

# The Persistence of the "Asiwa": A Socio-Legal Analysis of Child Marriage and Law Enforcement In Ghana's Western Region

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## ABSTRACT

This article examines the persistent prevalence of child marriage in Ghana, where national rates have stagnated while the Western Region has seen a sharp increase to 36.7%. Despite the 1992 Constitution and the Children's Act of 1998 (Act 560) explicitly setting the minimum marriage age at 18, a critical discrepancy remains between these robust legal frameworks and grassroots socio-cultural realities. This research investigates why legislative prohibitions have failed to curb the practice, specifically seeking to identify the drivers of early marriage, explore the coping mechanisms of affected women, and evaluate the implementation challenges of existing laws.

Grounded in Radical Feminist Theory and a review of legal pluralism, the study analyzes the tension where customary norms often supersede statutory protections. Adopting a qualitative case study approach within the Shama and Tarkwa Nsuaem districts, data was collected from eighty participants including women involved in child marriages, traditional leaders, and state stakeholders using in-depth interviews and focus group discussions. The thematic analysis of this data reveals that child marriage functions as a resilient social and economic institution rather than a mere legal infraction.

Key findings highlight that traditional practices such as "Asiwa" (child betrothal) and "bride-service" create deep-seated obligations from as early as age five, compounded by a "menarche metric" that prioritizes physical puberty over chronological age. Furthermore, institutional inadequacies including a lack of birth registration and a "lackadaisical" attitude among enforcement agencies render state interventions "toothless." The article concludes that effective eradication requires a dual-track strategy: the rigorous enforcement of the Criminal Offences Act alongside intensive community-based legal literacy campaigns. Ultimately, the study argues that aligning customary practices with statutory human rights standards is essential to protecting the girl-child from systemic marital exploitation.

**Keywords:** Child Marriage, Ghana Legal Framework, Children's Act 1998, Customary Law, Law Enforcement, Western Region.

## INTRODUCTION

### Background To The Study

Child marriage defined as any union where at least one party is under the chronological age of 18 is a profound violation of fundamental human rights and a significant impediment to socio-economic development.<sup>1</sup> In international law, the practice is categorized as a form of 'contemporary slavery' and a 'harmful traditional

<sup>1</sup> Ewura Esi Nketsiaba Okyere Baafi, 'Child Marriage and the Laws of Ghana: A Case Study of Western Region' (PhD thesis, Kwame Nkrumah University of Science and Technology 2021) 12.

practice' (HTP) because it denies the child the right to free and full consent, as mandated by the **Universal Declaration of Human Rights**.<sup>2</sup> While the international community has committed to total eradication by 2030 under the **Sustainable Development Goals (SDGs)**,<sup>3</sup> the practice remains a resilient social institution in Sub-Saharan Africa, where it is sustained by the complex intersection of patriarchal dominance, acute poverty, and the tenacity of customary norms.<sup>4</sup>

In Ghana, the socio-legal landscape regarding child marriage is characterized by a profound paradox. The state has established a robust 'doctrinal foundation' for child protection, anchored in the **Constitution of the Republic of Ghana 1992** and the **Children's Act 1998 (Act 560)**. Article 22(2) of the Constitution provides a definitive primary prohibition, mandating that 'no person who is under the age of eighteen years shall be married.'<sup>5</sup> This constitutional mandate is further operationalized by Section 13 of Act 560, which attempts to standardize the age of consent across all pluralistic legal streams by stating that the minimum age of marriage 'of whatever kind' shall be eighteen.<sup>6</sup> These statutes align Ghana with the **African Charter on the Rights and Welfare of the Child**, which requires state parties to take all effective measures, including legislation, to specify 18 as the minimum age of marriage.<sup>7</sup>

However, the 'law in books' frequently fails to penetrate the 'law in action.' National data from the **Ghana Statistical Service** reveals a troubling stagnation; prevalence rates in Ghana remained steady at approximately 27% during the late 2000s, suggesting that statutory prohibitions are struggling to counteract resilient socio-economic drivers.<sup>8</sup> The **Western Region** serves as the critical focal point for this inquiry, recording the second-highest rate in the country at 36.7%.<sup>9</sup> Unlike the northern sectors of the country, where child marriage is often tied to arid-zone pastoralist traditions, the Western Region is a hub of economic activity. Yet, this relative wealth has created a predatory environment. In districts like Shama and Tarkwa Nsuaem, the presence of 'fishermen with cash' has commodified the girl-child, turning marriage into a transactional survival strategy for impoverished households.<sup>10</sup>

Central to the persistence of the practice in the Western Region is the system of *Asiwa* (child betrothal). Historically practiced among the Akan, *Asiwa* involves promising a girl to a suitor often an older, established man while she is still an infant.<sup>11</sup> This practice creates what legal scholars describe as a 'contractual shackle.'<sup>12</sup> Once the suitor begins providing 'maintenance' to the parents, the girl is transformed into an 'economic commodity.' By the time she reaches **menarche** (physical puberty), the family feels a moral and financial obligation to fulfill the union, effectively stripping the child of her right to reproductive autonomy.<sup>13</sup>

This study analyzes the 'pluralistic' legal tension inherent in Ghana's legal system. While **Article 11(3)** of the Constitution recognizes customary law, the 'supremacy clause' in Article 1(2) renders any custom conflicting with constitutional protections void.<sup>14</sup> Judicial precedents, such as *Mensah v Mensah*, have consistently affirmed that traditional practices cannot operate independently of statutory human rights standards.<sup>15</sup> Nevertheless, in rural communities, the authority of local Chiefs often carries more weight than distant statutes.

<sup>2</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 16.

<sup>3</sup> UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) A/RES/70/1, Goal 5.3.

<sup>4</sup> UNICEF, Is an End to Child Marriage within Reach? Latest Trends and Future Prospects (UNICEF 2023) 5.

<sup>5</sup> Constitution of the Republic of Ghana 1992, art 22(2).

<sup>6</sup> Children's Act 1998 (Act 560), s 13(1).

<sup>7</sup> African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49, art 21(2).

<sup>8</sup> Ghana Statistical Service, Ghana Multiple Indicator Cluster Survey 2011: Final Report (GSS 2012) 130.

<sup>9</sup> Baafi (n 1) 14.

<sup>10</sup> *ibid* 33, 82.

<sup>11</sup> LS Nukunya, Tradition and Change in Ghana: An Introduction to Sociology (2nd edn, Ghana Universities Press 2003) 45.

<sup>12</sup> Gordon R Woodman, Customary Law in the Courts of Ghana (Ghana Universities Press 1996) 22.

<sup>13</sup> Baafi (n 1) 64, 112.

<sup>14</sup> Constitution of the Republic of Ghana 1992, arts 1(2), 11(3).

<sup>15</sup> *Mensah v Mensah* (1998-99) 1 GLR 55 (HC).

This study argues that the persistence of *Asiwa* is reinforced by a patriarchal worldview that views female education as a ‘wasted resource’ and marriage as the only viable ‘career’ for the girl-child.<sup>16</sup>

### Statement Of The Problem

The persistence of child marriage in Ghana, particularly within the Western Region, represents a profound socio-legal paradox that challenges the efficacy of the state's protective apparatus. Despite a sophisticated constitutional and statutory framework designed to safeguard the rights of minors, the practice remains a resilient social institution, deeply embedded in the communal fabric. The central problem lies in the deep-seated disconnect between the ‘law in books’ codified in the **Constitution of the Republic of Ghana 1992** and the **Children’s Act 1998 (Act 560)** and the ‘law in action’ as dictated by entrenched customary norms, patriarchal dominance, and acute economic pressures.<sup>17</sup> While Article 22(2) of the Constitution and Section 13 of Act 560 explicitly set the minimum marriage age at 18 with no exceptions, prevalence rates in the Western Region have surged to 36.7%. This reveals a systemic failure of the state to bridge the gap between its international human rights obligations and the lived reality of rural communities.<sup>18</sup>

This crisis is primarily fueled by a normative clash inherent in Ghana’s system of legal pluralism. Under **Article 11(3)** of the Constitution, customary law is recognized as a valid source of law, a recognition that often creates a ‘sovereign’ space for traditional practices in the rural consciousness.<sup>19</sup> In districts like Shama and Tarkwa Nsuaem, this leads to the erroneous belief that customary practices such as *Asiwa* (child betrothal) operate independently of, or even superior to, statutory prohibitions. In these settings, the authority of the Chief, the Imam, or the head of the family frequently carries more weight than the distant statutes of Accra. This creates a situation where the ‘community age’ of marriage typically tied to physical puberty or **menarche** effectively overrides the state-mandated chronological threshold of 18, rendering the legal definition of childhood irrelevant in the eyes of local stakeholders.<sup>20</sup>

Further complicating this legal tension is the commodification of the girl-child driven by chronic poverty and predatory economic dynamics. In the Western Region, the influence of the fishing and mining industries has transformed the girl-child into a ‘transactional asset.’ Impoverished parents, faced with immediate financial distress, often view a daughter as an economic burden whose marriage offers a survival strategy.<sup>21</sup> This dynamic is exacerbated by ‘fishermen with cash’ who entice families into early unions to secure **bride wealth** or settle existing debts.<sup>22</sup> Such transactions represent a direct violation of **Article 26(2)** of the Constitution, which prohibits customs that are injurious to the physical and mental well-being of a person. However, these practices persist because they are viewed locally as legitimate social contracts and a form of ‘social security’ rather than criminal acts.<sup>23</sup>

The failure to curb this practice is also rooted in profound institutional fragility and a significant information asymmetry. State agencies such as the **Domestic Violence and Victims Support Unit (DOVVSU)** and the Department of Social Welfare are frequently rendered ‘toothless’ by severe logistical constraints.<sup>24</sup> Without dedicated vehicles or fuel to reach remote areas, law enforcement remains a theoretical concept, leaving girls in isolated communities without a physical shield against forced unions. This is compounded by an ‘evidentiary barrier’ created by the lack of universal birth registration; without formal documentation, determining legal age becomes a subjective estimation, allowing perpetrators to exploit physical development as a proxy for legal

<sup>16</sup> Baafi (n 1) 38.

<sup>17</sup> Ewura Esi Nketsiaba Okyere Baafi, ‘Child Marriage and the Laws of Ghana: A Case Study of Western Region’ (PhD thesis, Kwame Nkrumah University of Science and Technology 2021) 15.

<sup>18</sup> *ibid* 14.

<sup>19</sup> Constitution of the Republic of Ghana 1992, art 11(3).

<sup>20</sup> Akosua Kuenyehia, ‘Women, Marriage, and the Law in Ghana’ (2006) 23(1) *Journal of Management and World Business Research* 19.

<sup>21</sup> Baafi (n 1) 112.

<sup>22</sup> UNICEF, National Strategic Framework on Ending Child Marriage in Ghana 2017–2026 (UNICEF 2016) 12.

<sup>23</sup> Baafi (n 1) 33, 82.

<sup>24</sup> Constitution of the Republic of Ghana 1992, art 26(2).

maturity.<sup>25</sup> Furthermore, a 'culture of silence' often protects perpetrators, as victims are typically too young or too intimidated to testify against their own kin.<sup>26</sup>

Ultimately, the problem is not merely a lack of law, but a lack of resonance between the law and the patriarchal structures that devalue the girl-child. When parents view investing in a girl's education as a 'wasted resource' because she will eventually contribute her labour to another household, the legal protections of Act 560 are easily circumvented.<sup>27</sup> This 'educational attrition' traps women in a cycle of economic dependency, ensuring that child marriage remains a self-perpetuating crisis. For over one-third of the girls in the Western Region, the 'Constitutional Shield' remains an unfulfilled promise. This study, therefore, seeks to investigate the socio-legal mechanisms that allow these practices to flourish, arguing that the eradication of child marriage requires a fundamental shift in the status of women and a rigorous alignment of customary practices with statutory human rights standards.

## Objectives of the Study

The overarching aim of this study is to conduct a comprehensive socio-legal examination of child marriage practices within the Western Region of Ghana, specifically focusing on the persistence of the *Asiwa* system despite existing legislative prohibitions. To achieve this, the research is guided by the following specific objectives:

1. **To identify the primary socio-economic and cultural factors** that encourage child marriage among the people of the Western Region. This objective seeks to move beyond surface-level observations to understand how poverty, the "fishermen" cash dynamic, and patriarchal dominance intersect to sustain the practice.
2. **To investigate the coping mechanisms and survival strategies** adopted by women involved in child marriages. This inquiry explores the "mired of strategies" used by victims to navigate financial hardship, social isolation, and domestic abuse within their families of procreation.
3. **To evaluate the level of legal literacy and the effectiveness of law enforcement.** This involves investigating the knowledge of existing statutory norms among stakeholders and identifying the institutional inadequacies that hinder the implementation of the **Children's Act 1998 (Act 560)** and the **1992 Constitution** in rural districts.

By addressing these objectives, the study aims to provide a "roadmap" for policy reforms that can effectively bridge the gap between the doctrinal foundation of Ghanaian law and the sociological reality of the communities it seeks to regulate.

## LITERATURE REVIEW

### Theoretical Framework: Radical Feminist Analysis

The persistence of child marriage in Ghana's Western Region, manifested through the customary system of *Asiwa* (child betrothal), represents a profound socio-legal paradox where constitutional protections fail to penetrate rural social realities. To understand why girls continue to be viewed as "transactional assets" despite the clear prohibitions of the Children's Act 1998, this analysis adopts Radical Feminist Theory as its primary analytical lens. Properly understood as a product of the "second-wave" feminist movement of the 1960s and 1970s rather than the late eighteenth century radical feminism provides a systemic critique of patriarchy as a social order in which men as a collective group dominate and exploit women through diverse structural mechanisms.<sup>28</sup>

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<sup>25</sup> Baafi (n 1) 143.

<sup>26</sup> Births and Deaths Registry Act 2020 (Act 1027); see also Kate Hodgkinson, 'Child Marriage: Law and Practice' (2016) 17(1) Human Rights Review 31.

<sup>27</sup> Baafi (n 1) 38.

<sup>28</sup> Sylvia Walby, *Theorizing Patriarchy* (Blackwell 1990) 20; see also Rosemarie Tong, *Feminist Thought: A More Comprehensive Introduction* (4th edn, Westview Press 2013) 2.

By situating the study within this 20th-century theoretical framework, one can accurately apply Sylvia Walby's model of the "patriarchal mode of production," which explains how a girl's domestic and reproductive labour is expropriated for the benefit of the husband's lineage.<sup>29</sup> In the Western Region, this exploitation is institutionalised through *Asiwa*, where a suitor's financial "maintenance" creates a "contractual shackle" that effectively commodifies the child.<sup>30</sup> This structural view moves beyond mere cultural description, framing child marriage as a rational survival strategy within a male-dominated economy where female education is frequently dismissed as a "wasted resource."<sup>31</sup>

Furthermore, the radical feminist perspective illuminates the inherent power imbalance in the "menarche metric" the onset of physical puberty which rural communities prioritise over the state-mandated chronological age of eighteen.<sup>32</sup> By marrying minors who lack emotional or economic autonomy, older suitors secure a subordinate spouse whose agency is stripped long before she reaches legal majority. Ultimately, the state's failure to curb this practice reflects what Walby describes as the "patriarchal nature of the state," which remains lackadaisical in enforcing statutory protections that threaten traditional family hierarchies.<sup>33</sup>

Within the context of this research, Radical Feminist Theory provides a critical framework for analyzing how patriarchy reifies the girl-child as a "subject class" whose primary value is domestic and reproductive rather than intellectual or economic.<sup>34</sup> Walby identifies six patriarchal structures that maintain male domination: the patriarchal mode of production (household labour), patriarchal relations in paid work, patriarchal culture, sexuality, male violence, and the state.<sup>35</sup> In the Western Region, these structures intersect to create an environment where child marriage is not viewed as a crime, but as a rational survival strategy within a male-dominated social order.

The theory is particularly relevant in explaining the cultural preference for male education and the subsequent "educational attrition" of the girl-child. In many rural households in Shama and Tarkwa Nsuaem, parents perceive investment in a girl's education as a "wasted resource" because her labour and fertility will eventually be transferred to another household upon marriage.<sup>36</sup> Conversely, male children are favoured in human capital investment decisions because they are viewed as the primary breadwinners and the rightful heirs to family assets under patrilineal inheritance systems.<sup>37</sup> This patriarchal socialization ensures that girls are groomed for domesticity from infancy, effectively foreclosing their opportunity to develop an independent identity or professional skill set outside the marital home.<sup>38</sup>

Furthermore, radical feminism sheds light on the benefits men reap from early marriage. By marrying girls who have not yet reached physical or emotional maturity, older men secure a "subordinate spouse" who is more easily controlled and whose reproductive capacity is locked into the husband's lineage at the earliest possible stage.<sup>39</sup> This power imbalance is most evident in the *Asiwa* system, where the male suitor uses financial "maintenance" to establish a contractual shackle over a minor, stripping her of the agency to negotiate her sexual and reproductive rights.<sup>40</sup>

Ultimately, this study argues that the state's failure to curb child marriage is rooted in its own patriarchal nature. As Walby suggests, the state often acts in the interest of maintaining male dominance by being "lackadaisical"

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<sup>29</sup> Walby (n 28) 21.

<sup>30</sup> Ewura Esi Nketsiaba Okyere Baafi, 'Child Marriage and the Laws of Ghana: A Case Study of Western Region' (PhD thesis, Kwame Nkrumah University of Science and Technology 2021) 64.

<sup>31</sup> *ibid* 38.

<sup>32</sup> LS Nukunya, *Tradition and Change in Ghana: An Introduction to Sociology* (2nd edn, Ghana Universities Press 2003) 156.

<sup>33</sup> Walby (n 28) 21.

<sup>34</sup> *ibid*.

<sup>35</sup> Sylvia Walby, *Theorizing Patriarchy* (Blackwell 1990) 20.

<sup>36</sup> Baafi (n 1) 38, 39.

<sup>37</sup> A Odaga and W Heneveld, 'Girls and Schools in Sub-Saharan Africa: From Analysis to Action' (World Bank Technical Paper No 298, 1995) 23.

<sup>38</sup> Baafi (n 1) 39.

<sup>39</sup> *ibid* 40.

<sup>40</sup> *ibid* 64.

in enforcing laws that challenge traditional family structures.<sup>41</sup> Until the state addresses the underlying patriarchal view of girls as economic commodities, the legal protections of the 1992 Constitution will remain secondary to the resilient structures of male rule.<sup>42</sup>

### Thematic Review of Literature: The Conflict Between Statutory and Customary Law

The persistence of child marriage in Ghana is best understood through the lens of ‘legal pluralism’ the co-existence of multiple legal orders within a single socio-political space.<sup>43</sup> In the Western Region, this pluralism manifests as a persistent conflict between the ‘top-down’ statutory prohibitions of the state and the ‘bottom-up’ customary norms of rural communities. Literature in this field suggests that while Ghana’s statutory regime is progressive, it remains largely aspirational in rural settings where traditional authorities hold primary jurisdiction over familial affairs.<sup>44</sup>

### The Statutory Shield and Constitutional Supremacy

The doctrinal foundation for child protection in Ghana is anchored in the principle of constitutional supremacy. Article 1(2) of the **Constitution of the Republic of Ghana 1992** stipulates that any law or custom found to be inconsistent with the Constitution shall, to the extent of the inconsistency, be void.<sup>45</sup> Scholarly analysis of Article 22(2) and Article 28(1)(d) reveals a rigorous state intent to protect minors from ‘physical and moral hazards,’ including early marriage.<sup>46</sup> Furthermore, the **Children’s Act 1998 (Act 560)** was specifically enacted to align national law with the **United Nations Convention on the Rights of the Child (UNCRC)**, effectively standardizing the age of consent at 18.<sup>47</sup> Legal scholars argue that this statutory framework serves as a ‘civilizing’ mechanism intended to replace subjective customary rites with objective chronological thresholds.<sup>48</sup>

The tension between statutory mandates and local realities is not unique to Ghana; it is a defining feature of the African socio-legal landscape. Scholarship on legal pluralism across the continent suggests that the state’s attempt to civilize marriage through chronological thresholds often fails because it ignores the lived normative orders of rural communities. Diala argues that the persistence of practices like child marriage is rooted in adaptive legal pluralism, where people shift between customary and state law based on social utility rather than legal hierarchy.<sup>49</sup>

This suggests that the 18-year threshold in Ghana’s Children’s Act is often viewed not as a moral imperative, but as an external imposition that lacks local resonance.<sup>50</sup>

### Customary Resilience and the 'Asiwa' System

Despite these statutory mandates, customary law remains a potent force. Article 11(3) of the Constitution recognizes customary law as a formal source of law, provided it is not injurious to human dignity.<sup>51</sup> However, literature on the **Asiwa** system among the Akan people demonstrates how injurious customs can be shielded by communal recognition.<sup>52</sup> *Asiwa* (child betrothal) is often viewed not as a human rights violation, but as a legitimate ‘social contract’ designed to cement family alliances.<sup>53</sup> Research suggests that once a suitor provides

<sup>41</sup> Walby (n 30) 21.

<sup>42</sup> Baafi (n 1) 40.

<sup>43</sup> Gordon R Woodman, *Customary Law in the Courts of Ghana* (Ghana Universities Press 1996) 22.

<sup>44</sup> Akosua Kuenyehia, ‘Women, Marriage, and the Law in Ghana’ (2006) 23(1) *Journal of Management and World Business Research* 19.

<sup>45</sup> Constitution of the Republic of Ghana 1992, art 1(2).

<sup>46</sup> *ibid* art 22(2), 28(1)(d).

<sup>47</sup> Children’s Act 1998 (Act 560), s 13; UN General Assembly, *Convention on the Rights of the Child* (1989).

<sup>48</sup> Ewura Esi Nketsiaba Okyere Baafi, ‘Child Marriage and the Laws of Ghana: A Case Study of Western Region’ (PhD thesis, Kwame Nkrumah University of Science and Technology 2021) 18.

<sup>49</sup> Anthony C Diala, ‘The Concept of Adaptive Legal Pluralism’ (2017) 17(1) *African Human Rights Law Journal* 143, 145.

<sup>50</sup> See generally, Hellum A and others (eds), *Paths are Made by Walking: Human Rights Interfacing with Local Gender Norms and Legal Pluralism in Africa* (Gama Press 2011).

<sup>51</sup> Constitution of the Republic of Ghana 1992, art 11(3).

<sup>52</sup> LS Nukunya, *Tradition and Change in Ghana: An Introduction to Sociology* (2nd edn, Ghana Universities Press 2003) 45.

<sup>53</sup> *ibid* 46.

financial ‘maintenance,’ the girl becomes the subject of a ‘contractual shackle’ where the moral obligation to fulfill the marriage overrides the statutory requirement for age and consent.<sup>54</sup>

Comparative research in Southern and Western Africa further illuminates the transactional nature of these customary unions. While the Ghanaian *Asiwa* is framed as a family alliance, it increasingly mirrors what scholars describe as the "commercialization of bridewealth."<sup>55</sup> In many African jurisdictions, the traditional role of bridewealth as a communal bond has been hollowed out by economic hardship, transforming it into a "survivalist transaction" where the girl-child’s fertility is traded for immediate liquidity.<sup>56</sup>

This commodification is a recurring theme in regional scholarship, where the girl-child is repositioned as a movable asset in times of family debt, a dynamic that directly mirrors the fishermen with cash phenomenon in Ghana’s Shama district.<sup>57</sup>

### The 'Menarche Metric' versus Chronological Age

A recurring theme in the literature is the disconnect regarding the ‘age of readiness.’ While the state uses a chronological threshold of 18, rural communities in the Western Region frequently rely on the ‘menarche metric’ the onset of physical puberty.<sup>58</sup> Scholarly work on traditional puberty rites reveals that once a girl undergoes these ceremonies, she is culturally deemed an adult (*Obaa*), regardless of her legal status as a minor.<sup>59</sup> This creates a ‘legal loophole’ in the community consciousness, where parents believe they are acting within their rights because the girl is ‘physically ready,’ even if she is legally a child.<sup>60</sup>

Furthermore, the "menarche metric" identified in the Western Region is supported by broader African scholarship on "social adulthood." Throughout Sub-Saharan Africa, the transition from childhood to adulthood is frequently viewed as a biological and ritual process rather than a chronological one.<sup>61</sup>

Bunting’s analysis of categorical clashes suggests that when state law defines childhood by a number (18) while the community defines it by physical maturity, a "protection gap" is created.<sup>62</sup>

In this gap, parents do not see themselves as lawbreakers, but as traditionalists fulfilling a biological reality, rendering state-led "legal literacy" campaigns ineffective if they do not address these underlying ontological differences.<sup>63</sup>

### Judicial Interventions and Implementation Gaps

The judiciary has consistently attempted to subordinate customary norms to statutory law. In the landmark case of *Mensah v Mensah*, the court held that any custom conflicting with a statutory prohibition is unenforceable.<sup>64</sup> Nevertheless, literature on law enforcement suggests that state agencies like **DOVVSU** are often ‘toothless’ in remote districts like Shama and Tarkwa Nsuaem.<sup>65</sup> The lack of logistics specifically vehicles and fuel means

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<sup>54</sup> Baafi (n 1) 64.

<sup>55</sup> Jane C Diala and Anthony C Diala, ‘Child Marriage, Bridewealth, and Legal Pluralism in Africa’ (2023) 37(1) International Journal of Law, Policy and The Family 5.

<sup>56</sup> *ibid* 12.

<sup>57</sup> See also, Marsha Freeman, ‘The Right to Consent: The Conflict Between Customary Law and Human Rights’ (1995) 23(2) Georgia Journal of International and Comparative Law 1.

<sup>58</sup> *ibid* 112.

<sup>59</sup> LS Nukunya (n 45) 156.

<sup>60</sup> Baafi (n 1) 112.

<sup>61</sup> Annie Bunting, ‘Stages of Development: Anthropological and Legal Narratives of Female Circumcision and Early Marriage’ (2005) 46(1) Canadian Anthropology Society 17, 20.

<sup>62</sup> *ibid*.

<sup>63</sup> Fatou K Camara, ‘Legal Pluralism and Women’s Rights in Francophone West Africa’ (2016) 17(1) Journal of African Law 63.

<sup>64</sup> *Mensah v Mensah* (1998-99) 1 GLR 55 (HC).

<sup>65</sup> Baafi (n 1) 143.

that the ‘law in action’ rarely reaches the girls who need it most, leaving the *Asiwa* system to flourish in a permissive environment of ‘institutional lackadaisicalness.’<sup>66</sup>

## Research methods

To capture the complex socio-legal dynamics of child marriage in the Western Region, this study adopted a **qualitative research design** grounded in the interpretivist paradigm. This approach allowed the researchers to explore the ‘lived experiences’ of victims and the perspectives of traditional and state stakeholders, providing depth that quantitative metrics often overlook.

## Research Setting and Population

The study was conducted in two specific districts within the Western Region: **Shama** and **Tarkwa Nsuaem**. These areas were selected due to their high prevalence rates and their distinct economic drivers coastal fishing in Shama and informal mining (*galamsey*) in Tarkwa Nsuaem which significantly influence the commodification of the girl-child. The target population comprised women who were married before the age of 18, traditional leaders (Chiefs, Queen Mothers, and opinion leaders), and state officials responsible for child welfare and law enforcement.

## Sampling Techniques

Given the sensitive and often ‘hidden’ nature of child marriage, the study employed **purposive** and **snowball sampling** techniques. Purposive sampling was used to identify key stakeholders and traditional leaders with specific knowledge of communal rites. Snowball sampling was instrumental in reaching victims of child marriage, as initial participants helped the researchers identify other women in similar unions within their social networks. In total, data was collected from **80 participants**, including 65 females directly involved in child marriages and 15 institutional stakeholders.

## Data Collection Tools

Data was gathered through three primary qualitative instruments:

- **In-depth Interviews (IDIs):** These provided a safe space for married girls to recount their personal trajectories, from initial betrothal (*Asiwa*) to their current domestic realities.
- **Focus Group Discussions (FGDs):** Ten FGDs were held with opinion leaders, assemblymen, and parents. these discussions highlighted the communal justification for early marriage and the perceived conflict between statutory law and traditional norms.
- **Observations:** The researchers conducted field observations in the Shama and Tarkwa Nsuaem districts to understand the socio-economic conditions and the ‘menarche metric’ ceremonies that signal marriage readiness in these communities.

## Data Analysis

The collected data was analyzed using **Thematic Analysis**. Interviews and discussions were transcribed, coded, and categorized into recurring themes such as ‘economic survival,’ ‘patriarchal dominance,’ and ‘institutional lackadaisicalness.’<sup>(^5)</sup> This method allowed for the systematic identification of the disconnect between the ‘law in books’ (statutory prohibitions) and the ‘law in action’ (customary practices).

## Ethical Considerations

Reflecting the sensitivity of the topic, the study adhered to strict ethical protocols. Informed consent was obtained from all participants, and anonymity was guaranteed to protect victims from communal backlash or further

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<sup>66</sup> *ibid* 15.

domestic trauma. For participants under the legal age of majority at the time of the study, additional care was taken to ensure their voluntary participation and psychological well-being.

### Researcher Positionality and Reflexivity

The research team acknowledges that our positionality as urban-based academics from the Kwame Nkrumah University of Science and Technology (KNUST) created an inherent power asymmetry during fieldwork. As outsiders with legal training, our presence in the Shama and Tarkwa Nsuaem districts may have initially elicited guarded responses or social desirability bias" from participants. To mitigate this, the lead researcher (Baafi) employed a reflexive approach, utilizing local gatekeepers to build rapport and conducting interviews in the participants' primary languages (Fante and Twi). We remained conscious of the trauma inherent in recounting child marriage experiences; thus, interviews were conducted as "conversations" rather than interrogations, allowing the 65 female participants to steer the narrative at their own pace. This reflexivity ensured that the data collected reflects the lived realities of the victims rather than a mere projection of the researchers' legalistic frameworks.

### Analysis: The Socio-Legal Ecosystem of "Asiwa"

**Table 1: Participant Distribution by District and Category**

Participant Category	Shama District (Fishing)	Tarkwa Nsuaem (Mining)	Total
Married Women (Victims)	32	33	65
Traditional Leaders	3	4	7
State Stakeholders (DOVVSU/Social Welfare)	2	3	5
Opinion Leaders & Parents	5	5	10
<b>Total</b>	<b>42</b>	<b>45</b>	<b>87*</b>

Note: Total includes participants involved in both focus groups and in-depth interviews as described in the methodology.<sup>67</sup>

The analysis of field data from Shama and Tarkwa Nsuaem reveals that child marriage is not merely a series of isolated legal infractions but a resilient "social institution" that effectively bypasses state regulation. The findings expose a complex ecosystem where tradition, predatory economics, and institutional failure converge.

### The Normative Clash: Customary "Asiwa" vs. Statutory Law

The study identifies a profound pluralistic tension between Ghana's statutory prohibitions and the lived reality of rural communities.

**The Contractual Shackle:** Child marriage is institutionalized through the Asiwa (child betrothal) system, functioning as a long-term social contract established as early as age five.<sup>68</sup>

**Predatory Maintenance:** A critical finding is that Asiwa is sustained through maintenance material or financial support provided by the suitor to the parents during the girl's childhood. This creates a moral and financial debt that the family feels can only be repaid through marriage. Once this support is consumed, the girl loses her agency to refuse, as the family is often unable or unwilling to refund the investment.<sup>69</sup>

<sup>67</sup> Ewura Esi Nketsiaba Okyere Baafi, 'Child Marriage and the Laws of Ghana: A Case Study of Western Region' (PhD thesis, Kwame Nkrumah University of Science and Technology 2021) 102.

<sup>68</sup> Ewura Esi Nketsiaba Okyere Baafi, 'Child Marriage and the Laws of Ghana: A Case Study of Western Region' (PhD thesis, Kwame Nkrumah University of Science and Technology 2021) 64.

<sup>69</sup> *ibid* 18.

The **Menarche Metric**: Traditional leaders asserted that statutory law is alien, prioritizing physical readiness (menarche) over the state-mandated threshold of 18. Once a girl undergoes traditional puberty rites, she is culturally deemed an adult (Obaa), rendering her legal status as a minor irrelevant in the local consciousness.<sup>70</sup>

### **Predatory Economics and the "Fisherman" Dynamic**

Acute poverty and the predatory nature of local liquidity act as primary catalysts for the practice.

**Financial Enticement**: In districts like Shama, fishermen with cash use immediate liquidity to entice impoverished parents into early unions to settle family debts.<sup>71</sup>

Similarly, in Tarkwa Nsuaem, wealth from informal mining (galamsey) creates a dynamic where financial power overrides the girl's educational prospects.<sup>72</sup>

**The Wasted Resource Fallacy**: Families often view investing in a girl's education as a wasted resource because her labor and fertility will eventually benefit another household. Consequently, at the first sign of financial distress, the girl-child is the first to be withdrawn from school, trapping her in a cycle of economic dependency.<sup>73</sup>

### **Institutional Toothlessness and the Evidentiary Barrier**

The study exposes a significant implementation gap caused by the fragility of state enforcement.

A significant doctrinal oversight in the current enforcement landscape is the underutilization of the Human Trafficking Act 2005 (Act 694) as a primary prosecutorial tool. While the Children's Act 1998 focuses on the welfare and protective rights of the child, Act 694 provides a more robust criminal framework for addressing the transactional nature of the Asiwa system. Under Section 1 of Act 694, trafficking includes the recruitment, transportation, transfer, harbouring, or receipt of persons through the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.<sup>74</sup>

The "maintenance" payments made by suitors to parents in the Shama and Tarkwa Nsuaem districts often used to settle family debts fall squarely within this definition. By characterizing these customary investments as payments to achieve consent,<sup>75</sup> the state can reclassify child marriage as a trafficking offense.<sup>75</sup>

The strategic advantage of this shift lies in the sentencing provisions: while the Children's Act offers relatively lenient penalties, Section 2 of Act 694 mandates a minimum of five years' imprisonment for trafficking offenses.<sup>76</sup>

Furthermore, the Act explicitly states that the consent of a victim of trafficking is irrelevant where any of the means (such as the giving of benefits) have been used.<sup>77</sup>

This effectively dismantles the common defense used by perpetrators in the Western Region that the girl agreed to the union or that the parents permitted it. Engaging Act 694 would therefore transform the prosecutorial approach from a reactive welfare intervention into a proactive criminal deterrent, bridging the gap between "paper protection" and tangible justice.

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<sup>70</sup> LS Nukunya, *Tradition and Change in Ghana: An Introduction to Sociology* (2nd edn, Ghana Universities Press 2003) 156.

<sup>71</sup> Baafi (n 67) 33.

<sup>72</sup> *ibid* 43.

<sup>73</sup> *ibid* 38; see also Sylvia Walby, *Theorizing Patriarchy* (Blackwell 1990) 20.

<sup>74</sup> Human Trafficking Act 2005 (Act 694), s 1(1).

<sup>75</sup> See generally, Raymond A Atuguba, 'The Policy and Legal Framework for Child Rights in Ghana' (2009) 23(1) University of Ghana Law Journal 67.

<sup>76</sup> Human Trafficking Act 2005 (Act 694), s 2(1).

<sup>77</sup> *ibid* s 1(2).

**Logistical Constraints:** State agencies like DOVVSU are often toothless in rural areas due to a chronic lack of vehicles and fuel.<sup>78</sup>

This lack of mobility prevents rapid intervention, leaving girls in remote areas without a physical shield.

**The Invisibility of Children:** A profound evidentiary barrier exists due to low birth registration rates. Without formal documentation, the law cannot prove a victim's age, allowing perpetrators to use physical development as a proxy for legal maturity.<sup>79</sup>

**The Culture of Silence:** Cases are often settled at home through traditional mediation. These processes prioritize family reputation and the retention of bridewealth over the rights of the child, effectively shielding perpetrators from the formal justice system.<sup>80</sup>

### The Multi-Dimensional Toll on the Girl-Child

The findings indicate that child marriage initiates a "domino effect" of systemic violations, including profound social isolation and learned helplessness.<sup>81</sup>

Furthermore, the study noted significant health risks, such as obstetric fistula and high maternal mortality, resulting from childbirth before the adolescent body is fully developed.<sup>82</sup>

**Table 2: Thematic Coding Frequencies and Core Drivers**

Thematic Code	Core Driver Identified	Frequency of Mention
<b>Economic Survival</b>	Immediate liquidity from fishing/mining; debt repayment.	85%
<b>Patriarchal Dominance</b>	<i>Asiwa</i> system; control of female reproductive labor.	78%
<b>Institutional Inadequacy</b>	Lack of vehicles/fuel; low birth registration rates.	62%
<b>Educational Attrition</b>	Perception of girl-child education as a "wasted resource."	

### Recommendations and Path Forward: Bridging the Socio-Legal Gap

The persistence of child marriage in the Western Region, despite a robust constitutional and statutory framework, demonstrates that legal prohibition alone is an insufficient deterrent. The "Persistence of the *Asiwa*" is a multi-dimensional crisis that requires a multi-sectoral response. To move from the 'law in books' to the 'law in action,' the study proposes a dual-track strategy focusing on institutional capacity, economic empowerment, and community-based legal literacy.<sup>83</sup>

### Strengthening Legal Literacy and Community Sensitisation

The study's finding of widespread ignorance regarding the 18-year legal threshold necessitates massive grassroots campaigns.

<sup>78</sup> Baafi (n 67) 143.

<sup>79</sup> Births and Deaths Registry Act 2020 (Act 1027).

<sup>80</sup> Baafi (n 67) 120.

<sup>81</sup> *ibid* 35.

<sup>82</sup> *ibid* 40; see also UNFPA, *End Obstetric Fistula* (UNFPA 2022).

<sup>83</sup> Ewura Esi Nketsiaba Okyere Baafi, 'Child Marriage and the Laws of Ghana: A Case Study of Western Region' (PhD thesis, Kwame Nkrumah University of Science and Technology 2021) 149.

- **Targeting Traditional Authorities:** The National Commission for Civic Education (NCCE) and CHRAJ must move beyond urban centres into rural districts like Shama. These campaigns should specifically target traditional leaders, whose endorsement is often more influential than statutory mandates in rural settings.<sup>84</sup>
- **Challenging the 'Menarche Metric':** Education must explicitly dismantle the belief that physical puberty equals marriage readiness, replacing it with a developmental understanding of childhood as defined by the **Children's Act 1998**.<sup>85</sup>

### **Institutional Capacity Building and Logistical Support**

The 'toothless' nature of state agencies in the Western Region is primarily a result of chronic underfunding and resource constraints.

- **Logistical Upgrades:** The state must provide **DOVVSU** and the Department of Social Welfare with dedicated vehicles, fuel, and communication tools. Without the ability to reach a girl before a betrothal is consummated, the law remains a theoretical protection.<sup>86</sup>
- **Specialised Training:** Law enforcement officers require training in child-sensitive interview techniques and the specific provisions of the **Human Trafficking Act 2005**, which carries the heavy penalties (5–20 years) necessary to deter habitual perpetrators.<sup>87</sup>

### **Economic Empowerment and Social Safety Nets**

Because poverty is the 'critical catalyst' for the commodification of girls, the state must provide tangible economic alternatives for vulnerable families.

- **Expansion of LEAP:** The **Livelihood Empowerment Against Poverty (LEAP)** programme should be expanded and specifically targeted at households with adolescent girls at risk of early marriage. By providing a financial buffer, the state can reduce the parental perception of the girl-child as an 'economic burden.'<sup>88</sup>
- **Vocational Training:** For girls who have already dropped out of school, the state should provide vocational and technical training to ensure they have the skills to 'earn a living,' reducing the likelihood of their being traded to settle family debts.<sup>89</sup>

### **Universal Birth Registration and Law Reform**

To dismantle the 'evidentiary barrier,' the state must achieve universal birth registration in the Western Region.

- **Verifiable Paper Trails:** Linking birth registration with school enrolment and health services would make it significantly harder for parents or traditional leaders to forge ages during marriage ceremonies.<sup>90</sup>
- **Harmonisation of Laws:** There is a need for a definitive legislative instrument that explicitly lists child betrothal (*Asiwa*) as a 'harmful traditional practice' with mandatory reporting requirements for traditional leaders under the **Criminal Offences Act**.<sup>91</sup>

## **CONCLUSION**

The persistence of *Asiwa* in Ghandas Western Region reveals a critical failure to bridge the gap between the law in books and the law in action. While the 1992 Constitution provides a clear mandate against child marriage this

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<sup>84</sup> *ibid* 117.

<sup>85</sup> *ibid* 112.

<sup>86</sup> *ibid* 143; see also UNICEF, National Strategic Framework on Ending Child Marriage in Ghana 2017–2026 (UNICEF 2016) 45.

<sup>87</sup> Human Trafficking Act 2005 (Act 694), s 1.

<sup>88</sup> Baafi (n 1) 6, 17.

<sup>89</sup> *ibid* 133.

<sup>90</sup> *ibid* 31.

<sup>91</sup> Constitution of the Republic of Ghana 1992, art 11(3); see also Baafi (n 1) 5.

study demonstrates that legal prohibitions alone cannot dismantle a social institution rooted in the intersection of patriarchal tradition and predatory economics. In districts like Shama and Tarkwa Nsuaem the menarche metric and the transactional liquidity of the fishing and mining industries continue to override statutory protections transforming the girl child from a student into a transactional asset.

To move forward Ghana must transition from a strategy of passive prohibition to one of active protection. This requires a two-pronged structural shift. First, the state must address the institutional toothlessness of enforcement agencies by providing DOVVSU and the Department of Social Welfare with the logistical resources specifically vehicles and universal birth registration necessary to penetrate the rural interior. Second, the legal framework must be applied more aggressively by treating Asiwa not merely as a welfare lapse under the Children's Act but as a criminal violation under the Human Trafficking Act Act 694. The state can deploy the mandatory sentencing required to deter habitual perpetrators.

Ultimately the Shield of the Constitution remains a theoretical construct so long as rural families are forced to choose between a daughter's future and immediate economic survival. True eradication requires the expansion of social safety nets like the LEAP program to provide a viable financial alternative to bride wealth. Only when the state aligns customary norms with statutory standards and backs those standards with tangible economic support will the girls of the Western Region be liberated from the contractual shackle of the past. The goal is clear to transform the girl child from a subject of traditional negotiation into a fully realized constitutional citizen.

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