ appeared together on the national crest, as the motto of the nation. In the stratified traditional society, forms of bondage reduced large numbers of individuals and families to servitude of various forms including slavery and pawnship. In contrast to such conditions of servitude were the various categories of ‘free-people,’ the highest of which were those who belonged to the ruling classes. Among the Akan,

¹⁸ Ranger, ‘The Invention of Tradition in Colonial Africa,’ 212.

¹⁹ According to Alan Gewirth ‘...persons might have and use the concept of a right without explicitly having a single word for it.’ Quoted by Goldewijk & Fortman, *Where Needs Meet Rights*, 55.

²⁰ The left hand in Ghanaian culture is considered impure. As part of the socialising process, growing children are taught how to use the right hand in social interactions, since greeting another person, especially an elder, with the left hand is a sign of gross disrespect. The proverb means once somebody has a right to something, no behaviour or condition of that person can be reason enough to deny them the enjoyment of that right.

²¹ Assimeng, *Foundations*, 27.

for example, anyone who was not in any form of bondage was one of whom it was said, *ɔdze ne ho* (he/she is self-sovereign, free).

But the idea of freedom expressed in the Akan language, for example, as *fa ho dzi*, which literally means, ‘self-rule’ carries nuances such as ‘autonomy,’ ‘equality’ and ‘equity.’ However, some of the deeper meanings assigned to the concept of human rights via its Ghanaian mother-tongue translations are captured in long sentences such as the Ewe, *AmEgbEtɔfe didiwo alo hiahiawo si mele be woaxɔ le esi o* (the human being’s needs and wants which he must not be deprived of); the Akan, *Nyimpa biara na adehyedze* (The inheritance of every human being); and the Ga, *NyɔNmɔ drɔmɔ kEEnii gbɔmɔ adesa ko nyENNashɔ yE edEN* (God’s gracious gifts which no human being can take away from his/her hands).

Put together, it appears that in Ghana, human rights are seen as needs and wants, they are an inheritance; they are God-given and no one is permitted to take them away, or to deny another person of them. In fact, ‘inheritance’ is inadequate to express the real meaning of *adehyedze*. The word does not only connote the right to inheritance or absolute ownership. It comes from the word, *ɔdehye*, which means literally, ‘the one who owns the boundary.’ This gives *adehyedze* the literal meaning ‘that which falls within one’s boundary.’ It connotes royalty; that is, kingship and sovereignty. It may be properly rendered, ‘sovereign ownership.’ While in linguistic terms it may be difficult to find an adequate term as equivalent to human rights, at the level of conceptualisation it finds meaning in several local expressions.

8.3.1 The Ghanaian religious worldview

Driving current Ghanaian culture is what we have referred to in this work as popular religion, which has resulted from the various currents of beliefs and ideas that have been exerting influence on Ghanaians since pre-colonial times. Writing in 1975, an eminent Ghanaian academic and public servant, S. K. B. Asante, observed,

Traditional tenets of the cult of ancestral worship, animism, Christianity, Islam, Western liberal individualism, and socialism all vie for the allegiance of Ghanaians. The result is a strange melting pot of ideas.²²

This ‘strange melting pot of ideas,’ which produces a synthesis between the traditional and the modern, provides the context for a continuous intra-cultural conversation, prompted by both internal conditions and encounters with external forces. The thick carpet of religious ideas and beliefs that is an underlay of Ghanaian culture, largely informs the interpretations and explanations of events in the lives of individuals and the nation. Gyekye’s point that the Akan conceptual scheme explains causality in terms of spirits means that in resolving the disruption caused to the ‘life-world’ by the ‘systems world,’ religion becomes one of the ready tools to be employed with the greatest competence by Ghanaians. Invoking religion to explain economic and moral failure is a noticeable feature of Ghanaian society; traditional conceptions of well-

²² S. K. B. Asante, *Property Law and Social Goals in Ghana- 1844 – 1966* (Accra: Ghana Universities Press, 1975) 281.

being that have become a central aspect of contemporary popular interpretations of national events, continue to nurture the general religious orientation of most Ghanaians.²³

Although Wiredu insists that the African belief in extra-human forces is non-religious,²⁴ he nevertheless does not deny the existence and widespread extent of such beliefs. He argues that the Akan approach to such spirit-beings, for example, is purely utilitarian and lacks the aspect of ‘unconditional devotion’ that, in his view, must characterise a religious approach to any object of worship. Nevertheless, the much repeated claim that the dichotomy between the secular and the religious does not fit the African, and for that matter the Ghanaian case, must make this debate redundant. The continued influence of conceptions of the world in terms of material and spiritual beings in close and active relationship has both theoretical and practical implications for the inculturation of human rights.

8.3.2 Tensions between secular and religious perspectives

The overwhelming religious character of the Ghanaian population means that the minority, whose approach to issues may not be guided by religious considerations, may occasionally come into dispute with the majority. In the public sphere, where general norms are set, contestations between different perspectives should be expected; in fact, this should be encouraged. It is one of the situations in which the element of confrontation in the inculturation process may be observed. Tensions normally heighten when questions, traditionally considered moral and touching on religious sentiments, become framed as human rights questions; or when issues considered by sections of civil society as human rights issues but considered by religious people as doctrinal or moral come up in the public domain.

Discussion of certain issues has been going on in the Western context for many years, and probably in ‘ethics’ and ‘moral philosophy’ classrooms in Ghanaian seminaries and universities too, but are yet to be considered in the public domain. Among these are issues such as euthanasia, abortion, the use of condoms to prevent HIV/AIDS, and same-sex relationships. With regard to issues that have to do with prevention of health hazards, as for example the use of condoms, the Ghanaian attitude to life, health and healing is such that most of the time doctrinal injunctions will be disregarded, since any religious belief or practice that does not enhance life and health is not attractive. Admittedly, in recent times some members of the Jehovah’s Witness Movement have refused blood transfusions for their ailing family members.²⁵

In such situations of conflicts, what is the most helpful approach to pursue by those concerned about the inculturation of human rights? Since religious convictions and cultural beliefs with respect to such issues are hard to give up on, or even to modify, the approach to be taken is important. The controversy provoked by the issue of ‘marital rape’ during the debate about the Domestic Violence Bill between the years 2003 and 2005 offers an important example. Dwelling mainly on this issue, campaigners for the bill aroused fears in religious and traditional segments of the society that the proposed legislation was going to undermine basic principles of fidelity and trust in marriage and thereby undermine family values. It was clear that many people

²³ Assimeng, *Salvation*, 33.

²⁴ Wiredu, *Cultural Universals*, 48.

²⁵ Article 28(4) of the Constitution forbids this in the case of children.

supported the law but felt uncomfortable about the aspect of ‘marital rape’ for religious and cultural reasons.

8.4 Inculturating Human Rights in Ghana: the Four Analytical Elements

Our proposed model of inculturation has four main analytical elements: spontaneous or popular dialogue, translation, confrontation, and directional or formal dialogue. As we explained, these are not to be construed in terms of either unconnected phases or sequential stages of a process. They are to be understood in terms of overlapping elements that may be present at the same time in the dynamic process of social change. Inculturation must, of necessity, involve comparison – a comparison of the global culture with the local. Comparative analyses normally take account of, not only present phenomena but also, relevant historical data. A critical aspect of the exploration we embark upon is how to resolve the incompatibilities between normative human rights and traditional customary norms, sometimes presented as the basis of claims to cultural and group rights, but which in several instances also provide the context for the easy violation of human rights by influential individuals and traditional authorities.²⁶

Most of the themes that are important to the project of inculturation of human rights in Ghana are conceived and interpreted in the context of a basic spiritual worldview. Among such themes are conceptions of the human being; what is meant by human dignity; the place of the individual in the community; relations between rulers and the ruled; and mutual rights and obligations between individuals. Other important themes include the human rights implications of the relationship between human beings and their environment, (both physical and metaphysical). A discourse on these themes is also a discourse about justice, well-being, freedom, and peaceful co-existence among groups and individuals, and with the natural environment. Embedding human rights in any culture must involve an exploration of how human dignity is conceived in the context of the Ghanaian worldview. This is necessary, not only because of the need for justifying why human beings should be entitled to rights, but also because of the interconnectedness of the various aspects of the physical, metaphysical and social environments which, in the context of Ghana, should all be considered in relation to human rights.

8.4.1 Physical and metaphysical environments

The sense of community of traditional societies in Ghana goes beyond the physical community. It includes the ancestors, who are actually regarded as the custodians of customary norms and as the actual owners of the group’s natural resources. This dimension of religious belief, in times past, ensured the protection of natural resources from being alienated or desecrated; and since the ancestors did not only represent the past, but also the future, preservation of resources implied respecting the rights of the unborn.²⁷ Apart from the ownership of land and other natural resources by the ancestors, which bestowed sacredness on the environment, several plant and animal species were believed to possess spirits that made it imperative that human beings showed respect in their use of them.

The natural environment – land, water-bodies, vegetation and some animals - was regarded as sacred. While the universal norms of human rights may not come to be based on the beliefs or taboos underlying the practices of showing reverence for the ecosystem, they may exploit the

²⁶ Packer, *Using Human Rights*, 131 -154.

²⁷ In the traditional belief of reincarnation, it was the ancestors who were believed to be reborn as babies.

idea that in some way the ecosystem is regarded as worthy of preservation for the collective good of humanity. For example, the taboo that forbids fishing on specific days and the belief that on such days, the gods and their children turn into fishes and, therefore, must not be caught, represent the community's concern for the protection of the ecosystem. Such practices and their underlying concepts bring into the ambit of metaphysical concern the preservation of the natural environment as a matter of socio-religious responsibility. They could also serve as important 'raw materials' to be developed and expressed in the language of human rights.

This agrees with our element of popular or spontaneous dialogue in the process of inculturating human rights; rights language can be easily inserted into the local context at the level of translation and directional dialogue. Translating the idea of preserving land, water-bodies, and other resources as a sign of respect for the ancestors and a concern for the unborn into the language of human rights as a starting point is a viable proposition. Religious beliefs and ideas alone may not be sufficient to secure compliance, but authorities and human rights workers may be inspired by the existence of these norms and be guided in formulating appropriate legislation and their implementation in ways that are meaningful and, therefore, acceptable to majority of the ordinary citizens. Local and international NGOs may also take advantage of the availability of such resources in their advocacy and training programmes at the grassroots.

8.4.2 The human being as an individual

Although modernity has deeply penetrated contemporary Ghanaian society, several features of the traditional culture still persist. Modernity and tradition have not proved incompatible in the Ghanaian context. Nowhere is this more evident than in the context of religious practice, where belief in the reality of spirits is combined with a high appreciation of modern global systems and the way they work.²⁸

The idea that the human being has a soul that carries *nkrabea* (destiny) underlies the sense of individuality. This belief in *nkrabea* serves as the basis of a sense of autonomy because it is not conceived collectively. Each soul carries its own *nkrabea*. It is a radically individualistic concept, as is illustrated in the maxim: *obi rekra ne Nyame no na obi ngyina h* (nobody was there when one was taking his/her destiny from his/her God). Wiredu describes the implied privacy involved in this concept as 'metaphysical right to privacy.'²⁹ In the context of the limited economic and other opportunities, which, sometimes, generate stiff competition and without the previous strong kinship network support systems, a sense of radical individuality indicates not only autonomy but also vulnerability. This sense of vulnerability and the desire to achieve the 'destiny' carried by one's 'soul' make it natural to want to seek help from presumed benevolent spirit powers, or to seek to keep one's affairs away from the influence of evil spirit forces.

To the extent that this leads to a high level of individual consciousness, it supplies a good ground of affinity with the sense of individuality considered critical for the development of a human

²⁸ Without discounting other factors that may be scientifically proved, several Ghanaians attribute economic crises to 'satanic powers' that control multilateral institutions and the unfair world economic order; businessmen and women actually believe their ventures can prosper or fail through interventions of spirit powers; and traditional priests use the television and radio to advertise themselves.

²⁹ Wiredu, *Cultural Universals*, 158.

rights culture. It appears that scholars who overemphasise the dichotomy that assigns communitarian characteristics to Africa and individualistic characteristics to Europe often neglect to investigate aspects of the religious thought of Africa. While African indigenous religions, especially Ghanaian ones, have always included the community in its scheme of thought, they have not taught the dissolution of the individual ‘soul’ into a sea of spirits or impersonal state of existence after death, in which the individual spirit no longer exists or is merged into an impersonal reality.³⁰ Yes, they retire to a world of spirits ruled by the ancestors; but they retain their individual identities as spirits and, on appropriate occasions are addressed by name in libation prayer. Drawing a dichotomy is unnecessary; most traditional societies in Ghana cannot be put purely in ‘either - or’ categories in terms of the communitarian-individualistic divide.³¹

Linked also to the concept of the ‘soul’ and other presumed metaphysical components of the human being is the idea of human dignity. In the context of the synthesis that we have called Ghanaian culture, the human being is conceived in terms of not only the ‘soul’ but also, ‘spirit,’ and in certain cases, ‘blood’ or some other similar concept (depending on the segment of popular religion one is most inclined to). The belief that the human being is the creature of God, and possesses non-material indestructible elements that survive death, underscores the exalted place the human being occupies in the thinking of the contemporary Ghanaian.

In chapter five, we saw how this high view of the human being was traditionally expressed mainly in terms of taboos of the *egudodoamE* type. The fact that there are certain things that must never be done to human beings because their status as human beings, and that such acts symbolise degradation, is a good starting point to discuss the subject of human dignity. In the same vein, the extension of the idea of sacredness to the environment –water bodies, vegetation, animals and the earth - in itself promises a meaningful engagement with modern international concerns about ecosystems which are also expressed in terms of human rights.

It does not mean that at every level of society, Ghanaians are consciously developing these ideas into moral philosophical tenets of human rights. We are only saying that such ideas and beliefs constitute good starting points for creative engagement with international norms of human rights. The element we have referred to as ‘popular dialogue’ is an unconscious spontaneous aspect of the inculturation process, which often occurs at the grassroots of society. We may refer to it as ‘inculturation from below.’ For example, a recognition of an affinity between the universal normative idea that the human being has dignity and must therefore be treated in certain ways and never in certain other ways, and the local concept of *egudodoamE* can be a starting point for dialogue in both the ‘popular dialogue’ sense and the ‘directive dialogue’ sense.

³⁰ Kwame Gyekye, *African Cultural Values*, 13.

³¹ It is interesting to read the varied account of early European visitors to the Gold Coast on this issue. In some cases, it was said the societies were so communitarian that the individual’s existence is meaningful only in relation to the group. In other cases, they were so individualistic that they ‘have no community of goods, even in marital relationships...’; and also that one’s own well-being depended on the individual so much that when an individual found it difficult to subsist they pawned themselves....’ because ‘death is to be preferred to shame.’

8.4.3 Human dignity

Translations of 'human rights' collected from the field contained cognate concepts such as freedom, equality, natural inheritance due to each human being, the portion due to each person as a human being, human needs common to all persons, human necessities, power to live as a human being, things that are permissible, and divinely bestowed gifts. These ideas of human rights flow from people's sense of dignity, which is conceived in terms of the basic respect and honour that every human being is thought to inherently carry.

Such inherent honour and respect are captured in the Akan and Ga concept of *enyimnyam* in Mantse (*animuonyam* in Twi, *hiEnyam* in Ga). Literally, the word means 'face shine/glory/aura.' The last syllable, *nyam* is also found in the word *Onyame* which is the Supreme Being, translated 'God' in the Akan versions of the Bible and *NyɔNmɔ* in the Ga Bible.³² This not only links human dignity to a divine source but ascribes to it a metaphysical quality. This underlies the Ghanaian relish for 'beauty of speech, thought, action and appearance,' which traditionally serve as criteria for appointment to high office. It sets a standard for measuring the complete humanness of individual persons. Normally, qualities looked for in occupants of high office are those qualities considered ideal by a community. This means, by stressing on 'beauty of speech, thought, action and appearance' as qualifications in relation to high public office, Ghanaian society sees in these qualities what may be regarded as expression its ideal humanness. This may be even better appreciated when it is considered that Ghanaian concepts of beauty and virtue are measured on a criterion of significance.³³

Enyimnyam then becomes the outward manifestation of the inherent human dignity. It is the 'content' of the concept of human dignity manifest to the world outside a person. The following statement about the Akan concept of the human being by Wiredu explains our point:

...everybody is a human being, a person. But there is a second sense in which the word is used: to call an individual a person is to commend him; it implies the recognition that she has attained a certain status in the community. Specifically, it implies that she has demonstrated ability through hard work and sober thinking to sustain a household and made contributions to communal welfare.³⁴

This idea of dignity does not only depend on the performance of duties but also on achievement. Dignity in this sense, therefore, includes certain physical, social and moral qualities or abilities, which every member of the human family ought to possess. By intuition, the society has in mind how a human being should appear and function; so if anybody does not meet those criteria, they are considered to be below the minimal standard of dignity. This would impose a duty on the family or the community to protect such a person so that their disabilities or inabilities do not become impediments in their way to make up for what they fall short of physically, and in other ways, as human beings.

³² J. B. Danquah, *The Akan Doctrine of Ghana* (London: Frank and Cass, 1968) 37.

³³ Wiredu, *Philosophy and African Culture*, 11; Mends, 'Some Basic Elements in the Culture of Ghana,' 41 & 42.

³⁴ Wiredu, *Cultural Universals*, 160.

We noted how on their death, certain differently-looking and differently-able people were denied aspects of the honour accorded to the dead by traditional societies in Ghana (ch.6). We said that by such act, the society showed its aversion for the conditions of disability and deformity, but that this did not mean their humanity was denied: rather, it was affirmed. While they lived, they were respected and supported. The symbolism of rites performed at their burial makes sense in the context of the traditional belief in reincarnation. The message communicated was simply this: 'human beings must be whole in body and function properly in all their faculties. You are a human being, when you are coming into the world the next time do come in whole and function fully as a human being.' In other words, while their deformities and failings were regretted, their basic humanity was nevertheless affirmed. In the context of the contemporary situation the belief in reincarnation, like many other traditional beliefs, is gradually giving way to a belief in a 'one way traffic' to heaven or hell as the case may be; and many people, religious and non-religious, no longer resort to the traditional mortuary rites on the death of the physically challenged.

But how can human dignity so conceived give support to efforts aimed at the development of a local expression of the universal human rights concept? Human dignity in the sense of *enyimnyam* presents a picture of 'true' human functioning, which must be used as a standard by society to ensure that each human being realises the power to exercise their rights and responsibilities. Traditional societies protected and supported the physically or mentally handicapped within the context of the kinship system, with the ruler, in certain cases, taking care of those who lacked the support of relatives. There were also various resources available to restore the humanity of those who failed to live up to the society's standard of morality or social responsibility (ch. 6). After such persons had been appropriately sanctioned, they were taken through rituals of cleansing and restoration. Such rituals, while they signified society's disapproval of anti-social or criminal behaviours, also symbolically affirmed the dignity of those involved. The relevant point for us is that human dignity may be measured in terms of basic functionality that enables a person to fulfil their responsibilities and enjoy their rights.

There is hardly any restorative dimension to the prison systems of African nation-states. Penal codes only aim at punishment with no mechanism to rehabilitate and reintegrate those fallen foul of the law and social norms. Yet, if there is anything like *human dignity*, then it must be affirmed even in 'inhuman human beings.'³⁵ It is not just those who cannot function properly because of some form of retardation or of disability, but even alleged or confirmed criminals. Ritual formulas employed in such cases were significant for the cathartic effect they had on the culprit and the reassurance they brought to the public that the former criminal was still human and had been restored to function normally as such.

8.4.4 The 'capabilities approach' and Ghanaian conceptions of human dignity

The idea involved in our approach may be developed within the framework of Nussbaum's 'capabilities approach' to human dignity.³⁶ Although she does not seem to explicitly include criminals and their rehabilitation in her scheme, her emphasis on a caring society makes her approach broad enough to include such concerns. She advocates what she calls the capabilities approach as a philosophical underpinning for an account of 'core human entitlements' that

³⁵ Van der Ven, et al. *Is There a God of Human Rights?* 274.

³⁶Nussbaum, *Frontiers of Justice*, 70.

should be respected and implemented by 'governments of all nations, as a bare minimum of what respect for human dignity requires.'³⁷

She focuses on 'human capabilities,' by which she means 'what people are actually able to do and be, in a way informed by an intuitive idea of a life that is worthy of the dignity of the human being.'³⁸ She suggests a threshold level of each 'capability' below which truly human functioning is not possible. She maintains that these 'capabilities' should be pursued for each and every person, treating each other as an end, and none as mere tool of the ends of others. The social goal of the approach is to be understood in terms of getting citizens above this 'capability threshold.'³⁹

Nussbaum lists ten capabilities as 'central requirements of a life with dignity:' life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play, control over one's environment.⁴⁰ She proposes these as contents of the abstract concept of human dignity. A person's dignity does not depend on their possession of such basic capabilities as individuals; rather these must be understood as the characteristics that every member of the human species must possess.⁴¹ Therefore, once a person is born into existence they are entitled to these capabilities. A just and caring society assumes the responsibility for ensuring that the basic capabilities that are acquired by every human being for adequate human functioning as part of the community are acquired even if a person does not possess them.

The convergence of this with the Ghanaian worldview and conceptions of the human being is in the fact that Nussbaum views the human being as a being with physical, emotional, spiritual and social needs. Sociability is an important characteristic of the human being in need of care. Her theory presupposes a society in which human beings are held together by altruistic ties of mutual advantage. It posits a strong commitment to the good of the other person. The Ghanaian conception of the human individual in relation to the community is that of interdependence. This is illustrated in the maxims: *onyimpa hia mboa* (the human being needs help) and *onyimpa nnyE abEdua na w'aso ne ho azde yE* (the human being is not a palm tree that will be able to meet all its needs alone).⁴²

The indigenous Akan version of interdependence for mutual benefit, which is also found among the Ewe, the Ga and most other ethnic groups on Ghana, has been developed by Wiredu in his principle of sympathetic impartiality. This principle stipulates a moral imperative that requires everybody, in their conduct, to manifest a due concern for the interest of others at all times. As Wiredu explains,

A person may be said to manifest due concern for the interests of others if in contemplating the impact of her actions on their interests, she puts herself imaginatively in their position, and having done so, is able to overcome that impact.⁴³

³⁷ Nussbaum, *Frontiers of Justice*, 70.

³⁸ Nussbaum, *Frontiers of Justice*, 71.

³⁹ Nussbaum, *Frontiers of Justice*, 71.

⁴⁰ Nussbaum, *Frontiers of Justice*, 76 & 77.

⁴¹ Nussbaum, *Frontiers of Justice*, 285.

⁴² Wiredu, *Cultural Universals*, 165.

⁴³ Wiredu, *Cultural Universals*, 41.

This is clearly in keeping with what is required of every citizen as a duty-bearer with regard to the rights of others and the general good of society. The principle encourages mutual support by citizens to fulfil their duties and affirm their sense of dignity in their recognition and enjoyment of rights. Sympathetic impartiality is a deeply entrenched traditional value, which guides social relations. Like Rawls' overlapping consensus and Habermas' communicative action, it seeks to provide a basis for harmonious and peaceful coexistence of mutual respect in the pluralistic context of the world. Like Nussbaum's capabilities approach, it seeks to promote a just, fair and sympathetic society in which dignity is accorded equally to all members of the human species. Sympathetic impartiality is expressed in maxims such as *kwasea na ose wodze me yenko na wɛndze emi* (it is the fool who says 'it affects my neighbour but not me') and *sE amma wo nyEnko antwa akrɛn a wo nso worenntwa du* (if you do not allow your neighbour the ninth count' you cannot count ten). It expresses what has come to be described as the 'golden rule' found in the teachings of most religious tradition.⁴⁴

Nussbaum's 'basic capabilities' also converges with the traditional Ghanaian idea of human dignity conceived as *enyimnyam* that includes certain physical, social and moral qualities or abilities that ensure basic human functionality. Actually, her list of ten capabilities as 'core 'core human entitlements' that should be respected and implemented by 'governments of all nations, as a bare minimum of what respect for human dignity requires,⁴⁵ could also be understood as constituting some or all of 'those resources or conditions which constitute the minimal conditions for human existence'⁴⁶ and which forms our operational definition of human rights.

8.4.5 Human family: local and universal

One of the declared bases why human rights are held as a universal set of principles, desirable to be upheld by all peoples everywhere, is the idea of humanity as one family.⁴⁷ This is important to note because it reflects the shift from rights regimes as 'citizens' rights to 'human' rights. Informed by the long and ugly experiences of discrimination based on race, class, tribe and religion with their attendant fruits of domination, slavery and wars, the human rights project launched by the international community seeks to undo all distinctions based on primordial identities. In that sense, the human rights concept may be understood as a tool for the nurturing of a sense of global belonging. The idea of a 'human family' does not only aim at creating global citizens out of local peoples in their particular contexts; it has implications for national governments too. National governments assume responsibility for the human rights of both citizens and non-citizens within their areas of jurisdiction. The inculturation approach must therefore contend with the challenge of traversing any sharp sense of local particularities, especially those with the potential to deepen mutual suspicions between people of different races, classes, ethnic or religious traditions.

⁴⁴ Wiredu, *Cultural Universals*, 41.

⁴⁵ Nussbaum, *Frontiers of Justice*, 70.

⁴⁶ Joy Gordon, 'Human Rights,' 63.

⁴⁷ Preambles of the UDHR and ICCPR, for example, mention the term, 'human family;' and article 1 of the UDHR enjoins 'all human beings' to 'act towards one another in a spirit of brotherhood.'

Divisive schemes that formed the bases of racial, ethnic, class or religious discrimination were often justified by religious belief. Even in Ghana, aspects of cultural traditions were sometimes formulated in such a way that each ethnic group saw in its own people essential humanness and all outsiders as savage or unclean. Although this may not have been explicitly stated in cultural norms and customs, the effect of the attitudes and corresponding resentments generated by such ethnocentric formulations still sustain inter-ethnic suspicions in the country. However, such traditions also contained more important inclusive aspects, parts of which have survived into the present time and may be developed in support of human rights.

According to Ghanaian traditions such as those of the Akan, Ga and Ewe, and what we have referred to as a common Ghanaian culture, all human beings have come from God and each one possesses a *soul*, which is a spark of God that gives life to them. For example, the maxim: ‘all human beings are children of God; no one is a child of the earth’ expresses the view that all human beings have their origins in God and not from this earth. It is the earth that creates differences between human communities; it is the realm where human beings can draw boundary lines. The earth is the place where differences in climate and vegetation produce differences in skin colour and differences in ways of seeing and doing things that have come to be described as ‘culture.’ But God (*Onyame*) does not draw differences between human beings. Among the Akan, for example, the firmament serves as a symbol of God; it is said to reflect his shining glory and majestic power. The word *onyam*, which shares roots with *Onyame*, is also used to describe the shiny appearance of the firmament.⁴⁸ There are no visible boundaries in the firmament; boundaries are seen as things of the earth, created by human arrangements.

Though each soul carries its own destiny and is accountable to God and a spark of the divine in equal measure, whether in terms of quantity or quality, it shares with other souls a basic common humanity; a human family that shares similar basic needs, fears and aspirations. This makes any culture discourse in the context of Ghana that is divisive dubious since it does not enhance the prospect of achieving a sense of a global citizenship. In the spirit of the elements of popular or spontaneous dialogue, translation and directional dialogue, the idea of the brotherhood of all human beings expressed in the UDHR is already being inculturated in the local Ghanaian context. This is greatly facilitated by the extensive influence of Semitic traditions of creation, which trace the origins of all human races to a common ancestral couple, Adam and Eve.

8.4.6 Relations between rulers and the ruled

It is said that the earliest Ghanaian elite agitation for freedom and democratic governance was driven by religious thought. According to Assimeng, the Bible was the first large-scale form of literature available in most of Africa; so the earliest nationalists of Ghana, who were all educated in mission schools, obtained the idiom for the expression of ideas of equality, freedom and democratic rule from that source. However, this is in reference to the modern period.⁴⁹ In chapter six, we discussed the open and participatory nature of traditional governance. This aspect of traditional political culture unfortunately was not nurtured by the colonialists into a modern African version of democratic governance. In Ghana, however, aspects of that culture seem to have been carried into modern attitudes to governance. For example, traditionally, politics and

⁴⁸ Danquah, *Akan Doctrine of God*, 37 & 38.

⁴⁹ Assimeng, *Foundations*, 27.

piety have not been separate pursuits but conjoined in such a way that political involvement and religious devotion were not antithetical.

Ghanaians in general are highly politically conscious and participate freely in politics in spite of their intense religious devotion. An observable aspect of Ghanaians in public office is that, while they may draw on their religion for confidence building and protection against those who, they believe may attack them through spiritual means, they do not allow their faith to influence working relationships. Their religion may provide personal ethical visions of life but they do not approach their work as propagandists of their religious traditions.

Participation in politics comes, almost naturally, to most Ghanaians. History provides evidence of how ordinary people resented and resisted the British imposition of the indirect rule, which made the chiefs part of the colonial administration in terms of carrying out the orders and policies of the colonial government. This arrangement cut off the chiefs from their subjects because the laws and policies they implemented had been imposed instead of reached by consensus. It meant that popular participation in governance, which was characteristic of most traditional societies, was abolished. Immediately, several protest movements arose all over the country.⁵⁰

The element of spontaneous or popular dialogue between indigenous principles of governance and the modern democratic ideas are discernible in these developments. It may be argued that the traditional religio-social culture provided elements of the political preparation needed for the establishment of a democratic culture in Ghana. Democratic practice insists on important principles such as due process, correct procedure and the rule of law. Palace etiquette involved elaborate procedures which, when ignored, incurred sanctions. In the same way procedures, whether they had to do with deposition of a chief from office or the installation of a new chief, had to follow a prescribed step-by-step process, otherwise they would be regarded null and void. Rituals of various types also followed strict procedure, otherwise their efficacy would be undermined. Therefore principles of modern democratic governance such as are expressed in the terms, 'due process' and 'proper procedures' are not entirely novel to the Ghanaian context and may help the development and expression of the universal principles of democracy in the local context.

8.5 Confronting Custom

Exploring the possibilities of reconciling entrenched customary beliefs and practices with international human rights norms, we have argued, is critical to the inculturation model. The realm of culture often supplies the resources for the legitimization of resistance to change. Custom and tradition⁵¹ are two important resources and properties of culture frequently invoked in internal contestations and disputes over social goods and policy direction. In that sense they are inextricably entwined with the structures of power, as those who assume the power to interpret cultural values or to determine the authenticity of customs and traditions play a critical

⁵⁰ Alexander Baron Holmes IV, *Economic and Political Organisation in the Gold Coast – 1920 -1945* (PhD thes., University of Chicago, 1972) 10 -22.

⁵¹ On the distinction between 'custom' and 'tradition,' see Hobsbawm, 'Introduction: Invention of Tradition' in Hobsbawm and Ranger, *The Invention of Tradition*, 1 &2.

role.⁵² Several traditional beliefs and customary norms continue to influence life in urban and rural communities in Ghana; and since, generally, socialisation processes orient people to accept and conform to such norms, it becomes difficult for most people to raise voices of protest. An examination of news reports as well as official reports⁵³ of state agencies and NGOs on Ghana reveal a continuous tension between the exercise of the human rights of individuals and groups and the customary norms of traditional communities.⁵⁴

One of the most difficult obstacles to an enhanced regime of human rights in Ghana appears to be the continuous application of traditional beliefs and customary practices to many issues of personal and public circumstances. Since Ghanaian societies are mostly patriarchal, it is women and children that are mostly affected by the repressive dimensions of custom.⁵⁵ Yet, change is not unknown to the traditional cultures of Ghana. Whenever it was deemed necessary, chiefs and elders met in council to make fundamental alterations to traditional laws and customs. For example, the Bond of 1844 is ample evidence that Ghanaian cultural traditions are not averse to change but are adaptable to meet the contingencies of new situations.⁵⁶ Also, in 1938, the Confederation of Akan Chiefs passed a law that granted widows and their children one-third of the deceased husband's properties.⁵⁷ This means inculturation of ideas and practices linked to universal human rights are already taking place in the processes of law making and administration of justice in the context of traditional rule. In that case, the reform of customary laws and practices to harmonise with universal human rights norms already finds a foundation to build on. Conditions are ripe for directional dialogue. Formal interventions through appropriate legislation at the national level, dialogue with chiefs and other stakeholders, and exposure of the custodians of customary laws and practices to universal human rights through education are important in this regard.

Issues of relevance to human rights and Ghanaian customary practices that have attracted international attention in recent times include witchcraft accusations, child labour, *trokosi*, female genital mutilation (FGM) and widowhood rites. Other issues are property rights and application of customary law. FGM and *trokosi* have been extensively dealt with in several scholarly works and reports of NGOs,⁵⁸ we shall, therefore, not engage in extensive discussions of these issues. In the rest of our discussions, we shall dwell on the other issues. Moreover, although, we have discussed customary law in chapter six, we shall be making references to it again since several of the issues under discussion are connected to it.

⁵² Bonny Ibhawoh, 'Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human rights in the African State' *Human Rights Quarterly* 22, (2002) 842.

⁵³ For example, most of the issues that featured at the 2008 review of the fulfilment of Ghana's human rights obligations by the Human Rights Council's Universal Periodic Review Working Group were about customary practices or related to them. See UN Human Rights, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>. (Accessed on July 4, 2008).

⁵⁴ See for example, *The Chronicle*, Friday, June 28, 2008 'Child Labour still Prevalent in Ghana – LRC Calls for Affirmative Action;' *The Spectator*, Saturday 30th June, 2007, '500 Protest Against Widowhood Rite;'

⁵⁵ Gedzi, 'Principles and Practices,' 213.

⁵⁶ See Adu Boahen, *Evolution and Change*, 40 -41; Antony Allott, *Essays in African Law with Special Reference to the Law of Ghana* (London: Butterworth, 1960) 102.

⁵⁷ Packer, *Using Human Rights to Change Tradition*, 182

⁵⁸ See for example, Quashigah, 'Religious Freedom and Vestal Virgins: The Trokosi Practice in Ghana' *African Journal of International and Comparative Law* 10, (1998); Elom Dovlo & A. K. Adjoyi, *Report on Trokosi Institution* (Report of a Research Project conducted for International Needs, Ghana, 1995).

8.5.1 Witchcraft accusations

On Friday, January 12, 2007, an interesting reader's letter was published in the *Daily Graphic*, the most widely circulated Ghanaian newspaper. In the light of its relevance to our discussion, I take a rather lengthy quotation out of it:

I have always had a morbid fear for courts, but in November, 2006, curiosity took the better part of me and I went to the District Magistrate Court at Assin Foso to listen to a judgement which was to be delivered by the Magistrate, Joseph Blay esq.

In 1989, my family suffered gross injustice at the hands of the rulers of my town, Katakyliease, near Mfantse Nyankomase. The facts of the case were the same as what the judge was due to give a decision upon, so a lot of interested inhabitants were in the audience with me.

In the year referred to, my grandmother, aged about 89, died. While we were preparing for the funeral and making other arrangements to bury her, the rulers of the town came to inform us that the old lady had been branded a witch so they would not permit her to be buried the normal way. We were ordered...to bury her quietly at sunset.

We were ordered not to weep, not to perform any funeral ceremony and not play any instrument. We were simply told that that was the custom for burying witches. We were forced to comply and my grandmother was buried like a dog. I was very bitter but nothing could be done.

In October, 2006, history repeated itself. An 85 year old lady, Obaapanin Yaa Kodua, died at Katakyliease. The rulers informed her family that she had been declared a witch so she could not be permitted to be buried like a normal corpse.

As usual the family accepted the orders...but a daughter of the deceased.... After all attempts by her to get the elders to change their decision had failed, she sued at the court for redress and that is what brought us all to court that day.

In his judgement, the magistrate made several references to the constitution of the Republic of Ghana.... After giving all these references and examples, he finally said, 'so with effect from today the customary practice of refusing a decent burial to old ladies because they are deemed to be witches is abolished forthwith in Katakyliease and elsewhere. Anybody who indulges in such a practice... will be breaking the law....'

A retired catechist confessed to me that he felt as guilty as the rulers of the town because some years back he and his family suffered a similar fate but could not muster the courage to challenge the elders....⁵⁹

The story told by the author of this letter does not represent an isolated case. Witchcraft accusations are rampant in both rural and urban communities in Ghana. But as the author of this letter and the retired catechist she refers to did, most families do not seek redress in court, either because they do not have the financial resources or there is no member of the family with sufficient courage to take on the powerful custodians of tradition and custom. A close look at the

⁵⁹ Agnes Kutin, Letter to the editor, *Daily Graphic*, Friday, July 12, (2008) 9.

story reveals that several individuals and families, as well as other identifiable groups continue to suffer in silence, away from the view of the general public, as a result of continued adherence to traditions and customs in communities in Ghana.

The lack of courage on the part of those who could afford the financial costs of litigation stems from several factors. In the first place, not many members of the community have been able to divest themselves of the beliefs underlying traditional customs. Residual amounts of belief in the traditions continue to lurk in the minds of even the educated members of the community. Secondly, kinship relationships are still of important effect in Ghana; the extended family system creates a complex web of relationships in which kinship connections can be traced through a chain of linkages until no one is a stranger to any. What is feared is the disruptive effect of litigation in the civil courts. Moreover, the relative isolation of several communities and towns from structures of the central government does not make it safe to court the displeasure of the community by humiliating its elders in court.

According to one of the paragraphs we omitted, after the judge's verdict, 'the rulers of the town sat in the court-room stupefied and complained that this could not happen. This, according to them, was a traditional practice handed down to them so it could not be abolished.' The shock experienced by the traditional rulers was understandable in the context. The decision of the court meant to them a complete loss of power to 'protect' their people against what they sincerely believed was a destructive spiritual power – witchcraft. Since colonial times almost all of the legitimate customary avenues through which communities used to deal with the threat of witchcraft have been systematically blocked through legislative interventions under various regimes. Yet, the belief has persisted. While judicial and administrative regimes have been successful in taking away the powers from traditional authorities to deal with alleged witches, they have not achieved much in their attempt to remove or change the belief. The belief and the resulting accusations, which continue to exist throughout the country, have been a cause of trouble for many women, especially, old women.

As a 2002 report on Ghana's human rights record stated:

Belief in witchcraft was still strong in many parts of the country. Most accused witches were older women, often widows, who were identified by fellow villagers as the cause of difficulties, such as illness, crop failure, or financial misfortune. Many of these women were banished by traditional village authorities or their families and go to live in "witch camps,".... In the past, in addition to banishment, suspected witches were subject to violence and lynching. The women did not face formal legal sanction if they returned home; however, most feared that they could be beaten or lynched if they returned to their villages. The law provides protection to alleged witches.... International and domestic observers estimated that there were between 550 and 1,150 women in the camps. The CHRAJ and human rights NGOs mounted a campaign to end this traditional practice but have met with little success. Various organizations provided food, medical care, and other forms of support to the residents of the camp.

There were no developments in the following 2001 cases: The January case of two elderly women in Komenda, Central Region, who were accused of being witches by their nephew and subsequently abducted and tortured to obtain confessions (one of the women died 2 weeks later); the April case in which a man living in Tongor in the Volta Region chopped off the hands of an elderly aunt, claiming she was a witch; and the June case of a woman in Abutia-

Kloe, Volta Region, who was beaten to death by persons who accused her of using witchcraft to mastermind the May 2001 stadium disaster in Accra.⁶⁰

The belief persists and the violations of the human rights of alleged witches continue. It is not the rulers and elders of rural communities alone who fear and are concerned about witchcraft. As has been shown in several studies about Ghana, beliefs and attitudes surrounding witchcraft and similar powers show themselves to be an important part of a mass religious movement.⁶¹ Pre-colonial methods of finding a witch who was believed to have caused evil and punishing her took several crude forms. One form, reported by Rattray from Kumasi: suspects were subject to a trial by ordeal in which they were made to chew the bark of the *odum* tree or drink a potion made of it. If they vomited, they were thought innocent if not they died, which was thought to be the confirmation of their guilt. Another form also reported by Rattray, was the practice of *efunsoa* (literally, corpse-carrying), in which the people carrying the dead body of a supposed victim of witchcraft would be directed by the ghost toward the person who, presumably, caused his/her death.⁶² Punishment for those found guilty included banishment from the community, executed, sold into slavery or cleansed in a ritual.⁶³

With the onset of colonialism, the authorities wrestled with the phenomenon of witchcraft belief and its associated matters. The government commissioned anthropologists to research the phenomenon and scholars like Margaret J. Field and R. S. Rattray conducted significant and useful investigations.⁶⁴ The British authorities made it illegal for the chiefs, the traditional rulers, to carry out capital punishment. This was reserved for the courts of the colonial government. Other practices, such as trial by ordeal in which the accused person was forced to drink the bark of *odum* tree were also banned. With the continuous decline of the judicial powers of the traditional rulers to sanction alleged witches, the only means of deterring their people from becoming 'witches' were the humiliating prohibitions imposed on their funeral as reported in the story cited above.

One of the reliefs that came to the communities in the midst of this disconcerting development were the new shrines that started to emerge by 1870, in Ashanti which claimed to use more humane approaches to neutralise the perceived diabolical power of the witches without physically harming them⁶⁵ They spread very fast throughout the southern part of the country (ch.5). However, allegations that some of the shrines used cruel methods in their rituals of exorcism and the judicial role they assumed, especially as trials were mainly by ordeal, prompted the colonial government to seek ways to regulate their activities.

⁶⁰ Bureau of Public Affairs, U.S. Department of State, *Ghana - Country Reports on Human Rights Practices - 2002* (March 31, 2003).

⁶¹ Gifford, *Ghana's New Christianity*; Birgit Meyer, *Translating the Devil: Religion and Modernity among the Ewe in Ghana* (Edinburgh University Press, 1999); J. K. Asamoah-Gyadu, *African Charismatics: Current Developments within Indigenous Pentecostalism in Ghana* (Leiden/Boston, Brill, 2005) and Omenyo & Atiemo, 'Creating Space.'

⁶² R. S. Rattray, *Religion and Art in Ashanti* (London: 1959) 167-170.

⁶³ Rattray, *Ashanti Law and Constitution* (Oxford, 1929) 313.

⁶⁴ The works of R. S. Rattray include, *Ashanti* (London: 1923); *Religion and Art in Ashanti* (London: 1927); *The Tribes of Ashanti Hinterland* (Oxford: 1932). M. J. Fields' works include, *Akim - Kotoku: an Oman of the Gold Coast* (London: 1948); *Religion and Medicine of the Ga People* (London: 1937) and 'Some Shrines of the Gold Coast and Their Significance.' *Africa* 13, (1940) 138 - 49.

⁶⁵ T. C. McCaskie, 'Anti-Witchcraft Cults in Asante: An Essay in the Social History of an African People,' *History in Africa* 8(1988) 129 -133.

Witchcraft was, perhaps, the most difficult problem that ever confronted colonial lawmakers.⁶⁶ Beginning with the Native Administration Ordinance (NAO) of 1927, empowering chiefs to try cases involving witchcraft accusations, the colonial authorities tried several approaches to the issue with very little success. The Native Tribunals that operated under the Ordinance, in their effort to establish the truth of allegations, referred litigants to the shrines. But the reported abuses at the shrines were publicly decried in the press and by the Christian missionary bodies. This forced the government to pass the Order in Council (No. 28), which proscribed ‘witch and wizard finding.’⁶⁷ But this did not solve the problem either, as communities and influential individuals continued to petition the government to allow the shrines to operate.⁶⁸

The issue is not a simple one, nor has it ever has been. The human rights issues involved include the right to life, since accusations sometimes result in lynching and other forms of violent behaviour; the right to dignity, since accusations bring public shame and ridicule to the accused; the right to bodily integrity, since sometimes the accused are beaten, tortured and have injuries inflicted on their bodies; the right of free movement since sometimes the accused become confined and cannot freely move about. Others are the right to freedom of belief, since sometimes the accused are forced to go through rituals and trials by ordeal that are against their own religious beliefs; the right not to be discriminated against, since in most cases they are isolated by the community and because, in most cases, the accused are old women. Issues become even more complicated when some people feel themselves to possess the supposed evil power of witchcraft and confess to it. That could be interpreted as a form of neurosis,⁶⁹ but if such a person claims responsibility for some harm that has befallen another person or the community the reaction of supposed victims will be difficult to predict, especially since the courts have no expertise in handling issues of such nature. In most cases, religious functionaries, whose methods are rooted in the culture, remain the best resource persons for addressing the problem.

The controversy provoked by ‘Order 28’ in the 1930s finally led to a settlement which, though not directly dealing with the human rights dimension of the problem, may provide a pattern to guide our present project. Danquah, the leading Gold Coast nationalist, philosopher and lawyer, argued that the most important problem was not whether witchcraft was true or not but the undeniable fact that the overwhelming majority of Ghanaians believed in it. He likened the priests of the new shrines to clinical psychologists, particularly to psycho-analysts, and said that while it was wrong for any authority – chiefs and family elders, for example, to compel anybody to consult a shrine on suspicion of being a witch, a person who went to the shrine on their own

⁶⁶ For a discussion of the challenges faced by the Colonial Government, see Gray, ‘Witches, Oracles, and Colonial Law’ 339-343.

⁶⁷ Allman & Parker, *Tongnaab*, 163 -170.

⁶⁸ For example, in February the Central Province Council of Chiefs protested against the government’s decision to expunge witchcraft from the law books of Ghana as follows:

‘With the unhappy result of the Native Authorities of this Country being forever deprived of the Statutory powers of duly apprehending and trying persons... who may be found by some skillful detection or by their confessions to possess the means of practicing Witchcraft with intent to use the dangerous spiritual powers it involved to endanger or destroy human life.... from time immemorial the firm belief of all Native African Peoples – Christians and non-Christians - that Witchcraft positively exists.’ (See Allman and Parker, *Tongnaab*, 162 -163).

⁶⁹ See H. Debrunner, *Witchcraft in Ghana: A Study on the Belief in Destructive Witches and its Effects on the Akan Tribes* (Kumasi, Presbyterian Book Depot, 1959)85; Field, *Search for Security*, 149.

accord because they felt themselves to be possessed of witchcraft power should not be barred from consulting them. This basically was the substance of the settlement reached in 1932.⁷⁰ It reflected the emerging consensus that the dignity of alleged witches deserved to be protected. Through popular or spontaneous dialogue and the critical element of confrontation, it had come to be generally accepted that the supposed evil power of witchcraft could be destroyed through the work of the religious specialists without harming the alleged witch.

8.5.2 Widowhood rites

Widowhood rites continue to feature in the life of several communities in Ghana. It is an example of customary and religious practices that are difficult to deal with by legislation and prosecution, even though it involves a lot of practices that may be termed cruel and which violate human rights of women in several ways. The rites, which take different forms in different traditional areas, generally have features such as the following: confinement for a period of time, usually, in the room where the body of the late husband was laid in state; shaving of the head to the scalp; eating sparingly, usually, once a day; having daily cold baths; using a stone as pillow for the period of confinement; wearing a black cloth throughout the period; and being taken to the beach or the refuse dump at night for a final ritual bath. In some cases, cruel elements such as putting pepper in the eyes of the widow; pouring hot water on her, which sometimes scalds her body; and starving them for days. There is a law prohibiting the cruel aspects of widowhood and forbidding widows to be compelled to go through the rites. Moreover, since widowhood rites seems to be widespread in Africa,⁷¹ international instruments exist that seek to protect women against such abuses, the most explicit being the Women's Protocol to the African Charter, which was adopted on 11 July 2003.⁷²

In spite of the existence of relevant laws and vigorous advocacy by women's groups, including religious ones, widowhood rites continue to pose a challenge to the human rights of women in Ghana.⁷³ The latest incident that dominated the press in 2008 concerned the three widows of Nana Adjei Dimpo II, the late Paramount Chief of the Mo Traditional Area in the Brong Ahafo Region who had been confined for nine years following the death of their husband. According to the traditions of the area, widows of a chief should remain in confinement until the final funeral rites are held, and the funeral rites cannot be held until a new chief has been installed. However, in this particular case, a rather long litigation over who should be the next chief had delayed the funeral rites. It took the personal intervention of the President of the country to persuade the traditional council to amend the custom so that the funeral could be held for the widows to be released.⁷⁴

Widowhood rites persist because they have social and religious significance for many women, which is why in some cases women voluntarily submit to them. In some areas, women who have converted to religions such as Christianity and Islam are exempted; yet, many Christian women voluntarily submit to them. The rites have motifs such as ritual separation between the widow

⁷⁰ Allman and Parker, *Tongnaab*, 170 -175; Gray, 'Witches, Oracles, and Colonial Law,' 359 – 363.

⁷¹ Leda Hasila Limann, *Widowhood Rites and the Rights of Women in Africa: The Ugandan Experience* (LLM diss. Makerere University, Uganda, 2003) 25.

⁷² For a discussion of relevant instruments see Limann, *Widowhood Rites*, Chapter Two.

⁷³ See for example, *The Ghanaian Chronicle*, 'Widowhood Rites on Ascendancy in Asutifi - A Victim Narrates her Ordeal,' June 6, 2006; *The Spectator*, '500 Widows Protest against Widows' Rites,' June 30, 2007.

⁷⁴ *Graphic Online*, 'Fate of Mo Widows Now Certain,' June 28, 2008.

and the ghost of the dead husband; cleansing from ritual pollution; proof of fidelity during the marriage; and as an expression of love and respect for the late husband. In certain cases, the performance of widowhood rites becomes the basis of the woman's claim to her share of the deceased husband's estate. Furthermore, the traditional process of socialisation creates fear of spiritual sanctions, which makes it difficult for women to refuse to undergo such customary rites. Several Christian churches have sought to overcome these fears through religious instruction and the development of alternative rites that are devoid of the negative features of the traditional one. This in itself is evidence that some form of inculturation is already taking place, which may be taken advantage of by those concerned to embed human rights in Ghana.

8.5.3 Child Labour

Recent references to increased incidents of child labour in Ghana broach the issue of human rights and the long-standing traditional practice of involving children in the economic and domestic activities of the family.⁷⁵ Children's role, traditionally, was to provide supportive services such as fetching water and transporting firewood for fuel. Children also engaged in petty trade, especially hawking.⁷⁶ Traditionally, women going into marriage for the first time were given girl-children of other relatives to help and support them with domestic chores; in contemporary times, the phenomenon of 'house-help' has become a mechanism by which city and urban households enjoy such services, traditionally provided by children. As Oppong and Abu put it, 'such practices have the support of customary norms, values and beliefs, regarding their efficacy.'⁷⁷ Against this background, it is not surprising that a report by the ILO in 1996 revealed that seventy-five per cent of child labour in Ghana took place in such family situations.⁷⁸

Cultural and religious factors are deeply implicated in the perpetration of child labour in Ghana. Traditional methods of child training consider it a virtue to introduce the child to the traditional occupation of the parents early. Boys normally followed the occupation of their fathers and girls that of their mother. In addition, petty trading as a means of supplementing income was seen as an important skill, especially for girls. The process of socialisation involved aspects that ensured that children grew up conforming to social norms. Emphasis was placed upon values such as 'respect, obedience and service to elders...sanctioned by corporal punishment, ridicule, and magico-religious threats ensured that children remained oriented towards working diligently for elders in their households, whether parents, relatives or strangers.'⁷⁹ Such factors make it easy for children to continue to be exploited. However, the economic factor is as implicated as the cultural and religious.

However, the traditional culture sets limits for the tasks in which children may be involved. This is underscored by the Akan maxim that *abofra bɔnwaw na mbɔkyekyer* (the child breaks the shell of the snail; not the shell of the tortoise). Very clear lines are drawn between the types of

⁷⁵ E. H. Mends, 'The Rights of the Child in Ghana: The Socio-Cultural Milieu' in Henrietta J. A. N. Mensah-Bonsu and Christine Dowuona-Hammond(eds.) *The Rights of the Child in Ghanaian Perspectives*(Accra: Woeli Publishing Services, 1994) 7.

⁷⁶ Christine Oppong and Katherine Abu (eds.), *Seven Roles of Women: The Impact of Education, Migration, and Employment on Ghanaian Mothers* (Geneva: ILO, 1987) 79.

⁷⁷ Oppong and Abu, *Seven Roles*, 79.

⁷⁸ http://www.afrol.com/News2001/gha007_child_labour.htm (accessed on July 3, 2008).

⁷⁹ Oppong and Abu, *Seven Roles*, 80.

work in which children may be engaged and work for adults. The welfare of children was paramount in the arrangement of traditional societies and the whole community was responsible to ensure that children were protected. It was the responsibility of every adult person to uphold the welfare of children in a needy situation, whether they are your own children or not. Such cultural values and practices can provide the grounds for an engagement with modern human rights norms.

8.5.4 Property Rights

The issue of property rights in Ghana is linked to the issue of individuality and communality. Traditionally, the right to land is linked to membership of the kinship group. Nukunya reports that among the Ewe, for example, every member of the kinship group 'is entitled to a number of rights and privileges including a plot of land to cultivate, a creek to fish in, a place to live and a group to care for him in time of need.'⁸⁰ According to Danquah, land is communally owned among the Akan, and individuals belonging to the kinship group are entitled to a piece of land for cultivation.⁸¹ What this means is that in traditional societies land was owned by the lineage. This was an arrangement that ensured equitable distribution of the common property. It was not permitted to sell any part of the land, because that would mean depriving future members of the lineage of their right to land and, by implication, livelihood and shelter. Consequently, mechanisms existed for lineage elders, as custodians of the property, to account to the members of the lineage. Yet modern developments have led to serious abuse of lineage property.

By the middle of the 1960s the erosion of traditional religious values had combined with other factors such as the traditional deference to status, to undermine fiduciary standards in most communities in Ghana. Lineage members became less able to demand accountability of lineage heads.⁸² Traditionally, religious standards that demanded complete fidelity and fairness in such matters placed effective checks on the powers of lineage heads and elders. But with the decline in such values, several elders and lineage heads deliberately sacrificed such values for personal gain. Irresponsible alienation of property has deprived hundreds of people of their right to family property. By the 1980s, this aspect of rights had become so alarming that the PNDC government found it necessary to enact a 'Family Accountability Law' under which any member of a family could take family elders to court to account for their stewardship. This is a clear case, where traditional belief systems are no longer effective. It seems that economic interests have overshadowed ancient customs and religious beliefs in this matter.

In matters related to property, there has also been the opportunity from time immemorial for individuals to own property, apart from the lineage ones. Whether a person is male or female,⁸³ married or unmarried, they can own property as an individual. This cannot be said to be of a recent origin; an observation by a Dutch official in Elmina in the eighteenth century read:

⁸⁰ Nukunya, 'Social and Political Organisation,' 50.

⁸¹ Danquah, *Ghanaian Establishment*, 297.

⁸² Asante, *Property Laws*, 256.

⁸³ Christine Oppong observes that in both patrilineal and matrilineal societies in Ghana, traditional arrangements existed that granted autonomous identity to women apart from their husband.

Married people here have no community of goods; but each has his or her particular property; the man and his wives generally adjust the matter together; so that they are to bear the charge of house-keeping, while the clothing of the whole family is at his sole expense.⁸⁴

Parties in a marriage always, in a customary legal sense, never lost their sense of individual autonomy, especially, with respect to property. They also maintained close links with their families of origin. According to Danquah, women in Ghana have always been free and independent, 'both as to holding any kind of property, and in the exercise of intangible civil rights.'⁸⁵

This means any attempt to justify the denial of property rights to women on the basis of traditional custom, as is done in some cases in contemporary times, cannot be said to be justified. Inheritance arrangements also did not traditionally discriminate against women. Among the Anlo, for example, daughters were not excluded from inheriting property of the father.⁸⁶ Greene observes that prior to the seventeenth century, women inherited from both their fathers and mothers; and in spite of the fact that the society was a patrilineal, women could bequeath land to their children.⁸⁷ Issues of inheritance and property rights in Ghana have been an important issue of public interest for several hundred years. Factors such as intermarriages between people of matrilineal and patrilineal groups and concern for widows and children of deceased men have served to make these issues, subjects of spontaneous or popular dialogue in the process of inculturation. We also see all the other elements of inculturation already involved. Nevertheless, the process toward rearranging inheritance systems and indigenous property rights systems to conform to international standards need to be guided through formal interventions in keeping with the element of formal or directional dialogue in the inculturation process.

8.6 Conclusion

The understanding of the universe and relationships within it in terms that transcend the material view of reality to include the spiritual, is not antithetical to a secular project such as human rights. Since this has been the most popular framework of understanding for individuals and communities in Ghana to interpret events, the evaluation of evolving values and their expression are naturally best done by employing systems of meanings familiar to it.

Forms of inculturation are already taking place, there are several points of affinity between local Ghanaian values and the norms of international human rights that facilitate the ongoing dialogue in which translations, and confrontations are taking place. However, there is the need to push issues forward in faster and more systematic way by giving direction to the process of inculturation, which has been ongoing since colonial times. This calls for a deliberate recognition of, and the systematic exploitation of 'spiritual capital'⁸⁸ in the effort to make human rights an integral part of Ghana's culture, with deep roots in the Ghanaian worldview. The metaphysical linkages implied in the common worldview, and the values activated by such foundational ideas

⁸⁴ William Bossman, *A New and Accurate Description of the Coast of Guinea* (1704) (Fourth edition published in London, 1976. Quoted by W. C. Ekow Daniels, 'The Legal Position of Women under Our Marriage Laws' 50. See also, A. N. Allott, 'Marriage and Internal Conflict,' 177.

⁸⁵ Danquah, *The Ghanaian Establishment*, 29.

⁸⁶ Nukunya, 'Social and political Organisation,' 51.

⁸⁷ Greene, *Gender, Ethnicity*, 4.

⁸⁸ *A Political History*, 160.

of human dignity and common membership of a universal family, may serve as the basis of a human rights regime in which everyone is the other person's keeper. This conforms to what Wiredu has put forward in his 'principle of sympathetic impartiality' - a 'principle of conduct, the recognition of which could ensure the survival of human society in a tolerable condition.'⁸⁹

⁸⁹ Wiredu, *Cultural Universals*, 41.