



**Legal Services for Rural and Urban Poor
and the Legal Status of Rural Women**

in Anglophone West Africa



Report of a Seminar

International Commission of Jurists
Geneva, Switzerland

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International Commission
of Jurists (ICJ)
Geneva, Switzerland

**19 - 23 July 1993
Accra, Ghana**

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Preface

In July 1993 a Seminar on Legal Services for Rural and Urban Poor focussing on the legal status of rural women was organized by the ICJ in collaboration with FIDA/WILDAF-Ghana. The seminar took place in Accra, Ghana with participants from the Anglophone West African countries of Sierra Leone, Nigeria, Liberia, The Gambia and Ghana. There were also observers from Senegal.

Prior to this the ICJ had organized regional seminars on legal services in rural areas of Africa in Banjul, 1989; Harare in 1990 and Nairobi in 1992. These meetings had led to the birth of a number of practical projects for providing legal services in rural areas in many of the countries from which participants to these meetings had been drawn. In addition skill development workshops for paralegal trainers had also been organized to enhance the work being carried out at the local level.

The purpose of this Seminar was to follow up on some of the recommendations of these meetings especially as it relates to the plight of rural women. The Seminar also provided an opportunity for testing a manual for Paralegal Trainers in Africa which was being developed by the ICJ.

This publication contains the papers presented by both the resource persons and participants, the Conclusions and Recommendations adopted at the end of the meeting and the follow up activities to be carried out at the country level referred to as the national plans of action.

We thank His Excellency Mr. K.N. Arkaah, Vice-President of the Republic of Ghana for opening the Seminar. We are also very grateful to Members of FIDA/WILDAF-Ghana for their assistance in organizing the seminar.

The ICJ wishes to express its gratitude to the European Union whose financial contributions enabled us to undertake this project and publish the report.

Adama Dieng
Secretary General of the ICJ

Narrative Report

A Seminar on «Legal Services for Rural and Urban Poor and the Legal Status of Rural Women» was organized by the ICJ together with FIDA & WILDAF (Ghana), from July 19 - 23, 1993, in Accra, Ghana. This seminar was made possible by the generous financial support of the European Union (EU) Fund for Human Rights and Democratization in Developing Countries (DG VIII/5). The ICJ expresses its deep appreciation to the EU for its support.

Background

Since the late 1970's the Legal Services for Rural Areas (LSRA) programme of the ICJ has sought to explore the nature of the relationship between human rights and the process of development through the organization of seminars in Latin America, Asia and Africa. One of the major conclusions of those early seminars was that in several societies, the poor (rural and urban) and other disadvantaged groups viewed the law as a tool to oppress them and not a tool assisting them in the securing of their rights. With a view to ensuring that the legal profession and legal processes were sensitized to the needs of the poor, the ICJ sought to establish links with legal services organizations that worked with the poor and other marginalized groups. In Asia, for example, seminars were organized on the subject of «Legal Services for the Rural Poor and Other Disadvantaged Groups». Topics included the «Role of Law Schools and the Legal Profession» in dealing with the problems of access to legal services.

Drawing on the success of similar programmes in Asia and Latin America, the ICJ decided, in 1982, to embark on a system providing legal services in rural areas of Africa. Seminars on legal services have been held in selected African countries: Tambacounda, Senegal (April 1984); Limuru, Kenya (October 1984); Lome, Togo (February 1987); Libreville, Gabon (February 1988); Banjul, The Gambia (November 1989); Harare, Zimbabwe (February 1990) and Nairobi, Kenya (June 1992). Important results of these seminars and paralegal training workshops have been the launching of LSRA projects in some African countries as well as the preparation of a Draft Paralegal Trainers Manual for Africa.

Against this background the Ghana Seminar was designed to explore ways of providing legal services for the rural and urban poor of the West African sub-region. In particular, attention was focused on the examination of the legal status of rural women and its impact on the development process.

Objectives of the Seminar

The Seminar had the following objectives:

- to identify factors contributing to the legal status of rural women;
- to explore ways of improving the status of rural women through the provision of legal services;
- to examine the role of paralegals and the legal profession in the delivery of legal services to rural and urban poor;
- to test and evaluate a Draft ICJ Paralegal Trainers Manual for Africa;
- to formulate concrete plans for launching paralegal training projects in Anglophone West African countries.

Participants

A total of 40 participants, mainly lawyers, human rights activists and community development personnel representing The Gambia, Ghana, Liberia, Sierra Leone and Nigeria took part in the deliberations of the five day seminar. Representatives of Cameroonian and Senegalese human rights organizations attended as observers.

Programme

The Seminar was officially opened by His Excellency Mr. K.N. Arkaah, Vice-President of the Republic of Ghana who was represented by the Attorney-General of Ghana. In his address, the

Vice-President pointedly observed that despite formal gender equality reflected in legal instruments, societal practices continue to denigrate the roles and status of women. He stressed the need for human rights education through the adoption of legal literacy programmes «since it is only when a person knows what her rights are that she will approach legal experts for protection when her rights are violated or endangered».

The ICJ Secretary-General's welcome address explained the rationale for focusing attention on the urban poor in the following terms:

«The phenomenon of urban poverty is a new disturbing trend. Its genesis lies in the rural to urban drift occasioned by deprivations of the rural areas. The attraction of the bright lights and the «job security» of the urban areas have motivated a large exodus from the rural to urban and peri-urban centres resulting in a variety of socio-economic problems. Community and paralegal organizations are urgently required to deal with these problems.»

The Working Sessions were preceded by the presentation of a background paper which highlighted the legal status of rural women in terms of education, health, access to economic resources and employment, property and inheritance. The several issues raised in the paper were subjected to critical review and analysis by the participants. The rest of the programme, introduced by three resource persons, comprised the following four segments:

1. An introductory appreciation of such concepts as paralegals, the role of paralegals, rural and urban poor, the legal status of rural women and marginalized sections of society. A lively debate ensued, women participants arguing that, in the African context, the status of the rural woman was not different from the legal status of women in general. It was pointed out that in terms of rural development and the provision of legal services to disadvantaged groups, the focus should be on the legal status of rural women.
2. Country Reports: presentations were made by the representatives of the participating countries on the

availability or otherwise of legal services for the rural and urban poor and the legal status of rural women. In the discussions following the presentations of these reports, the unique characteristics and common problems confronting the countries concerned were carefully noted.

3. Evaluation of ICJ Draft Paralegal Trainers' Manual for Africa: a draft ICJ Paralegal Trainers' Manual for Africa, prepared by resource persons, Mrs. Tokunbo Ige and Ms. Amy Tsanga, was evaluated by the participants in terms of content, illustrations and relevance as a tool for the training of paralegals. A detailed chapter-by-chapter evaluation was presented and debated. These were carefully noted for incorporation into the final draft prior to publication.
4. Formulation of Concrete Action Plans: in light of the detailed discussions of country reports and the evaluation of the Trainers' Manual, national groups made presentations regarding concrete actions aimed at the practical implementation of the recommendations of the Seminar.

Press Coverage

The Seminar was widely covered in the local press. The national television news reported on the official opening session at length including press interviews of some of the participants. Other sessions were covered by the Ghana Television Service with a view to producing a special documentary report on the Seminar.

Results

The bringing together of lawyers, human rights activists and community development personnel from Anglophone West African States to deliberate on issues of rural and urban poor, paralegal training and the legal status of rural women is likely to have an important impact on the processes of human rights, democratization and development in these countries. Reactions from participants bear testimony to the success of the Seminar. They have informed the ICJ of concrete plans they are taking to implement the Seminars' recommendations in their countries.

Follow-Up

The ICJ is in close contact with the participants, and will be providing further assistance, if requested, to ensure the success of eventual pilot projects. Whenever possible, the ICJ Legal Officer for Africa will visit the countries concerned to ascertain the extent of national implementation of the Seminars' recommendations. The ICJ would support funding applications of national groups aimed at conducting paralegal training and human rights education programmes.

Appreciation

We would like to express our appreciation to all our funders whose support and cooperation made this Seminar possible.

Welcome Address

Mr. Adama Dieng, ICJ Secretary-General

The relationship between law and the process of development has been the subject of debate over the years. Differing views have been expressed regarding the relationship between the two dynamic processes. On the assumption that there is some «tension» between law and development, two diametrically opposed views of the two processes have often been articulated. Skeptics have viewed the law as a tool for repression, the maintenance of the *status quo* and the institutionalization of discrimination and power inequalities. This view portrays a gloomy picture of the law and the institutions of the Legal system as being completely at odds with democratic development - a negation of the Rule of Law, human rights, public accountability, political equality and empowerment.

The opposing view considers law from a more optimistic standpoint. While it agrees with the proponents of the «repression theory» that law is a tool, it argues that as a tool, the law may be fashioned to achieve a variety of purposes. The law, *per se*, could not be blamed. If blame should be apportioned it must be put on those who manipulate the law to serve narrow selfish interests. Used creatively by people of goodwill the argument continues, the law can be devised to effect positive social changes, to release social energies directed at worthy causes and to empower disadvantaged groups in society.

The International Commission of Jurists (ICJ), as an organization committed to the promotion of the Rule of Law and the legal protection of human rights throughout the world, subscribes to the latter view of the Law as an instrument of social change for the betterment of society. The marginalization of sections of the society and the consequences of underdevelopment are clearly contrary to the spirit and purpose of the Rule of Law.

In Africa and other Third World nations, the ICJ's legal services programmes of the past one and a half decades have attempted to address issues relating to the Rule of Law, Human Rights and Development. The basic approach is a practical one. In most African

countries over 75 % of the population resides in the rural areas. Lack of meaningful development has had adverse consequences on the residents of rural areas. The position of rural women is particularly pathetic. Although they are obliged to carry the onerous burden of development, they lack the necessary legal status to effectively participate in the process. In addition to lack of awareness of their rights and the available legal remedies, a variety of religious, customary, legal and attitudinal constraints militate against women's assertiveness and participation in the political processes.

These constraints have to be removed. The Rule of Law, human rights, including the right to development and social justice demand that concrete steps be taken to ameliorate the plight of rural women, disadvantaged and other marginalized sections of society.

In some parts of the world, particularly in Latin America and Asia, ICJ programmes have attempted to deal with this problem through the efforts of community advice services and the use of paralegals in providing uncomplicated basic legal and social welfare services to needy rural and urban communities. These crucial services are provided by the so-called «bare foot lawyers» made up of community workers, youth, women, trade unionists and law students in creating awareness about peoples rights, helping to build organizations, dispute mediation and assisting practising lawyers in preparing cases asserting the rights of the rural and urban poor.

The phenomenon of urban poverty is a new disturbing trend. Its genesis lies in the rural to urban drift occasioned by deprivations of the rural areas. The attraction of the bright lights and «job security» of the urban areas have motivated a large exodus from the rural to urban and peri-urban centres. Unemployment, prostitution, crimes and other social evils, the development of shanty towns and havens of criminals have resulted from this unprecedented transfer of populations. These problems have, in some cases, been compounded by structural adjustment and belt-tightening economic programmes which have further impoverished the urban poor. Community and para-legal organizations are urgently required to deal with these problems.

Unfortunately in Africa, there are relatively few grassroots organizations designed to play this role. This seminar aims to explore the possibilities of taking practical steps to deal with the problems of rural and urban poor and the legal status of rural women.

It is envisaged that the Seminar's basic aims and objectives would be achieved through the following interactive processes:

- i) presentation of country reports detailing factors contributing to the status of rural women;
- ii) discussions to identify common trends regarding the situation of rural and urban poor and the legal status of rural women in the Anglophone West African region;
- iii) discussions led by resource persons on experiences gained from earlier seminars and follow-up country projects;
- iv) formulation of strategies regarding in-country paralegal training programmes and the delivery of legal services to rural and urban poor;
- v) adoption of conclusions and recommendations.

In conclusion, the point should be made that this seminar focusing on the status of women, could not have been more appropriately timed. Taking place less than one month after the historic UN World Conference on Human Rights in Vienna (14-25 June 1993) this seminar serves one of the practical expressions of the Recommendations of that Conference. It is of the utmost importance that attention be paid to the following Recommendations of the World Conference, stressing the close relationship between women's status and their human rights:

«1. The World Conference urges the full and equal enjoyment of women of all human rights and that this be a priority for governments and for the United Nations ...

2. The World Conference stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism ...

3. The World Conference urges governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process ...»

Madam Chairperson, Excellencies, distinguished participants, ladies and gentlemen, on behalf of the International Commission of Jurists, I welcome you most warmly to this seminar.

Opening Address

*His Excellency Mr. K.N. Arkaah,
Vice-President of the Republic of Ghana*

Mr. Chairman, the Secretary-General of the ICJ, Presidents of FIDA and WILDAF-Ghana, Excellencies, Distinguished Participants, Ladies and Gentlemen.

It is with great pleasure that I accept your invitation to participate in the opening of this Seminar on Legal Services for Rural and Urban Poor and the Legal Status of Rural Women. The theme for the Seminar is no doubt instructive, as in many countries issues of human rights, particularly the rights of women, and social justice are not given high priority on the agenda for national development.

As I understand it, the aims of this Seminar are, among other things, to identify factors which contribute to the marginalization and subjugation of rural women, to consider ways of improving the legal status of women and to explore the possibility of involving non-lawyers in the provision of legal services to the poor.

These objectives are indeed laudable, especially when one recalls the famous story of Alice, who is said to have pleaded with the Judge that «I can get no justice at all, seeing that I am poor and that this Thomas is rich... for God's sake, Sir Justice, think of me, for I have none to help me save God and you.»

This story illustrates the urgent need to address the problems posed by the widespread perception of the poor that justice is administered often in favour of the rich and powerful in the society.

Significantly, women form the majority of the poor in many developing countries yet they constitute more than 50% of the African population and are believed to perform at least 70% of every major work in the household. Mr. Chairman, it is sad to note that although the legal concept of gender equality between women and men has been enshrined in such international instruments as the 1948 Universal Declaration of Human Rights and the 1979 United Nations

Convention on the Elimination of all forms of Discrimination against Women, and have been given constitutional and legislative backing in many States, yet in practice our societies have denigrated the roles and status of women.

As you are aware, some of the underlying causes of this gender imbalance include the lack of political will on the part of governments to enforce laws guaranteeing equal rights to women and perhaps most importantly deep-seated prejudices reflected in religious doctrines, customary practices and social attitudes which regard women as inferior. Too often, through the medium of language, education and the mass media, this negative image of women becomes ingrained in our social fabric to the extent that even some women, particularly rural women, would oppose anyone attempting to stand up against these prejudices.

As a result, despite the significant progress made in the enactment of non-discriminatory legislation for the sake of women, there still exists in many countries an implementation gap between these laws and the actual status of women.

Recognizing that such sex stereotyping is a formidable obstacle to the elimination of discrimination against women, the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women stipulates that:

«States Parties shall take all appropriate measures

(a) To modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women» (Art. 15).

I share the view, Mr. Chairman, that no fundamental change in the status of women will be possible without a significant change in the attitudes of men who dominate all spheres of public and private life in our so-called «man's world».

Unfortunately, women's rights campaigners often tend to concentrate their activities among women's groups, thereby neglecting the main architects of their woes - men!

But it is not enough for poor women to know their rights, because any enlightened woman may still lose her day in court if she cannot afford lawyer's fees nor pay for other expenses incidental to litigation. It is therefore commendable that the Seminar aims at finding ways by which legal services can be offered to the poor in order that the gates of justice will be open to them. I am happy to note that already in Ghana a Legal Aid Scheme has been set up under PNDC Law 184 to provide free legal services to persons whose earnings fall below the Government minimum wage. There is also a popular legal aid scheme operated by FIDA (Ghana) which continues to help disadvantaged women in our country.

However, the experience of past and present legal aid arrangements has shown that to succeed, they must be adequately funded, for even the most charitably inclined lawyer will not be willing to use his own pocket money to meet court fees and transportation costs, in addition to the time and efforts he or she will freely offer to the poor. Thus, to rely solely on the enthusiasm of a volunteer legal aid lawyer will be to underestimate the complexity of the task. It is also essential that the eligibility criteria, especially those defining the «indigent» or «poor», be kept under constant review to reflect changing realities so that we do not unduly exclude deserving people from the ambit of the legal aid scheme.

Mr. Chairman, if the poor and women are to avail themselves of any free legal services provided by lawyers and paralegal personnel, then they must first be educated on their rights through the adoption of legal literacy programmes since it is only when a person knows what her rights are that she will approach legal experts for protection when her rights are violated or endangered.

I believe that any people-oriented reform project such as the one envisaged by this seminar, can hardly be effective and meaningful without the active involvement of those who are targeted to benefit from these services. I am sure that the idea of training paralegal personnel - themselves invariably community citizens - was prompted by the need to involve grass roots persons.

It is my fervent hope that out of your deliberations will emerge a workable action programme that will enhance the realization of equality and social justice between the rich and poor, women and

men, to ensure an equitable, balanced and integrated human resource development for sustainable socio-economic development for our countries.

On this note, Mr. Chairman, Distinguished Participants, Ladies and Gentlemen, I have the pleasure to declare the ICJ Seminar on Legal Services for the Rural and Urban Poor and the Legal Status of Women open.

Thank you.

Background Paper on the Legal Status of Rural Women and Urban Poor in Africa

*Ms. Akua Kuenyehia, Senior Lecturer,
Faculty of Law, University of Ghana, Legon*

Introduction

In Africa, women occupy a certain role in society, dictated largely by customs, tradition and sometimes religion. In most African societies, women are regarded as sexual and domestic functionaries. Their worth is sometimes measured in terms of the number of children they bear. They perform a variety of roles as mothers, carriers of water and hewers of wood, and engage in economic activities either to maintain their families or supplement the income of males. They are also the carers of the aged. Yet in spite of all these activities, of providing food, water etc. and promoting the health and well-being of their families and of society, their role is one of subordination. Gender inequalities exist within the family and the society, reinforced to a large measure by social, cultural and religious practices and beliefs which serve to keep women in a subordinate position and give men a dominant role in the society.

This paper will look at the law and women against this background, particularly rural women, in terms of education, health, access to economic resources and employment, property and inheritance.

A. Education

It is said that «Education may well be the area in which women have made the greatest gains in recent decades» (R. L. Sivard, *Women - A World Survey*, p. 18). Most governments have taken steps to remove barriers to entry into school systems and give equal access to boys and girls. They have also enacted laws requiring compulsory education for all children of school age. According to the UN, 161 out of 194 countries with autonomous school systems had education for all children of school age by 1980. Of these countries, most (94 of the 161) required eight to ten years of schooling; 55 required seven years

or less; twelve had ten years or more (R. L. Sivard, see *supra*). As an example, the Education Act of Ghana, 1960, provides for compulsory free education for all children of school age. Article 22 1(a) of the Constitution of Ghana also provides that «basic education shall be free, compulsory and available to all». Similarly, the concept of universal primary education exists within the legislation of most African countries (Mozambique, Swaziland, Zimbabwe, Lesotho, Nigeria, The Gambia, Sierra Leone etc.). Despite the significant body of law guaranteeing full access to education, in Africa, basic elementary education is not yet available to all. Laws that require compulsory education are not uniformly enforced.

Rural women in Africa have a particular problem which hinders their access to education: their traditionally perceived role in society. As a result of this, girls tend to be overlooked by their families and the education of the boys preferred, especially if there are financial constraints; 'naturally', a boy gets the advantage of what little resources there are for education.

The rate of illiteracy among women in Africa is therefore rather high, especially among rural women and the urban poor. Again to take Ghana as an example, the literacy rate of the population aged nine years and over is estimated at 32.5%. The rate for males is 42% and for females only 23% (GLSS 1989).

B. Health

There is an unquestionably close link between the role that women play and how that role affects their health, irrespectively among rural, urban poor or other women. There is also a close link between the rates of infant and child mortality and morbidity, poor nutritional status and the quality of life on the one hand and the situation of women on the other. Women shoulder the responsibility for nurturing children and caring for the sick and disabled. It is important that the health of women be given greater attention in the household, for their own health and their task of providing and promoting health care at home and in the community could be the key to better health for all.

In Ghana, the maternal mortality rate was estimated to be 5-10 per 1000 in the mid 1970s. Life expectancy is generally low for

females in African and other developing countries. There is a strong correlation between low life expectancy and high fertility rates. Countries with the lowest life expectancy for females also have high female illiteracy rates, low *per capita* income and hunger. In Africa, one UN study found that Chad, in 1980, had a female life expectancy of 42 years, fertility rate of 5.9 per woman, infant mortality rate of 143 per 10,000 births. In The Gambia, female life expectancy in 1980 was 44 years, fertility rate per woman was 6.4, and the infant mortality rate was 193 per 10,000 births (R. L. Sivard, see *supra* p. 26).

Factors which affect women's health are:

- i) malnutrition: in Africa, various cultural practices and harsh living conditions are major factors contributing to the malnutrition of women. Traditionally in most African countries, food taboos are imposed on women and men eat first and best, followed by the boys and girls before the women. Where there is a shortage of protein, therefore, women suffer most. Hunger during the lean season effects the health of rural women in particular.
- ii) repeated pregnancies: not only repeated pregnancies but also the shortness of the intervals between them and the age of first pregnancy pose a high risk to the health of women.

The law does not discriminate in the provision or availability of health care between men and women, but like most issues affecting the status of women in Africa, it is the disparity between law and reality that is the problem. Moreover, rural women tend to suffer from the non-availability of health care facilities, even if they are in a position to use them. As noted earlier, women, at the household level are the major providers and promoters of health care; yet they neither influence the provision of facilities nor are they consulted about priorities. Even where facilities are available, their family responsibilities and lack of free time limit their access to them unless they are very near.

Since the move away from the provision of free health care and the introduction of cost sharing care systems by most African governments, the problem of women have been compounded. Within the legal framework of the cost sharing health care system, there are provisions of free health services for people who are unable to afford

the cost of health care. However, the procedures are so cumbersome that the beneficiaries never really benefit from the provisions.

There are some encouraging signs, however. Major changes in governmental health programmes which place greater emphasis on primary health care and community-based health programmes have been introduced in most African countries. Hopefully, this will mean that rural women and the urban poor will have greater access to health care and that their special needs will be met more directly. The overall philosophy of the Primary Health Care System is to reduce morbidity and mortality rates through existing methods of prevention, easy treatment and control.

Customary law sometimes places very serious impediments in the way of women needing health care. In some African societies, a woman is regarded as a minor and as such requires the consent of her husband before she can obtain medical care. This legal disqualification means that she must also obtain his consent before receiving family planning services. This is said to have «less to do with the medical treatment *per se* than with the cultural practice requiring all important decisions to be discussed at the family level», (R.T. Nhlapo, *The legal Situation of Women in Swaziland* in *Women & Law in Southern Africa* Vol. 11, p. 121). This attitude of customary law is apparently totally unaffected by constitutions or legislation which provide for equality of treatment for all persons regardless of sex.

C. Access to Economic Resources

Regarding access to economic resources, we should focus not only on the availability of credit but also on access to land and on matters such as extension services. The majority of the population of most African countries is located in rural areas. Rural women are mostly engaged in subsistence farming and produce more than 50%, probably even 80%, of all the food produced in Africa. Rural women constitute about 50% of all workers in agriculture and animal husbandry.

However, even though rural women are engaged in agriculture, they do not generally own the land they cultivate. In most cases, the land tenure is governed by customary law. Both the customary and legislative frameworks for access to land are so diverse, that a general

analysis is difficult. Suffice it to say that most rural women can farm land but cannot always own the land they farm. In Ghana, rural women either farm their land through family ties and lineage, or through marriage, or as settler farmers. Where the woman has access to land through her husband, the security of her tenure often depends on the survival of her marriage. Occasionally, but not often, women are given outright gifts of land by family or husbands. Although they farm particular tracts of land, they almost never benefit from the activities of agricultural extension services, so that they do not acquire new ideas and techniques in agricultural production.

Rural women, like most other women have very little access to traditional means of credit. The legal regime for granting loans effectively cuts off most women. Very few rural women have bank accounts and even fewer have the collateral or other security required for the granting of loans. The various structural adjustment and austerity economic measures taken by African governments in order to revive their ailing economies have resulted in more strains on rural women and the urban poor. They tend to work longer hours with less pay and their purchasing power is further limited. Without access to economic resources, they have very little chance of entering the cash economy. Recently, to combat the problem of access to credit by rural women and others, a system of People's Banks and Community banking systems has been established. In Ghana, these rural banks offer credit without the usual requirements of the regular commercial banks. Experience shows, however, that credits from the rural banks go to women traders and those in organized groups. More recently in Ghana, Women's World Banking and Credit Union Associations as well as other NGOs are trying to bridge the gap. The impact of these groups is as yet rather limited and many women in the rural areas are unable to break out of the debt and poverty cycle.

D. The Right to Property and Inheritance

With respect to property and inheritance, the rural woman in Africa is neither worse nor better off than her counterpart in urban areas. Under customary law, most African women do not have the right to property which they helped their husbands acquire during marriage. Court cases in Ghana have ruled that it is a woman's duty under customary law to help her husband in his engagements, though this gives her no share in the property that he acquires in the course

of their marriage. Furthermore, where customary law does allow females to inherit property, whether under a matrilineal or patrilineal system, it is only for their life time. They cannot pass property on to their children. Only males can do so. Under customary law, at least in Ghana, widows fare the worst. They have no clearly defined rights to the estate of their deceased husbands. To varying degrees, they obtain the right to occupy their deceased husband/father's self-acquired house and to be maintained out of the estate.

Since 1985, legislation has been put in place in Ghana which seeks to apply uniform rules to all persons without regard to ethnic or tribal background. The fact that eight years into that legislation we are still battling with the problem of unfair treatment of widows and children is testimony to the tenacity of customary laws and norms. In spite of the existence of this legislation, the situation of widows has not much improved. One would hope that this is due to the fact that attitudes are slow to change. Hopefully, as knowledge of the law spreads and as other attempts at rights awareness within the country gain ground, women will have greater rights to property and inheritance.

E. Women's Legal Rights

Most countries in Africa have embraced the concept of equality of the sexes and have established constitutional and other legislative provisions guaranteeing equal rights to both men and women. Constitutions clearly define the scope and content of this equality. According to the 1992 Constitution of Ghana, «A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status» (Art. 17.2). The Constitution goes on in various articles in Chapter 5, consecrated to fundamental human rights, to define the scope of this non-discrimination: «A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a Will» (Art. 22.1); «Parliament shall, as soon as practicable - after the coming into force of this Constitution enact legislation regulating the property rights of spouses (Art. 22.2); «All customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited» (Art. 26.2).

The problem with women's legal rights, however is the gap between Constitutional and legislative guarantees and social reality. In some cases, traditional, social and religious practices continue to strictly enforce women's subordinate status. In spite of Constitutional guarantees, customary practices are accepted which severely limit the rights of women.

The lives of women in rural areas have deteriorated dramatically with the global economic crisis and the attendant structural adjustment and other austerity measures. Cut back in social services, greater unemployment and reduced purchasing power all limit rural women and the urban poor. «Of all those who live in poverty, women who are the rural poor of the Third World are a special case. Most numerous of all, they are also the most disadvantaged. An 18 hour working day is not uncommon for them. Overworked, undertrained, often undernourished and illiterate, they account for more than half the food produced in the region and for as much as 90% of the family food supply of rural Africa» (R. L. Sivard, see *supra*, p. 17). Economic equality measures the degree to which women can expect equal treatment with male co-workers. It is also an index of the ability of women to participate in economic life including the right to own, manage and inherit real property. Turning legal guarantees into economic reality requires actions by government, NGOs, employers, landers and others who exercise economic power.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the UN in 1979, is the central and most comprehensive international treaty on women's rights. The Convention emphasizes that the denial of equal rights and opportunities to women who form half of humanity is a gross violation of human rights and warrants due attention from governments and the International Community. More importantly, the Convention contains practical instructions for governments of States Parties exhorting them to guarantee the exercise of the rights expressed in the Convention. Article 14 of the Convention pays special attention to the needs of rural women and requests all States Parties to take appropriate measures to ensure their equal participation in development, access to health care and family planning services, the right to benefit directly from social security, the right to training, access to credit, loans, marketing facilities, appropriate technology, equal treatment in land and agrarian reform and resettlement and the right to adequate living conditions - housing, sanitation, electricity, water - among other things.

According to the African Charter on Human and Peoples' Rights, «The State shall ensure the elimination of every discrimination and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions» (Art.18.3).

Article 1 of the same Charter declares that «The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them».

Thus the African Charter on Human and Peoples' Rights, by creating a deliberate linkage between it and International Conventions like the CEDAW and the Universal Declaration of Human Rights, makes these declarations legally binding on States Parties since the Charter establishes binding obligations on them. The problem, however, remains that even though many African countries have ratified these international human rights documents, they are slow to adopt the necessary legislation to make them directly applicable to the population, and even where legislation is adopted, the political will to enforce them is often lacking. In this light, the extension of the principle of gender equality from broad guarantees to specific programmes puts new emphasis on consciousness-raising and the positive allocation of resources to correct past discrimination.

The majority of rural women are not merely poor; they live on the edge of subsistence. They are economically dependent, vulnerable and politically and legally powerless. If they are to be helped out of their helplessness, positive reallocation of resources must be established to meet their needs and they must be put through consciousness-raising programmes to enable them to question their circumstances and seek redress for the injustice they suffer. Providing them with legal services, I believe, is one step in the long way to empowerment. The under-development of rural women and the urban poor is really to the disadvantage of the population at large. The State is deprived of a sizeable percentage of human potential. If, as has been noted, rural women produce the bulk of the food consumed within their countries and they do so using rather primitive tools, then it is obvious that given access to appropriate, simple technology and to facilities that will improve their health, they will produce more, not only for local consumption but for export. The loss

to the various countries in terms of national development is immense and it will be in the interest of States to improve the status of women so that they participate in national development.

Country Report - The Gambia

Mrs. Aminatta Loïs Runeni N'Gum

In The Gambia, the law governs the everyday life of individuals male and female; whether as Common law; Statutory Provisions, Islamic and/or Customary law. In their daily transactions, unknown to them in most cases, men, women and children are dealing with legal issues. This is because the legal relations that arise out of the law, affect an individual from the womb to the grave. These are legal provisions for maintenance during pregnancy, punishment of those who cause illegal abortions, birth registration, maintenance and welfare of the child after birth, education, rights and duties towards parents and other individuals, e.g. in marriage, divorce and maintenance of children, spouse and other dependants.

Furthermore, the law governs the right to property; how it is obtained and disposed of; contracts in business transactions; torts and crimes in personal transactions. And, last but not least, law governs the individual's burial rights and the disposal of his estate thereafter. Thus women in The Gambia, whether rural or urban, rich or poor, are governed by rules and regulations everyday.

However, most women are not aware of this. "When women think of the law and legal system, they tend to think of lawyers, courts, judges, the police, imposing institutions, a world altogether out of reach. However, we need to challenge and change this situation. The more we can learn about the legal system and how it works, the more chance we have of actually using it to secure the rights to which we are entitled and of changing those parts of the system that discriminate against us." (Adapted from *Empowerment and the law* by Margaret Schular (ed) OEF International 1986 and quoted in the *Tribune Women and Development Quarterly on Women and Law*, July 1990).

Background Information

The Gambia is an Anglophone country with an estimated population of 810,000 and a *per capita* income of US \$ 200. The economy is mainly agrarian and monocultural. The country is highly dependent on trade, importing about one third of its food

requirements, all of its fuel and capital goods and most other manufactured goods. Since Independence in 1965, The Gambia has consistently practiced democratic pluralism. The 1970 Republican Constitution has an entrenched Bill of Rights which can only be amended by a national referendum. General elections are held every five years. The President is elected directly by popular suffrage. Presidential and parliamentary elections are held simultaneously.

The legal system is modelled on the English legal system. The received English Law and Common Law of England are applicable and administered alongside the Sharia (Islamic) Law and Customary Law.

The Gambia has always strived for the universal adherence to human rights norms and is a party to most conventions and treaties on human rights. The African Charter on Human and Peoples' Rights, the International Covenant on Social, Economic and Cultural Rights, the International Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

The Gambia has over the years endeavoured, as much as possible and within its limitations, to implement the standards set out in the various treaties and covenants to which she is a party. Some of the above-mentioned rights have already been provided for in the 1970 Republican Constitution. All persons living in The Gambia or who are subject to the jurisdiction of The Gambia, enjoy the rights guaranteed under the Charter and the various covenants and treaties without distinction as to race, colour, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status.

Chapter 3 of the Constitution provides for a wide range of rights whose enforcement is ensured by an independent judiciary. Sections 14, 16, 17 and 19 guarantee the "Right to life, Inviolability, Integrity of the Person and the Right to the respect of the Dignity Inherent in Human Beings."

Since Independence in 1965, of all the 87 persons sentenced to death, only one was executed, under exceptional circumstances, immediately after the abortive coup of 1981. Death sentences

imposed by the Courts consequent upon a murder charge have, in practice, always been commuted to a custodial sentence. The Gambia has now abolished the death penalty, and is looking forward to becoming a State Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

In this Report, I intend to look at the following as the Seminar's Aims and Objectives:

- the identification of factors contributing to the legal Status of rural women. I will also deal with urban women since the legal status is the same;
- the exploration of ways of improving the status of rural and urban women through the provision of legal services.

1) Identification of Factors Contributing to the Legal Status of Women

a. Personnel

I believe that despite all the constitutional provisions etc., guaranteeing human rights for all persons, the lack of adequate infrastructure and personnel has prevented women from enjoying these rights. The highest Court of Appeal is still the Privy Council. Because of the cost involved, and the fact that one has to get a Queen's Counsel (QC) in England to be represented, I cannot see how any rural or urban woman can avail herself of this right to appeal to the highest Court. The Gambia Court of Appeal is based in Banjul only. At present, Court n° 1 of the Supreme Court is what they use for their Sessional sittings. The President of the GCA is Ghanaian. The Gambia government is going to obtain the other two Appellate Judges from other Commonwealth countries. Soon the GCA is expected to be sitting as a Permanent Court. The Supreme Court of The Gambia is comprised of five Courts with the Chief Justice and four Puisne Judges. Only one Puisne Judge is a Gambian and is retired and no women have been appointed as Puisne Judges.

Finally, the lowest Courts (Subordinate Courts) comprise seven Magistrates Courts in Banjul, one in Kanifing and five in the Western Division, North Bank Division, Lower River Division, MacCarthy Island Division and Upper River Division. The Magistrates have

both Civil and Criminal jurisdiction to hear and determine cases in these Courts. However, only three Magistrates are legally qualified. The other six are Retired Civil Servants appointed as Magistrates Class II. They have no legal experience and do not receive any training before they start sitting. Magistrates Court Houses are available in five areas, whereas two use the District Tribunal Court Structures for sitting. Appeals are made to the Supreme Court.

The Qadi's or Mohammedan Courts are only found in Banjul and Kanifing. There are two Qadis, one at each Court, who are learned in Islamic Law. They preside over cases in personal law - marriage, divorce, inheritance, succession, donations, testaments, guardianship and civil status. They have inadequate infrastructure when one considers how many women and children turn up in these Courts. Appeal from these Courts lies to the Supreme Court of The Gambia where a Judge will have to sit with two Assessors. Few cases from these Courts go on appeal.

In the rural areas, there are six groups and 35 District Tribunal Courts manned by all male Chiefs and Headmen who are usually literate in Arabic but not English. They deal with the same cases as Qadis, as well as Customary Law, Land Law, and minor civil and quasi criminal cases such as those relating to the environment and cutting firewood without a permit. Women in the rural areas appear before these courts more than before the Magistrates Courts.

Lawyers are not allowed to represent any person before the Mohammedan Courts nor the Group or District Tribunal Courts. A lawyer would have to apply for special permission from the Chief Justice. Very few lawyers have made the application. Appeal lies to the Supreme Court of The Gambia where a Judge sits with two Assessors.

b. Women in Decision Making Positions

As mentioned above, there are no women in Group and District Tribunals, Mohammedan Courts, the Gambia Court of Appeal and the Supreme Court. There are now nearly 20 female lawyers on the Bench and in the Private and Public Services.

There are no women Ministers in cabinet. No women were elected to Parliament following the 1992 elections although four women were candidates for various parties. Women do not seem to want to vote for and return members of their own sex to power. However, there are four women who have been nominated Members of Parliament and only one of them is a Parliamentary Secretary.

c. Statutory Laws that Are Archaic

Although after Independence, so many Statutes were passed, S 4 of the Law of England Application Act 1965 states that for those provisions that are not covered under the Laws of The Gambia, one has to resort to the Law in England as at February 1988. These laws are no longer applicable in England and are not readily available there. They are, therefore, not readily available in The Gambia. Other laws have also not been revised since Independence. Even new laws such as the Labour Act 1990 specifically states that those in domestic service are not protected. Most domestic workers are poor urban women.

d. Mohammedan and Customary Laws

These laws are to be found in the Koran (Sharia) and the Hadiths. They are not codified and it is very difficult to ascertain what one's personal law really is as the interpretation is always made by men. Even when rights are guaranteed by statute such as The Maintenance of Children Act 1988, and although the best interests of the child are considered paramount, one finds that the child's personal law is used for custody.

Even when Statutory Provisions give rights to women, the interpretation of Mohammedan and Customary law tramples on these rights. The Married Women's Property Act and the State Lands Act 1990 for instance, give rights to women to own property as *femmes seules*. Yet according to Customary Law the women have no right of ownership to the land they cultivate or the houses they live in.

e. Ignorance of the Law

Due to lack of education most women are not aware of their rights, whether they are rural or urban, rich or poor. Thus, even

where there are Statutory provisions such as The Matrimonial Causes Act 1986, one finds women suffering because they are unaware of their existence.

When the Law Reform Commission came up with proposals for a Moslem Marriage (and Dissolution) Bill 1987, the provisions contained therein did not become law because during workshop and seminars to sensitize all persons, both men and women were against it due to ignorance of the provisions in the Sharia. Ignorance of the law also make women accept traditional practices, which are repugnant to natural justice such as:

- female circumcision - not a religious requirement;
- food taboos - pregnant women should not eat eggs or fresh meat;
- health taboos - food pounding when pregnant;
- widow inheritance;
- labour taboos - only women do housework.

In fact it is the women themselves who perpetrate these discriminatory practices since research has shown that the education of the women improves the health of the family. It is incumbent on the government and parents to treasure the education of their female folk.

f. Attitudes of Society and Law Enforcement Agencies

Unfortunately, the belief that wife-battering is sanctioned in the Koran has led the law enforcement agencies not taking their role seriously when a woman goes to them for redress. Cases of rape and sexual abuse of women and girls have been reported but very few have been prosecuted. The attitude of society as well as the fact that in most cases the culprits are members of the family of the victims, and that families decide to hush the matter, are seen as protecting the victim who will be open to ridicule if she or her family insists on taking the matter to Court.

g. Cost of Litigation

Besides the fact that the lawyers are to be found in Banjul, the cost of litigation is so high that most rural and urban poor cannot

afford to take the matter to Court when the need arises. This is a deterrent to many women who would otherwise have instituted legal proceedings. There is no control on what lawyers may charge the client.

h. Economic Empowerment

Most women are not economically independent due to lack of capital. The Banks offer loans at high interest rates (26% at the moment). Even when women attempt to apply for these loans (the banks are few and mainly in Banjul) they lack collateral in the form of property or land as stated above. Other lending institutions such as The Gambia Women Finance Association have constraints in the Resources available to them. Other NGOs such as GAFNA, CRS, Save the Children; Sorooptimist International, etc., are assisting women in various ways.

Finally, projects that are meant to benefit women usually end up benefitting men. The Jaharr Pacharr Rice Growing Project is an example where initially the plots and loans were allocated to men as heads of household, yet they were not working on the rice fields.

2. Exploring Ways of Improving the Status of Women through the Provision of Legal Services

- Adequate infrastructure should be provided especially in the rural areas. The present open District Tribunal Courts should be built into proper structures.
- Laws that affect women should be written into Sharia Law and Customary Provisions. One cannot repeal or revise laws that are not written.
- A legal Aid Clinic should be open in Banjul and/or the Greater Banjul Area. The African Centre for International and Comparative Law has set up a Committee to look into this.
- A permanent and pensionable post of Legal Adviser should be provided at the Women's Bureau.

- The Information Education and Communication Component of the Women in Development (WID) World Bank Project should be used to provide training for Paralegals.
- Legal education programmes should be included in both formal and informal education e.g. when the Judiciary held a Symposium on "The Protection of Women and Young Persons under the Law" in 1990, students and teachers attended and showed great interest, especially during question time. They indicated that it would be useful if more programmes were provided.

The Women's Bureau has also conducted training programmes for Ngangs Simbas (female circumcisors who are also the traditional birth attendants) in human rights principles; health, etc.

The United States of America Embassy (Human Rights Fund) has been used to train the District Tribunal members and their scribes.

The NGOs who have training programmes for their women, should include a legal session to educate them on their rights (The Gambia Women Finance Association already does).

The Non Formal Education Unit should be encouraged and trained to include legal education in its programmes.

- There should be recourse procedures and Centres that women can resort to in case of violation of their rights. For instance in the Police Station, a unit manned by a woman police constable should be opened to deal with domestic and family complaints.
- Government Policy Interventions :
 - A Family Court should be provided.
 - Education should be free and compulsory.
 - The minimum age of marriage must correspond to the child's maturity e.g. 16 or 18 years. Since the Criminal

Code provides that sexual intercourse with a child under 16 is a crime, a child under 16 should, therefore, not be forced into marriage as is the case in Moslem and customary marriages.

- Pregnant school girls should be allowed to continue with their education.
- NGOs working with women should be given supportive policy and legislative provisions.
- Environmental issues such as stopping destruction of the forest are necessary as long as an alternative cheap source of fuel is provided.
- Ensure that projects meant for women do reach the intended beneficiaries.
- Ensure that programmes training women in modern technology should be provided, to enable them, for instance, to operate the machinery, oil pressing machines, milling machines that men operate on their behalf.
- The Poverty Alleviation Programme should include Legal Education Programmes.
- A National Marriage Guidance Council should be formed.
- Provision of an Ombudsman's Office.
- Provision of a prison for women and borstal for children and young persons.
- The Constitution of the Courts should be looked at so that the Supreme Court should be called the High Court as in other Jurisdictions. And let a Supreme Court be the final Court of Appeal, based in The Gambia whether as a permanent or Sessional Court.

Finally, I hope that our women lawyers will be encouraged to form a national FIDA and/or Wildaf.

Thank you Madame Chairperson.

Country Report - Ghana

Ms. Dorcas Coker-Appiah

In Ghana, access to any form of legal service, whether for civil or criminal matters, can be obtained if a person has the means to pay for the services of a lawyer. An indigent person charged with a capital offence would be assigned a court-appointed lawyer. Since 1985, a person can also have access to legal services by applying for legal aid under the National Legal Aid Scheme or from FIDA Legal Aid. Under Article 294 of the 1992 Constitution, provision is made for legal aid to be offered to a person «for the purposes of enforcing any provision of the Constitution in connection with any proceedings relating to the Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings». Clause 2 of this Article, however, goes on to state that Parliament shall, by or under an act of Parliament, regulate the grant of legal aid. As this Article is a virtual reproduction of similar provisions in the 1969 and 1979 Constitutions, it would be interesting to see if this Parliament would enact the necessary law to give effect to this Article. The two previous Parliaments did not.

For the rural dweller or urban poor, contact with a lawyer for services of any kind is considered a big financial risk which should not be attempted. Legal fees are such that most rural dwellers and the urban poor cannot afford to engage the services of a lawyer, no matter how good a case they may have. Small wonder that lawyers are regarded as the friends of the rich and powerful, being themselves a part of the upper class.

The fact that lawyers are found mostly in the cities is one reason why, for the rural person, the lawyer is unapproachable. For the rural person who has the means to engage the services of a lawyer, even finding one may be a problem, since Ghanaian lawyers do not operate in rural settings. Therefore, for the rural person with the necessary resources, to obtain the required legal services, means a trip to the city.

Lawyers should not be blamed however for this state of affairs. The Courts, which are their hunting grounds, cannot be found in the

rural areas. In fact, until about 18 months ago, all superior courts of judicature were situated in the regional capitals, and not all district capitals have magistrate courts. All High Courts in the country are located in the regional capitals with the exception of about eight new ones opened within the past year or so in some district capitals. With the majority of the High Courts as well as the Court of Appeal and the Supreme Court located in Accra, it is no wonder that about 85% of the lawyers on roll are located and practising there. The remaining 15% or so are distributed among the nine regions with Kumasi taking about half the number. The point being made here is that sometimes it is not only the lack of financial resources which restricts access to legal services but the unavailability of legal personnel as well; hence the situation in which an old «letter-writer» plying his trade at the local post office, ends up preparing legal documents having no bearing upon the issues the parties intended to have put into legal language.

In January 1985, the Ghana Branch of the International Federation of Women Lawyers (FIDA), started a legal aid programme for indigent women and children in Accra. The FIDA Legal Aid Scheme originally started in premises released by the Ministry of Social Welfare once a week on Wednesdays for the clinic. FIDA members volunteered their services every Wednesday at the Legal Aid Centre. The programme offers not only counselling services but also Court representation. An important element of the legal aid clinic which has made the Centre very popular is settlement and reconciliation, rather than litigation.

The Legal Aid Programmes started with no funds except contributions made by FIDA members themselves. However, since 1988, there has been continued sponsorship from the World Council of Churches, making it possible for the Centre to rent premises and to give an honorarium to one member to be in the office throughout the week, in the mornings. In addition, there are two National Service personnel who assist in the office and sometimes represent clients at the Family Tribunals under the supervision of senior members. As stated earlier, the FIDA Legal Aid was set up to offer legal services to indigent women and children. However, as the programme became widely known, men also started to seek our services and now they form about 15% of our clients each year.

The FIDA Legal Aid is entirely free to persons who go there. As a result, it became necessary to devise a means of ascertaining those

persons who actually qualify for free legal aid. The test used is not very strict, in order to allow the qualification of as many persons as possible. Persons with an income of about C50,000 a month with dependents would qualify. In fact, each client is treated differently. Sometimes, even if a client can afford to pay for the services of a lawyer, FIDA will take up the case if the facts are of particular interest to us. Some clients have asked FIDA to handle their case even though they do not qualify because they feel our volunteers will handle it better. At the end of the case, these clients make a contribution to the Centre.

As already mentioned, we try to settle most of the cases that come to us without resort to Court. This saves clients the costs of litigation such as filing fees, usually borne by clients, and tends to prevent family feuds resulting from litigation. (Mainly family cases come to us).

Unfortunately, due to the fact that the Legal Aid Clinic is being run on a part-time volunteer basis, we have had to restrict the kind of cases we handle, especially those which tend to be contentious and lend themselves to long delays. These cases are normally referred to the national Legal Aid.

The FIDA Legal Aid Programme has a legal literacy component which aims at educating the general public, especially women, on some of the laws that affect their everyday life. For the past five years, a series of seminars has been organized throughout the regional capitals to educate the public on the provisions of four laws: Intestate Succession Law, Marriage Laws, Maintenance of Children and Wills Act. Since the beginning of this year, these seminars have been held in some district capitals in the Volta and Ashanti Regions and plans are afoot to go to the Brong Ahafo and Western Regions before the year ends. At these seminars, FIDA personnel explain the provisions of these laws in as simple a language as possible and in the local language spoken in the area. Then participants are allowed to ask questions. Experience over the past five years has shown that the questions asked are usually based on facts which are personal. The response to a personal question enables the person to understand the law better.

Here again, even though FIDA has the noble objective of providing legal services for women, especially indigent ones,

throughout the country, it has not been possible to achieve this objective because the Legal Services Centre is in Accra and all the volunteers are in Accra. In fact, one problem that FIDA has been facing is that at the end of these seminars, people with legal problems feel the need to assert their rights but are unable to do so because the resource persons (who are all volunteers) leave as soon as the seminars are over and no other legal personnel are immediately available. The need for some legal personnel to provide follow-up after legal education programmes cannot be over-emphasized.

In September 1992, FIDA Legal Aid, in conjunction with Women in Law and Development in Africa (WILDAF) organized a legal education workshop for women leaders in Accra. The Workshop, which was a pilot one, was aimed at educating women leaders with a view to empowering them and also equipping them with the necessary skills so that they, in turn, could educate the members of their associations on the contents of these laws. During evaluation at the end of the workshop, participants urged the organizers to expand the programme to include two other laws.

Therefore, in May this year, WILDAF in collaboration with the National Council on Women and Development (NCWD) organized the first Training Workshop for Women Leaders in the Western Region at Takoradi. The four laws that formed the basis for the training are Intestate Succession Law, Wills Act, Marriage Laws and Maintenance of Children. These laws were chosen because they are the ones most women come into contact with at one stage or another in their lives. In addition to the four laws that were treated, the training programme had a rights awareness and a leadership skills component. It is the view of the course designers that for women who were being trained to be more effective, there was the need to raise their awareness about the issues raised by the laws and to give them the necessary self-confidence to enable them to assert themselves and impart the knowledge acquired to the other members of their various associations.

These women leaders are expected not only to impart the contents of the law to other women, but also to act as paralegal advisors to their communities in respect of these laws. The leadership skills component of the programme, it is hoped, will enable them to undertake their assigned roles confidently.

A training programme of this nature is expensive and funds have to be mobilized before starting one. For the course to be effective, participants should all reside at one place, which involves feeding them and providing accommodation, as well as the other materials for running a course.

In 1987, two years after the commencement of FIDA's Legal Aid, the government sought to bring legal services within the reach of the ordinary Ghanaian when it enacted the National Legal Aid Scheme Law, PNDCL.184. The law created the National Legal Aid Board which was given the responsibility for running the scheme throughout the country. Even though the law was enacted in 1987, the Board did not commence its work until early 1989. Up until now, two Regions, Upper East and Upper West have not had their regional committees inaugurated, which means that six years after the promulgation of the law, the people of those two regions have not derived any benefit from it. Again, even for those regions that have their legal aid committees functioning, the offices are located in the regional capitals, which means the rural person must incur extra expenses to travel to the regional capital to seek legal aid.

Under the National Legal Aid Scheme, the Regional Committees select clients who are eligible for legal aid. The law states that any person who earns the minimum wage qualifies to receive legal aid. However, in some cases such as landlord and tenant, any person can obtain legal aid. The selection committees meet once a week to interview clients and to decide the kind of service they need, whether legal representation or counselling. The committees generally operate on the lines of the FIDA Legal Aid.

Under the National Scheme, clients are assigned junior lawyers, most often National Service Personnel, under the supervision of senior lawyers. Other lawyers may apply to the Legal Aid Board to be assigned legal aid cases for which a modest fee is paid. It is heartening to note that more and more lawyers are placing their services at the disposal of the Board.

One drawback of the National scheme is that as the Regional Committees all operate in the regional capitals, their existence is not widely known, if at all, outside of these capitals. Information available at the Greater Accra office shows that about 90% of the cases handled are from within Accra and its immediate environs. Happily, the

Ashanti regional Committee has seen this drawback and has started campaigns in some towns in the Region to inform the public about the availability of free legal services in Kumasi.

From the above, it can be deduced that legal services for the rural areas are grossly inadequate due to (i) the lack of legal structures and (ii) the lack of legal personnel. These two factors, combined with the high cost of legal fees, puts legal services out of reach of the rural poor. As far as the urban poor are concerned however, lack of financial resources coupled with ignorance about free legal services are the factors which restrict their access to legal services.

So long as the courts are situated in the cities and urban centres and lawyers operate in the cities, rural people will continue to be denied legal services. However, with the National Legal Aid Scheme, the situation can be improved provided the rural person is made aware of the services available under the scheme. From the experience of FIDA, seminars are effective tools to raise awareness about laws and the existence of an organization which is available to offer free legal services. Interestingly, attendance at our legal aid clinics increases immediately after our seminars, especially if there is media coverage of the event.

It is the belief of the writer that any improvement in legal services is not effective unless an awareness programme is mounted to make people aware of their rights and obligations under the law and to make them want to assert those rights by whatever structures are available.

Obviously, an improvement in available legal services cannot be achieved without the necessary legal personnel to provide them. The National Legal Aid Scheme should have full time legal staff to be supported by the national Service Personnel in all the regions. The staff could then provide «mobile legal services» by moving from one town or village to the other. This will be taking the law to the doorstep of the people who most need it. Moreover, FIDA has plans for a mobile clinic in the not too distant future, funds permitting.

One other way of improving legal services is to have more lawyers volunteer their services free to the communities from which they come. This would seem a small price to pay for all the help and support the community might have offered them at one time or

another. However, since trained professional legal personnel are not often keen to offer their services free, there is need of a core group of people with some legal knowledge, not necessarily professionals, who can offer some advice in their localities as to where to go for the kind of service required. This is where the training of paralegals would be most useful. However, it is my view that the role of these paralegals would be most useful. It is my view that the role of these paralegals should be restricted to legal education and rights awareness programmes, to avoid situations in which paralegals might begin to hold themselves up as lawyers (and in the rural areas, this is quite possible), leading to situations not intended by the promoters of paralegal training. It is important to stress, however, the need for a referral point to which paralegals would direct people who need legal services. This is where an improved national legal aid scheme with permanent staff would be most beneficial.

FIDA's legal aid programme and WILDAF's training programmes have women as the main target group because the two organizations have felt that women need the most encouragement to bring them up to the level of the male in society. The legal status of Ghanaian women has been brilliantly discussed in the background paper, so there is no need to go over the same grounds.

Our constitution guarantees equal rights for the women of this country who form 51% of the population, the backbone of agriculture, yet do not form part of the policy making process, nor are they consulted. I can only conclude by saying that 51% of a nation's population cannot be ignored in the developmental process and that women would play their rightful role in the nation's development if they were empowered to know their rights and to assert them.

Country Report - Liberia

Mr. Parlee B. Kweekeb

Introduction

In November 1989, in Banjul, The Gambia, a Liberian delegation comprising Counsellor B. Mulbah Togbah and your humble servant attended a conference similar to the one we are now attending. At that seminar, our delegation acknowledged the need for legal services for rural and urban poor in Liberia on an institutionalized basis. We decided that efforts would begin in Gbarnga, a city centrally located, some 140 miles from Monrovia.

Immediately upon our return to Liberia, jointly and individually we began to make regular visits to Gbarnga to personally contact students, teachers, nurses, social workers, chiefs, elders, etc., individually and in small groups, with the primary objective of persuading them to support and volunteer their services. Simultaneously, we began similar talks with government officials, heads of various political parties, interest groups, the Liberian National Bar Association, women's groups, Justices, Judges, Magistrates and Justices of the Peace, law firms and others in and out of Monrovia, seeking their understanding and support. Through these talks, we became increasingly aware of the problems to expect and how to approach them. But our efforts were soon to be frustrated by the Civil War.

Proposed Organization

In December 1989, we had conceptualized a programme in the following terms, entitled Legal Services for the Poor and Disadvantaged (LESAPD), a non-profit-making association providing a medium through which lawyers, paralegals and others shall contribute to the welfare of the needy. Its objectives shall be to:

- a. expeditiously and inexpensively render legal services to the rural and urban poor and the disadvantaged;

- b. promote transparent justice and equality for all alike, regardless of socio-economic status, race, sex, creed, place of origin, etc;
- c. educate and sensitize the public (particularly the poor) regarding fundamental, human and constitutional rights and corresponding duties and responsibilities;
- d. promote the status of women in general and rural women in particular.

Personnel, Funding and Support

LESAPD will be largely serviced by volunteers of lawyers, paralegals, social workers, health workers, teachers, students, chiefs, elders, community and other group leaders who will help promote the objectives of the Association; lawyers and paralegals will be urged to give certain minimum man hours periodically. But due to the devastating effects of the Civil War, it is unrealistic that people would give free services as before. Therefore, funding and support by the ICJ, foreign donors, individuals and institutions are indispensable; rental fees, equipment, granting of honorariums and employment of permanent support staff are all needed. Government support and cooperation will be encouraged.

The Situation Regarding Legal Services for Rural and Urban Poor

The Liberian Constitution guarantees the right to counsel and the rights of counsel in every case. This right is however conditional in both civil and criminal cases. In a criminal case, the Republic shall provide a defence counsel if the person criminally charged is unable to secure representation of his choice.¹

1 The Constitution of Liberia (6 January 1986) Article 21(i): «The right to counsel and the rights of counsel shall be inviolable... where a person is accused of a criminal offence, the accused shall have the right to counsel of his choice; and where he is unable to secure such representation, the Republic shall make available legal aid service to ensure the protection of his rights».

The New Judiciary Law provides for the appointment of a defence counsel for each county.² However, a person who is claiming indigence must verify the same under oath and file the required affidavit with the appropriate court. In the absence of such verification and filing of such affidavit, no lawyer is permitted to represent the accused or otherwise render him legal services.³ The appointment of one defence counsel for an entire country, where there are usually numerous cases involving indigents, is inadequate. Moreover, the requirement of verification of indigence as a prerequisite to rendering of free legal services carries with it a cost factor thus creating obstacles even for the lawyer who wishes to volunteer his services to the indigent.

In civil proceedings, a party may be represented in person or by attorney or both. Provided that it is in the court of a stipendiary magistrate or justice of the peace, a party may be represented by his next of kin (namely spouse, parent, brother, sister, son or daughter), but he may not be represented by another person and an attorney except by consent of the court and due notice to the other party.⁴

Marriage and family relations are among the most common matters of concern among the rural and urban poor. Customary marriage is most prevalent among the rural poor and disputes therefrom are cognizable before tribal chiefs and governors; and appeals therefrom go to the Ministry of Internal Affairs and finally to the regular courts of law, if need be for such adjudication.

The interpretation of the customary marriage by our courts of law to the effect that the wife under such marriage is a property of the husband is something which causes concern with regard to the legal status of women, especially in rural areas. I am of the opinion that this is a gross misinterpretation due to ignorance of the understanding of customary marriage by the earlier writers and jurists. This misunderstanding seemingly derives from the traditional requirement that a token be given to the parents of the bride to consummate or

2 The New Judiciary Law, Chapter 19, Section 1.1.

3 The Code of Moral and Professional Ethics, Rules 12 and 13.

4 Liberian Code of Laws Revised Title I (Civil Procedure Law) Volume I, Section 8.1.

legitimize the marriage. Such token is not a price, but a symbol of appreciation by the groom to the parents of the bride for their upbringing of a good quality and marriageable partner. This misconception-that the token is a bridal price - is largely responsible for the misinterpretation which we must correct.

Chapter III of the Liberian Constitution guarantees the fundamental rights of all persons; it provides, *inter alia*, that all persons are equal before the law and are therefore entitled to equal protection of the law. It also states that no person shall be held in slavery or forced labour, nor shall any person deal in slavery or forced labour. Our laws further recognize customary laws and practices which are not inconsistent or repugnant to the Constitution and statutes.

But it would be unconstitutional for anyone to 'buy' or pay a price for a woman; for such contract will be illegal and against public policy and thus void *ab initio*. It is therefore inconsistent that our case law recognizes customary marriage, yet describes such a woman under this marriage as a property of her spouse.

Therefore, in customary and traditional or tribal matters, it is essential that those who understand the law and the customs and traditions of a particular group or tribe begin the effort of harmonizing these customs and traditions with the fundamental, human and/or constitutional rights of those involved to ensure that such rights are respected. For example, the traditional *poro* and *sande* societies for males and females respectively, generally practised by most tribes in Liberia, have gradually improved with respect to health and sanitation, with the resulting effect of respecting certain fundamental and constitutional rights. It is through these societies that men and women are trained and educated traditionally to become good and productive citizens. We, therefore, strongly believe that with the establishment of good relations with the elders by the legal service participants, the negative aspects of our Liberian traditions and customs - and African, for that matter - can be eliminated while developing for posterity the positive aspects in harmony with human and fundamental rights.

Other matters in which public education and awareness are needed include property rights and decedent estates, contracts and torts. For instance, in the area of realty, the rural poor must be

educated on how to own and perfect title to land; the mere occupancy or development of a government land does not perfect title, but grants only an inchoate right to such land. To own a land in fee simple from the government, one must possess a title deed to same; the principle of adverse possession being inoperative against the Republic.

The Judicial System and Practice

Our judicial system adheres to the common law of England and the United States where our laws are silent. The system comprises courts not-of-records and courts of records. Parties may be represented by non-lawyers who are next of kin, as mentioned earlier; but only lawyers duly licensed may represent parties in courts of records. Therefore, paralegals may generally not be permitted to represent the poor in courts in our jurisdiction. They may however be useful in courts not-of-records, administrative hearings before chiefs, elders, ministries and agencies authorize to hold such hearings.

Litigation, whether at administrative or pure judicial forums, is expensive and time consuming. Even with the exclusion of attorney fees, the average Liberian can hardly afford the incidental costs and the time involved. A simple labour matter often takes a minimum of three months at the Ministry of Labour; and the transport cost may often have to be borne by the Attorney who volunteers his services to an indigent aggrieved party.

The judicial system was operational throughout the country until 1990 when the Civil War escalated. Areas under the National Patriotic Front (NPFL) have evidently been chaotic, lawless and characterized by summary executions, torture, and inhumane treatment quite in violation of human rights of those concerned. Thousands of people have been deprived of their lives, liberty, security, property and/or privilege without the due process of law as constitutionally required. The Civil War has aggravated conditions of legal services to the rural and urban poor and the disadvantaged. There are now more poor and disadvantaged than ever before as a direct result of looting and destruction of property by warring factions. Such human rights abuses have been caused not only by the NPFL, but by all other warring factions (ULIMO and AFL). Courts are virtually non-existent in areas outside of ECOMOG's control.

The intervention of the Ecowas States through ECOMOG has brought relative sanity in areas liberated by them. The Interim Government has reconstituted the judicial system and the Supreme Court is now in its second sitting since it was reconstituted in March 1992. Though the NPFL nominated three out of five of the Justices, no appeal from its area has been filed with the Supreme Court.

Factors Affecting such Legal Services and the Status of Women

Illiteracy is the factor most adversely affecting the rendering of legal services to the poor and the status of women. The high illiteracy rate in Liberia is mainly responsible for the lack of knowledge of citizens' fundamental rights as enshrined in our Constitution.

Ignorance defined as either a) a complete lack of knowledge, b) misunderstandings, c) doubt, or d) mere error, is also a factor affecting legal services. Most Liberians, including the educated, are not aware of their constitutional or human and fundamental rights. Some believe that lawyers are liars simply because of their Liberian experience that the decisions made by courts in certain cases were not in agreement with their desire and expectation, regardless of whether or not such decisions were founded in law. They, therefore, tend to have little or no confidence in lawyers and the entire legal system.

Poverty is also a major cause of inadequate or lack of legal services to many Liberians, especially those in the rural areas. A poor party litigant may lose the prosecution or proper defence of his case because of his inability to pay a lawyer of his choice. In the case of a person who is criminally charged and given a defence counsel, he or she is rarely acquitted (sometimes because of the defence counsel's lack of adequate knowledge, experience, commitment and/or professionalism).⁵

5 *Fine Boy Gissi v. Republic of Liberia* 13LLR Page 7 (1957): Fine Boy Gissi was convicted and he subsequently lost his life because his defence counsel appointed by the Supreme Court prosecuted the appeal of the defendant unethically by conceding his client's guilt and submitting for confirmation of the conviction by the lower court.

Corporate agencies cannot meet up with requirements which are personal attributes (having graduated from law school or sat an examination, honesty, professionalism, etc.) and such agencies being artificial and existing only in contemplation of law cannot become members of the Bar. They, therefore, cannot practise law in Liberia in the absence of statutory provision to that effect.⁶

The practice of law in Liberia has thus been restricted to sole proprietorship or partnership in accordance with the Business Association Law. This common law practice was also practised in the USA until statutes were enacted in some States to provide for formation of corporations to render legal services to the public. There being no such statute in Liberia, it is my opinion that to form a corporation, business or non-profit-making association for the purpose of rendering legal services to the public is illegal in Liberia.

We note with concern that some entities may have incorporated themselves for the purpose of practising law and rendering such services to the public; to this, it can only be said that the risks are theirs to assume and such risks will certainly increase whenever government or authorities are challenged for violations of the Constitutional or human rights of their client or in the interest of the general public.

We are pleased to submit that, in that respect, the appropriate recommendations have been made to the Committee revising the Rules of Court and Code of Moral and Professional Ethics. Notwithstanding the said legal obstacles and lack of funding, we have continued to individually render free legal services to the poor and disadvantaged and to pursue the objectives of the unincorporated LESAPD. Our efforts in this respect have mainly included labour disputes, marriage and family relations, criminal offenses, torts and even free legal advice on national issues.

6 The Code of Moral and Professional Ethics, Rule 31: «No lawyer should permit his professional service or his name to be used in aid of, or connection with, or to make possible, the unauthorized practice of law by laymen or lay agencies, personal or corporate or by persons who have failed to strictly comply with the rules controlling the admission of lawyers.»

The Centre for Law and Human Rights Education (CLHRE) and the Liberia Human Rights Charter, Inc. are among the few human rights concerned entities which have emerged recently. They have contributed immensely to the public awareness campaign and the former has represented the poor and indigent at the military tribunal and courts and launched a newspaper called *The Human Rights Review*. The latter has erected the first billboards on human rights.

Legal Status of Women

Generally, the legal status of women has improved greatly during the past two decades. Women have served as ministers, judges, legislators; Justice Agnes Brooks-Randall once served as the first female Justice of the Supreme Court of Liberia; and Ms. Martha Belleh, then Minister of Health, administered the affairs of the State while the late President Doe was away on foreign visits. In addition, many statutes were enacted to promote women's liberation and equality before the law. These resulted in the inclusion of pertinent clauses in the Constitution of 1986 in the furtherance of the protection of women's rights.

Many women's groups, such as the Women Development Association of Liberia (WODA), Women in Action for Goodwill, Concerned Women and the National Women's Commission of Liberia (NAWOCOL) have been formed to promote the general status of women in Liberia. Most of these women's groups have become more assertive of their rights since the Civil War.

Despite these developments, the status of rural women leaves much to be desired. Illiteracy, ignorance and poverty along with some religious customary and traditional practices inconsistent with human rights continue to deprive them of their rights.

Recommendations for Improvement

To improve the general situation of legal services and the status of women, we recommend:

- a. the establishment of a constitutional and democratically elected government committed to upholding and defending

the Constitution, the general principles of national policy and the fundamental rights of the people enshrined therein, with accountability to the people and transparent justice for all;

- b. the eradication of illiteracy and ignorance through the establishment of more institutions of learning and teaching of the Constitution;
- c. the adoption and development of those positive cultural and traditional values that will contribute to the general welfare of the people;
- d. the development of the rural and urban areas alike, and stimulation of the economy throughout the country with the aim of providing equal job opportunities in rural areas while discouraging unnecessary urban migration and overcrowding;
- e. cooperation with instrumental institutions in the promotion of fundamental human rights and the amendment of laws and improvement of conditions inimical to the free existence of such institutions and the attainment of their objectives;
- f. the training of more qualified lawyers, appointment of more defence counsels in each county and the training and acceptance of paralegals to assist in dispute settlement;
- g. the diligent implementation of LESAPD's programme in cooperation with the government and any individual to ensure its perpetual existence and quality performance free of undue influence.

In conclusion, the provision of free legal service to the poor and disadvantaged in Liberia is needed now more than ever before; the rich have become poor and the poor, poorer as a result of the Civil War. The Government of Liberia is therefore requested to embrace all programmes promoting the respect of human rights; and foreign donors are urged to financially and morally support such undertakings. Notwithstanding the devastating effects of the war, Liberians, particularly lawyers, must assist their unfortunate brothers

and sisters to ensure that equal protection under the Rule of Law is a reality. We, therefore, reaffirm our commitment to providing legal services to the urban and rural and disadvantaged and to the continual improvement of the legal status of women.

Country Report - Nigeria

Ms. Grace I. Osakue

Believing that seminar papers are partly presented to generate useful discussions on chosen themes, this paper will attempt as much as possible to report on the legal status of the rural woman and the legal services available to the poor in Nigeria in as few sentences as possible.

Introduction

Women in Nigeria whether rich or poor, urban or rural based, are linked by the fact that they are of the same gender and are therefore faced with gender discrimination which today is entrenched in the cultures of most Nigerian societies. As a result, they suffer several deprivations that have no relationship whatsoever with their economic positions.

Poor and rural based women, on the other hand, are faced with double discrimination because, in addition to the deprivations they suffer for being women, they are also discriminated against as members of the lower classes. They lack access to health services because of poverty, for though consultation is free in most States, the patient bears the cost for drugs and tests; culture - in some areas a woman can only get into a hospital after the husband has given consent; and even attitudes - women hardly place themselves on the health agenda of their families, they fret over and nurse other members of the family when they are ill but hardly take their own illnesses seriously. Poor and rural women also lack education. Education is tuition free and compulsory at the primary school level, but poor parents find other allied costs such as for books and uniforms beyond their means, and where choices are to be made as to who gets educated with limited family resources, the girl-child loses out to the more «important» brother. Because of their poverty, women also lack access to legal services: all their time and efforts are taken

up with efforts to obtain food for their families and virtually no time is set aside. Ignorance of the relevance of legal services to their situations is another obstacle to legal services.

I believe that it is this double suffering of rural women which has made them the focus of this seminar.

Legal Status of Rural Women

Whether for males or females, rural or urban persons, Nigeria operates a dual legal system i.e., customary law which includes Islamic Law and Common Law. What law applies to one is generally determined by one's personal laws.

The Nigerian Constitution guarantees equality of both sexes and does not in any way discriminate against urban or rural based women.

Nigeria is also known to be a signatory to several international instruments: the African Charter on Human and Peoples' Rights and the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW), amongst others, which guarantee the equality of the sexes.

To further ensure that the rights of the rural woman are protected, the government operates a Legal Aid Scheme for criminal matters and some civil matters relating to accident cases under which assistance is given free of charge to Nigerians in the lowest income brackets.

All the foregoing builds up a picture which shows the rural woman in Nigeria enjoying an enhanced and protected legal status. Is that really so? Let me attempt to answer this question.

Dual Legal System

One naturally assumes that the existence of a dual legal system will adequately cater for and limit the oppression of groups, in this case, rural women. It would be expected, for instance, that if a woman contracts a marriage under the Act, then the Common Law should apply when issues like divorce and sharing of property come

up. There are instances, however, where the law most favourable to the man or his family is applied, in most cases customary law, to the effect that should a woman leave a Will, it will almost certainly mean nothing if any other woman can show she had children from your husband, or even married him after he had married you under the Act, at least at our lower courts. (The Arala case in Benin serves as example.)

Rural Women and Customary Law

Here we find blatant oppression of rural women; for the culture and customs forming the basis of customary law, though dynamic, are greatly influenced by the fact that most Nigerian societies are patriarchal. Women are to be seen and not heard. Thus customary laws are far from protective of the rural woman's rights.

Rural Women and Common Law

Common law guarantees equality for all, but for many obvious reasons, ranging from a lack of access to legal services to the gender biased attitudes of male legal officers, in real life the rural woman is deprived of this equality.

Rural Women and Governance

The place (or lack of place) of women in the government over the years has in no way helped the legal status of rural women: they have been grossly under represented or virtually absent. No State in Nigeria, in our 33 years of self-governance, has ever had a woman as chief executive. In the present political process, only one woman Senator and a handful of women legislators have emerged in the last elections. Even so, some of these few are very distant from the plights of rural women and a close examination may reveal that they are not all gender sensitive.

Rural Women and Legal Services

The rural Nigerian woman's access to legal services is impeded by several factors. One is a social attitude which frowns at the use of

courts. You will be virtually ostracized if you ever achieve a favourable ruling against any number of your community, especially in non criminal cases. Lack of confidence in the judiciary is another limiting factor. Until recently, women legal professionals never reached the 10% mark in the judiciary. The rural woman always feels (justifiably) sceptical that she would ever get justice from the male magistrate, who for all she knows may be a perpetrator himself of a crime similar to that for which she is seeking justice.

Even the 10% female component of the judiciary is no succor for women's causes, for only a limited number of that 10% work in rural areas and fewer still are gender sensitive enough to have thrown off the patriarchal stereotyped precepts taught by society.

Time consuming and expensive legal technicalities also generally scare women away, and rural women in particular, as they are grossly ignorant of the manner in which the legal system operates.

Legal Services for the Poor

Now the question arises what legal services do exist. We should note that the issue goes beyond legal services for rural women to legal services for the poor.

The poor in Nigeria consist of both men and women and are found in both rural and urban areas. However, regarding legal services, they have different levels of access because of the different status conferred upon women and men, irrespective of their levels of poverty. The poor man only suffers economic and political deprivations incidental to his lack of wealth. He is respected as a man and no matter how poor he is, women in his community are considered to be still less important. The poor woman, on the other hand, suffers all the economic and political deprivations of the indigent as well as the low status of women in society.

The government operates a Legal Aid Scheme by which assistance is given to the lowest paid citizens, male or female, who need legal aid for criminal and civil matters relating to accident cases. Whereas men find this assistance useful, the percentage of women who use it is insignificant considering the number of women who need assistance on issues of family law - marriage, divorce, inheritance and maintenance.

Non governmental organizations (NGOs) which provide legal aid are FIDA, presently operating two counselling centres; LRRD which provides legal services; Women In Nigeria (WIN), which provides legal aid to women; and such human rights organizations (Civil Liberties Organization and Committee for the Defence of Human Rights) which render legal assistance to persons who are detained or harassed unnecessarily. The level of impact of these efforts is very limited, as they are mostly located in urban centres.

Some NGOs have also concentrated on the position of rural women and women in general, advocating change through strategies aimed at making the government take positive steps to change the situation of women. Some of these organizations include Country Women's Association of Nigeria (COWAN), WIN, Centre for Women Research and Development (CEWARD). The impact of these NGOs has not been helped by the long-standing opinion of government officials that rural women had no problems. When the government finally decided to acknowledge the problems, it typically set up non-performing programmes which only improved the lifestyles of a few opportunists and had virtually no impact on the status of rural women in general.

Way Out

The situation could change for the better if several strategies were adopted by both the government and NGOs.

The government must create the means to improve the living conditions of rural women by discontinuing oppressive programmes such as the Structural Adjustment Programme (SAP) and by making life in rural areas more worthwhile. It must also take on the responsibility of discouraging those practices discriminatory to women which abound in the cultures and customs of many Nigerian communities. The situation could also be improved if the government would seek and accept the implementation assistance of relevant NGOs.

NGOs, on the other hand, must join their efforts to improve the status of the poor. At present much potential is undermined by the lack of funds of NGOs who have direction and lack of direction on the part of NGOs who have the funds. Solidarity and networking would strengthen them to achieve their objectives.

NGOs must also influence government officials, law making and law enforcement officers to make them more gender sensitive. The rural community itself must be made more gender aware if the issues of rural women are to be correctly addressed. Legal rights awareness campaigns and programmes are necessary to make legal services relevant to the lives of the rural poor. One instance readily comes to mind here: that of the Daleko market women in Lagos who sued their local government Chairman for harassment after he gave them quit notices for not coming out *en masse* to welcome his party's presidential election candidate. They were apparently empowered to take such action after participating in an Legal Research and Resource Development Centre training programme.

Lastly, the presence in rural communities of persons with basic knowledge of the laws and conflict resolution methods would greatly improve the chances of the rural poor by mobilizing them to improve their conditions and positions in society. Such persons, called community based legal educators, paralegals or whatever, need to be trained and supported. This can only happen when NGOs institute and pursue effective legal awareness and service programmes.

Country Report - Sierra Leone

Ms. Isha L. Dyfan

In Sierra Leone, the provision of legal services to the rural and urban poor can be seen through customary courts, local courts and chiefs' courts. Recently, however, through seminars and workshops organized by the ICJ for the training of paralegals, the concept of paralegals has also been introduced in Sierra Leone.

Sierra Leone is divided into judicial districts - the headquarters in the western area, the Freetown judicial district, the Sherbro judicial district and the Provincial districts.

The laws applicable in Sierra Leone are the English Common Law, the doctrines of equity and statutes of general application in force in England on the 1st day of January 1880, and customary law.

The magistrates courts are courts of record and are found in each judicial district. Within the magistrate court system there is provision for the chief justice, after consultation with the chiefs in each district, to appoint a panel of persons expert in customary law from whom a court may appoint assessors to guide it on questions of customary law. A decision by the majority of the assessors on customary law is binding on the magistrate unless the decision is inconsistent with a superior court decision or incompatible with any other Act applying in the rural areas.

Outside the magistrate courts are what are known as chiefs' courts or local courts. Chiefs' courts in the rural areas are presided over by the chief and local courts in the urban areas are presided over by the tribal heads of the particular tribe. In the chiefs' and local courts there is no legal representation of parties. Hearings are informal, the language is the local dialect and every side is given an opportunity to be heard. The rules, conventions and customs, are understood by the parties and their peers. There is respect for customs and the decisions given are taken in good part and obeyed. Matters dealt with by these courts are mainly family, land and marital disputes. The power of punishment is limited to fines, restitution, apologies, etc., enforcement being through court messengers. Appeals lie in magistrate courts up to the Supreme Court.

These provisions notwithstanding, the urban and rural poor are unable to take their matters of more serious land disputes, civil and constitutional rights, to the higher courts. In some instances they are unaware of these rights, or they cannot afford to meet the costs. Legal aid is not available except for the offences of murder, treason and aggravated robbery. Consequently the urban and rural poor remain legal illiterates and lack adequate legal service.

A small group of women lawyers have long recognized the need for legal aid and assistance to the urban/rural poor and suggested the provision of free legal representation to poor women. An office was earmarked for this purpose and practicing women barristers were to take it in turn to run the office and give advice to women in relation to family law, property law and children. The plan never came to fruition.

Again, at the 1989 conference on paralegals in Banjul, an idea was introduced to the Sierra Leonean participants and followed up with a pilot project in a village called Waterloo. The pilot project was successful in that it clearly showed the need for paralegal services. The group reported its findings in the workshop organized by the ICJ and the Centre for Democracy in Banjul in 1991 and at that meeting, the group learned of the progress made in programmes in other countries and promised to set up its own. Unfortunately nothing more can be reported on this.

Reasons for Lack of/Inadequate Legal Services

- (a) Attitudes of Legal Professionals: over the years the Bar Association has been more interested in national issues such as the Constitution, the conduct of free and fair elections etc., than to pay attention to judicial needs. However, a disastrous fire which gutted down the law courts building in 1991, the judicial headquarters in Sierra Leone, and virtually brought an ailing legal service to a halt, brought judicial needs to the forefront. Lawyers were seen using their hard earned cash to restore the court rooms so that proceedings could go on. This has been a change in the right direction. The Bar Association Conference this year had as its theme «Reforming the Law to Meet National Needs and Challenges». It can be hoped that these needs will include the expansion of legal education and service to grassroots.

- (b) Economy: another reason behind inadequate legal services to the rural poor is the general poor economic state of the country. This has meant that government has concentrated its meagre resources to areas of government other than the judiciary. Judicial staff are poorly paid, court rooms are insufficient and court cases take a long time to complete. There is a backlog of cases. With all these difficulties of maintaining the existing system, it is difficult to see government providing the facilities for expanding legal services to the rural poor in the form envisaged by this meeting.

The Legal Status of Rural Women

The legal status of rural women in Sierra Leone is enshrined in the 1991 Constitution which guarantees equal rights to every citizen. I refer to particular sections of the Constitution to demonstrate this point:

S.8(1) Social objectives which guarantee equality.

S.9(1) Educational objectives.

S. 15 Fundamental Human Rights.

Despite these protections in the Constitution, some customary laws put the rural women in a disadvantaged position as against the western area woman. I will now deal with specific examples.

a) Succession/Devolution of Property

The law of succession in Sierra Leone favours parties married under Christian and civil marriages. On the death of either party the wife or husband can take out letters of administration of the deceased estate and distribute according to the law that if a wife dies, the husband inherits the entire estate, whereas if the man dies leaving the wife, she is entitled to inherit just one-third of the estate, the rest going to the children. If there are no children, the wife gets half, the rest going to close relatives.

On the other hand, in the Muslim and customary law situation, if a man dies leaving his wife, the wife, her daughter or female member of his family is not allowed to take out letters of administration. Only the eldest son alive, uncle or male cousin alive in the family takes out letters of administration. Women have no control of the estate, nor do they benefit. Property is then distributed to the husband's children, close relatives brothers/sisters and parents. The widow is still unprotected. Property is still passed down under customary law through male heads of the family household. The law has tried to regulate this inequality in Muslim marriages. Act No. 10 of 1988 gives the right to every Muslim over twenty-one years to make a will.

b) Acquisition of Property

In customary law women do not own property. Even prominent business women need their husbands or other responsible males as guarantors for loans. Women do not own land, even those who are fully employed in agriculture, although in the case of some ethnic groups in the south, women can claim property acquired without financial help from their husbands. The women's constitutional review conference commented, «It is clear from the laws of Sierra Leone that women in the western area can purchase land and have property conveyed in their names, whereas provincial/rural women cannot. This inequality between the two types of women puts provincial/rural women in a less favoured position economically. Our view is that the laws with regard to property should be unified.»

Reasons for Inequality

1. History

The history of Sierra Leone is one of the factors contributing to the inequality between rural women and women in the western area. The western area, consisting of Freetown and the surrounding villages and originally settled by the freed slaves, operated the English kind of law system in which land can be bought outright by anyone. The provincial rural is subjected to customary land law which does not provide for the outright disposal of land. Rather, land is communal property vested in the chief and chieftdom council for the benefit of the people. This land system in the provinces further compounds the already disadvantageous position of its women.

2. Social Conventions/Beliefs

Some social customs and beliefs of the rural women themselves contribute to their disadvantaged status. Women believe they should be subservient to their husbands and to men generally, especially in order to promote peaceful coexistence in the home. Daughters should undertake domestic chores, while the boys should not. Men are given the honour of providing for the home even though it is the women who actually do the hard work and provide food and service in the home. These customs and beliefs have built up a social attitude which has affected women's development.

Consequences of Women's Status in Respect to National Development

1. Lack of political participation: women in the rural areas, though they are in the majority, find that there are not enough women in policy making positions of government to influence change in their situation or contribute to national development. They are unable to contest for political offices either because they do not have the necessary financial support or the know how. I should also draw attention to a slightly different situation in some ethnic areas in the south and east where women do hold high political office (that of chief) and have been able to use that as a stepping stone to contesting and winning a seat in Parliament. These women are few and women in the northern rural areas have nothing of the same opportunity.
2. Women's home management skills could easily be converted for national development, but this manpower and skill is eliminated or remains unassessed. It is my view that this is reflected in the poor quality of leadership.

How the Situation Could be Improved

1. Amongst other things, the practising bar, through the Bar Association, should encourage groups of lawyers to take special interest in the training of paralegals and the provision of legal services to the poor in both rural and urban key areas until such provision is extended to cover the whole country.

The present paralegal group could be a starting point by adopting the method used by the lawyers who sought to renovate the law courts building after the fire. These lawyers formed themselves into groups and undertook the responsibility and cost of repairing particular courtrooms. For example, they ensured that the electricity supply was reconnected to the particular court, that it was painted etc. Similarly lawyers could form themselves into groups and select a particular village or area with the primary intention of solving its particular legal problems (i.e., the problems peculiar to the area).

2. Through media education: fortunately, Sierra Leone is becoming increasingly media literate. There are now two radio stations. We must advocate for a weekly programme where legal issues would be discussed and the law presented as a social tool for home and work. Contrary, to popular belief, I do not think that this will interfere in any way with private practice. The public would have the opportunity to put questions to lawyers and Judges with a view to unmasking the secrecy of the profession. If the public at large were educated in the basic principles and concepts of law, I think the number of frivolous and minor matters brought before the courts would be reduced, leaving time and room for more serious matters.
3. During pupillage: every pupil Barrister should be required to spend three months in any area of their choice outside of the capital, passing on knowledge to the people in the area of law. I believe this should be included in the curriculum for pupil barristers and that they be subject to some form of examination by their pupil masters. This system would be akin to national service.
4. Through cooperation with other NGOs: while the legal service has been conservative and elitist, by and large other professions have known a better development. The medical profession, for example, has a network of midwives giving basic medical assistance to pregnant women. MCH aids mobile clinics, whether for immunization or primary health care, can be found in remote villages because they are aided by funds and technical persons of non-governmental agencies

such as Care and Christian Action Education. Tested and proved, these partnerships could be emulated with success in the legal service. There is presently no such cooperation in law. It is suggested that the ICJ use the present group to pioneer this type of joint project.

5. By producing more Lawyers: the number of British-trained lawyers who returned home to work and practice dropped over the years and it was only three years ago that the Sierra Leone Law School was established. As a result, there were not enough lawyers in the Attorney General's office to man the various courts whether as customary law officers or magistrates. Thus even where courts in the rural areas exist, there is no personnel. Now with an increasing number of lawyers available, these rural areas are bound to attract personnel.

Concluding Remarks

In conclusion, legal services to the rural areas in Sierra Leone are available but inadequate. This can be improved by provision of legal aid and education through non-governmental organizations. Even though the legal status of the rural women is protected under the 1991 Constitution some customary law provisions and the social and practical situations do not support those guarantees. Therefore, women should seek political power to affect these legal and social changes.



Dr. Philip Amoah, ICJ Legal Officer for Africa, speaking at the opening session.

Participants of the Seminar:

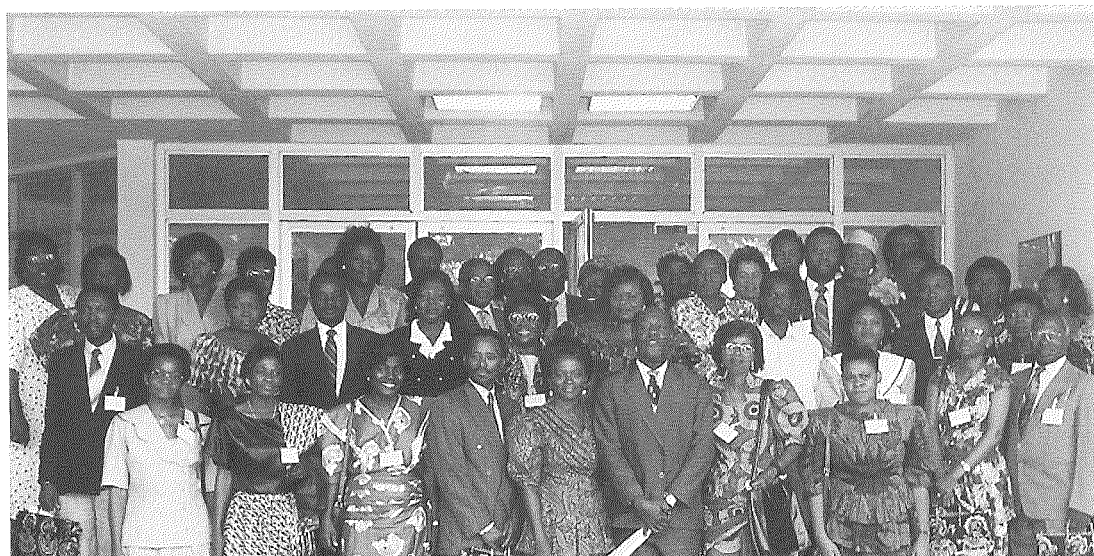


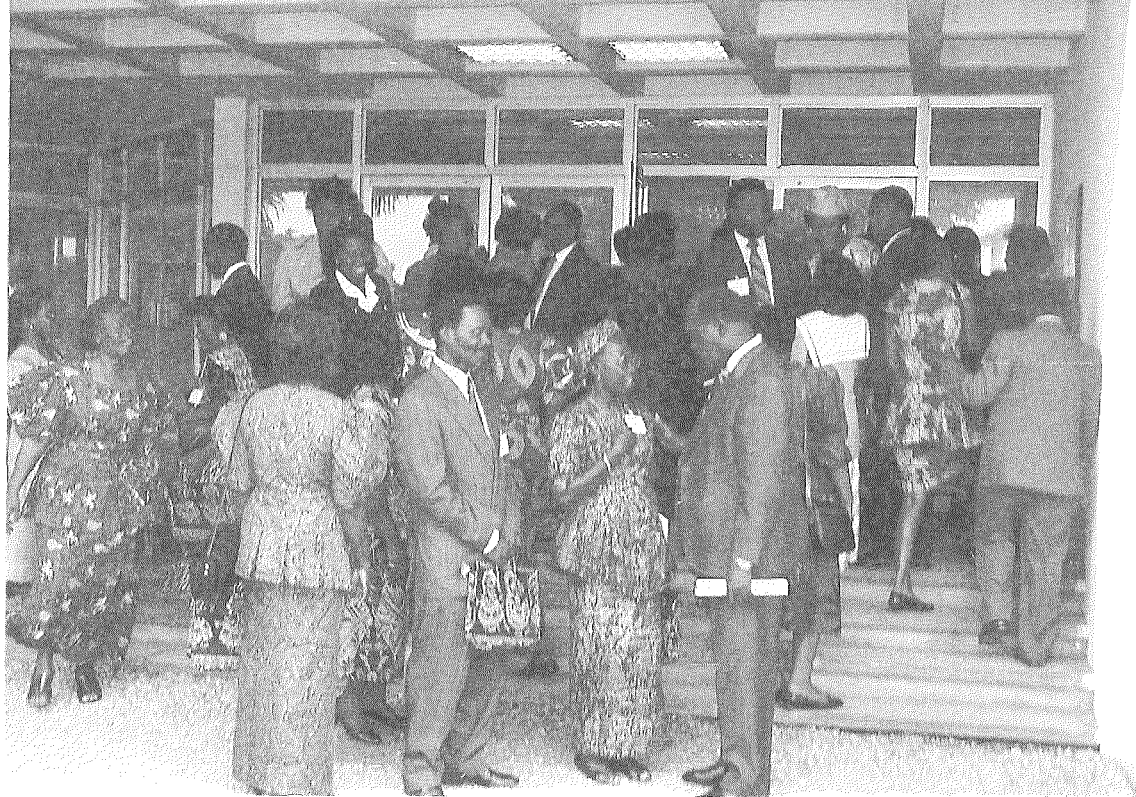
ON
**LEGAL SERVICES FOR RURAL & URBAN POOR & THE
LEGAL STATUS OF RURAL WOMEN-ANGLOPHONE WEST AFRICA**
19-23 JULY 1993 Accra, Ghana



Delegates from Sierra Leone participating in a discussion group.

The Attorney-General of the Republic of Ghana (sixth from the left) with the participants of the Seminar.





Mrs. Bineta Diop, ICJ Programme Coordinator, visiting the Women's Abokobi Agricultural Project.



Conclusions and Recommendations

Conclusions

1. To ensure meaningful and sustainable development, it is of the utmost importance that the legal status of all women, particularly rural women, be improved.
2. Rural women and urban poor, and other marginalized sections of society should be provided access to relevant socio-economic resources, including loans, agricultural credits, health and educational facilities.
3. Women should be empowered to participate in political processes and decision-making at the highest levels of government.
4. The concept of legal services should be given the widest possible interpretation. Other services including Paralegal training and legal literacy should also be covered, in addition to advocacy, conscientization, education, negotiation, mediation, counselling.
5. The training of paralegals should be undertaken by Law Faculties, Bar Associations and individual lawyers in collaboration with NGOs, Trade Unions and grassroots organizations.
6. The Draft ICJ Paralegal Trainers' Manual was a useful guide for the preparation of national paralegal training manuals suitably adapted to the particular needs of the countries concerned.
7. Paralegals should be provided with a Reference Manual based on National Laws and Procedures.

Recommendations

We, the participants at the ICJ/FIDA/WILDAF Seminar on Legal Services for Rural & Urban Poor and the Legal Status of Rural Women, RECOGNIZING that the rural and urban poor form the bulk of the population of our countries and that on these people depend the economic development of our countries and RECOGNIZING the role that law can play as a tool for social change, RECOMMEND AS FOLLOWS:

1. That Bar Associations should be lobbied about the necessity to participate in the provision of legal services for the rural and urban poor as a part of development-oriented voluntary public service.
2. As a follow-up to this seminar, that National seminars be organized with local Bar Associations on appropriate joint paralegal training programmes.
3. That participants should endeavour to implement the action plans drawn up at this seminar. In view of the difficulties of starting new organizations, it may also be advisable to have legal aid programmes within on-going projects.
4. That prior to the establishment of country pilot projects, the following steps be taken:
 - consultations with relevant groups;
 - needs assessment to identify target groups;
 - fund raising at the local level.
5. That reports of progress made in the implementation of these recommendations be sent to ICJ (Geneva), and all participants prior to the end of 1993.
6. That networking among the participants themselves and between them and other groups should be an essential follow-up to this Seminar.

Country Plan of Action - The Gambia

The Gambia is now in the process of creating a Legal Aid Centre. This will be a great gain for the rural and urban poor in terms of free legal services and advice, for the only legal aid obtainable was in the case of capital punishment which is now abolished. Legal aid is, therefore, likely to be erased from our records.

The legal aid cover is in our view a necessity, a long awaited project for the majority of Gambians. Most Gambians find it extremely difficult to find their way to the capital where most lawyers work or have offices. While some do get to these lawyers, they cannot afford to pay them for legal services.

Our target would be the urban and rural poor, but mainly women and children, who have the greatest legal and human rights problems.

The Legal Aid Centre, it has now been agreed, will be established in the central location of Serekunda. This pilot project will be launched as soon as we return home. To begin with, the Centre would be open twice a week from 4 p.m. to 6 p.m.; and a venue has already been earmarked. It will be staffed by part-time lawyers on a voluntary basis, until a full-time lawyer is chosen. Some private lawyers have been found who will take cases to court free of charge.

The recently established National Working Committee which decided to start the Legal Aid Centre will send individuals or groups to Serekunda to identify problem areas.

Contributions for the Legal Aid Center will be obtained locally. The National Working Committee will approach businessmen, private and public lawyers. The African Centre and members of the delegation might also contribute.

Country Plan of Action - Ghana

The structures which have been put in place by FIDA and WILDAF which provide some legal services to the urban and rural poor in Ghana have been described in the Country Report.

At present, Ghana's concept of paralegals is limited to their task to disseminate legal information and to serve in rights awareness programmes. The plan after this seminar is to expand these existing legal services to take into account the specific needs of the target group of rural people and urban poor. These needs will be addressed in consultation with other developmental organizations.

After consultation with these various interest groups, the concept of the paralegal will be expanded to cover the notions proposed in the manual. Implementation will be effected immediately.

In the meantime, the existing programmes of FIDA and WILDAF will continue to operate, but the rich experiences gained from this seminar will also be brought to bear on these programmes.

Country Plan of Action - Liberia

Our country is in dire need of legal services to the poor and disadvantaged. We realize that our target groups (the poor and the disadvantaged) reside mainly in the rural areas. Therefore, we had previously planned to establish the first pilot project for the training of paralegals in the rural area (Gbarnga); but the present situation of abnormality caused by civil war obliges us to begin in Monrovia, an urban area where a large percentage of the rural poor and disadvantaged population have taken refuge as displaced people.

Despite the constitutional provision of equality under the law and the protection of women's rights and the elections of appointments of some women to positions of esteem in the political arena, there is still need to promote the legal status of women generally and rural women in particular.

Legal services to the poor and disadvantaged including women are needed because these people constitute the largest portion of our population yet are often denied their constitutional, human and fundamental rights because of their ignorance of the law coupled with their inability to obtain the needed legal services. The availability of such services to the said target groups will go a long way in the dispensation of justice and equality for all and the respect of human and fundamental rights.

Lawyers themselves are the best people to render legal services to the needy poor and disadvantaged including women. However, the inadequacy of such available lawyers in our country, or any country for that matter, creates the need for training in prescribed manner in the rendering of such services.

As stated in our country report, we shall pursue the establishment of an entity, LESAPD, for the sole purpose of rendering free legal services to the target groups mentioned.

This will enable private practitioner volunteers to separate clearly their private practice for gain from the free services rendered to the needy target groups or individuals. Pending the proper condition for the establishment of LESAPD, we will embark on the training of paralegals in Monrovia.

We will first conduct a survey aimed at identifying the problems, the participants (trainers and trainees) and background of target groups. The trainers who shall be lawyers will include members of the Bar who shall volunteer along with those of us who have attended this and similar seminars. Pertinent institutions and interested individuals shall be urged to assist financially, materially, administratively, morally or otherwise to the training of paralegals.

Following the survey, we will develop the criteria for selecting trainees (teachers, health workers, social workers, community and group leaders). Then we will prepare a syllabus emphasizing the areas of greatest need (i.e. family matters, property ownership and laws of inheritance, contracts, criminal matters, basic human rights, etc.). Training will then be conducted at the most appropriate/expedient place and paralegals' performance in the community will be monitored and evaluated.

Country Plan of Action - Nigeria

The needs of Nigeria arise out of its peculiar social, economic and political situation. Nigeria is a heterogeneous society, multi-tribal, multi-lingual and multi-religious. The multifaceted issues have dictated a need for awareness of legal rights of the citizenry (both men and women). There is a shortage of legal services at affordable prices to the people and where there are, the income level and social services are grossly inadequate to meet their needs. Moreover, this is a society where gender awareness is low. Our focus then is to increase awareness of the legal system, particularly on the part of women.

A closer observation of the prevailing situation has influenced our decision to concentrate on the problems of women: problems in the area of family law covering divorce and separation, landlord and tenant relationship, inheritance and succession, simple contract arising from petty trading and commercial law in relation to ages.

Our basic target would be people, mainly women, within the low income range including petty traders, small scale farmers and workers earning less than N10,000 *per annum*.

This could be achieved by seeking out existing human rights organizations with existing infrastructure for accommodation, and by enlisting the support of lawyers as volunteers (in future, service lawyers).

Specific locations might be Lagos, Benin, Ibadan.

Country Plan of Action - Sierra Leone

After the Banjul meeting in 1989, members of the delegation conducted a pilot programme for the training of paralegals in a rural area some 18 miles from the capital Freetown. In our estimation, it was a success in that it taught us many lessons for a future programme in training paralegals in the rural areas of Sierra Leone.

Presently, we are of the view that a free service providing legal advice and counselling for the poor in Freetown is an urgent necessity. For some time now the economic fortunes of the people of Freetown have been following a downward turn compounding the situation of the urban poor. Among this class, many are illiterate with regard to the ability to read and write, and knowledge of their legal rights. Consequently, we believe that there is an urgent need for an Advisory and Counselling service in the Freetown area.

We would like to target both men and women among the urban poor in Freetown as a first step. We would apply a means test that will be generous, going beyond the minimum wage earners, so as to help a wider class of people because of the other economic constraints.

We intend to use a classroom in one of the centrally located primary or secondary schools in the city. Most schools close down by 3 p.m. in Freetown and we can use the school's furniture without having to provide such furniture initially. We intend to inform the Bar Association and individual lawyers who may be sympathetic to the aims and objectives of such a programme so that we can get as many lawyers to help out. In this way the burden and sacrifice will be spread out.

We will publicise the service by means of the radio in the local vernacular languages as most Sierra Leoneans listen to the radio regularly. However, we are confident that the service will advertize itself once we start, so that such radio announcements will be over a period of about two to three weeks.

Initially we will be meeting clients once a week, on Fridays between 3 p.m. and 6 p.m. If there are many lawyers willing to help,

we might be working on a rotational basis. We intend to start on the 1st November, 1993.

As far as finance is concerned, we the members of the Sierra Leone delegation will have to make individual contributions, to meet the expenses. However, it is hoped that we will have to solicit funds from within and outside the country as the programme expands.

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