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AFRICAN CENTRE FOR WOMEN**



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STRATEGIES FOR PROMOTING LEGAL LITERACY

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**REVIEW OF STRATEGIES FOR
PROMOTION OF
LEGAL LITERACY**



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Executive Summary

This report is a study of the strategies that Women's groups and organisations have adopted to empower Women about their rights. The overall objective of the strategies is **provide literacy on women's legal rights through simple effective methods**. The study also **examined the existing international human rights instruments, their applicability and relevance for African women**. Since the first World Conference on Women in 1975 (Mexico), women in Africa have mobilized themselves around issues of women's legal empowerment. They have initiated **activities towards women's legal empowerment through provision of legal aid services, legal awareness through theatre, song, and publication of simple books**. Legal literacy initiatives have also **been undertaken through public talks, and advocacy through activism to repeal and amend laws that are negative for Women's legal literacy**.

This report attempts to capture some of these efforts and assess the impact for Women's legal empowerment. The information contained in this report is **by no means exhaustive**. We were only able to sample a few women's groups. We propose that a wider study will need to be **undertaken in order to truly capture the achievements of the various Women's groups that participated**.

We would like to call for closer collaboration between various **Women's organisations, Government agencies and regional bodies** in the development of **Legal literacy strategies**.

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Jane Wambui Kiragu
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CHAPTER ONE

1.1 INTRODUCTION:

Legal literacy is important for both Women and Men to understand what their rights are and to articulate and protect them. Over the past two decades activism at National and local levels to improve women's rights has proliferated. The result of these efforts is the emergence of a Women's rights agenda. Through this agenda women have pressed for legal reform to protect them from violations and oppression.

The powerful participation and attendance of women at the United Nations Rights Conference in Vienna in June 1993 sent a clear signal that women are challenging the paradigm of Human rights content and practice. The effective mobilization of women at the Vienna conference has resulted in Women's Rights as Human Rights. The challenge and work did not stop at Vienna but continues, with Women monitoring the commitment of Governments and the United Nations to effect meaningful changes. In order to effect changes, Women's rights advocates have an important role to play to translate their activism into action and meaningful strategies that will benefit the local women. For women to claim their rights they must know them. As Margaret Schuller states, *"Women's rights advocates have an important role to play. They must be catalysts in the day to day work of making human rights norms and mechanisms relevant and real in the lives of women"*. The importance of Women's rights activists is necessary in order to highlight the real life experiences of women and to test the proposed remedies in the every day activities. The challenge is thus to make changes in the human rights consensus truly effective in the lives of women. What remains to be done is to bridge the gap between rhetoric and action, between theory and practice. The following report reflects some of the strategies that have been adopted to empower women on their rights and the impact of these strategies. The report also proposes future strategies and suggestions for the improvement of the strategies.

1.2 STUDY OBJECTIVES AND RATIONALE

The objectives of the study are inter-alia:-

- (1) To document the strategies that have been used by Women's legal rights and women organisations to empower women on their legal and human rights.
- (2) To assess an impact of the strategies for achieving the goal of empowering women of their rights.
- (3) To assess the impact of existing Human rights instrument Internationally, regionally as they impact on African women.
- (4) To make recommendations that will provide direction for future partnership between Women's organisations, inter agency cooperation and partnership with Government agencies.

1:3 METHODOLOGY

Information from Women's groups was collected through a structured questionnaires which were sent to the various groups. One on one interviews were conducted with Members of the bench and members of Parliament. A review of the existing legal instruments was undertaken to assess the accessibility and relevance for African women. Where it was possible interviews were held with heads of Women's humans rights organisations and programme officers. See a sample of the questionnaire as appendix 1

It was very difficult to obtain information from Women's organisations due to the poor communications infrastructure on the African continent. It was also expensive to follow through by the use of fax and telephone. Where it was possible interviews were conducted with representatives at various conferences and meetings that the researchers attended. Through the attendance of conferences and seminars and other meetings going on we were able to collect samples of work being undertaken or already done.

Interviews with Two members of Parliament in Kenya were conducted informally and a prior prepared set of questions guided the interview. Through this process it was possible to cover all the issues and objectives of the study. A list of the questions is attached as Appendix 2 .

A comprehensive review of materials collected from Women's groups and organisations was conducted in consultation with members of civil society working on community mobilisation and communication. Through this interaction we were able to get views and ideas from other key people who are also involved in civic education initiatives.

A comprehensive review was undertaken of all International conventions and instruments to assess relevance for women and accessibility for Women's groups and organisations working.

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CHAPTER 2

2.0 Introduction to Legal Instruments and Conventions Applicable to Women

In this chapter we wish to address the various international conventions that can be applied in analyzing the current status of African women. We will begin by giving a brief synopsis of the purposes of the conventions i.e. The UN Charter, CEDAW, ICCPR, ICESCR, and The African Charter on Human and People's Rights, and how they are perceived to affect women. We will then proceed to analyze the impacts, if any, these conventions have had on African women and their struggle for equal rights in the African context including the impact of dual legal systems on the lives of African women.

The **United Nations Charter** was the first to affirm explicitly the equal rights of men and women in its preamble and to include a person's *sex* as prohibited grounds for **discrimination**, besides race, language and religion. The explicitness of the Charter regarding **equal rights of women** was thereafter refined in a multitude of international human rights treaties. The need to pay particular attention to women became evident in the drafting process, where **drafters had to be reminded** that the term 'men' did not necessarily include women. Indeed the **Universal Declaration of Human Rights**, which in its final text reaffirmed and reinforced the Charter's postulate of the equal rights of women, represented a major milestone as an **initial draft had as its first Article, "All men are brothers."** It was only with the intervention of the Commission on the Status of Women that changes were effected, making the Declaration truly universal.

While the Universal Declaration constitutes the core of universal human rights guarantees, it is not legally binding unless incorporated into municipal law **through enactment**. After the declaration was adopted, work began on the translation of the **principles and norms** of the Declaration into an international treaty. The intention to draft one treaty had, however, to be abandoned mainly because of the Cold War controversies. The conceptual integrity of human rights was expanded by the adoption of two treaties, the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**. These were adopted in 1966 and became practice ten years later.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

This Covenant deals with civil and political rights, described as the so-called "first generation" rights, that have generally received a lot more recognition than other rights. It contains general provisions requiring equality of treatment to all individuals, for example, Article 2 provides that States should ensure that the rights of all individuals within their territory are recognized and protected as stated in the Covenant. The monitoring body for the ICCPR is Human Rights Committee. Despite being the leading UN body that investigates human rights violations, it has displayed an almost total lack of gender sensitivity in its discussions of the rights protected under the ICCPR. The Committee issues general comments on each Article of the ICCPR describing what it considers the most important dimensions of each right. When discussing the "*right to bodily integrity*" and the "*right to life*", for example, the Committee did not discuss the physical violence that many women face in their daily lives². So we challenge the Committee to respond in a more gender sensitive manner.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Economic rights have generally been accorded a secondary role in the United Nations debates on human rights. This is despite the constant rhetoric on the indivisibility of human rights. This is compounded further by the views of human rights theorists from the West, particularly the USA, that "rights" comprise the duty of governments not to interfere with the civil and political liberties of its citizens. By contrast, many Third World nations argue for the primacy of economic and social rights, which create a positive obligation on governments to meet basic human needs. These divergence of views have necessarily been a serious drawback to the practical implementation of the Convention. However, the Committee on Economic, Social and Cultural Rights, is a body still in the early stages of its work with the Economic Covenant, and is in dire need of information from NGO's and thematic input from which it can develop its own jurisprudence. Since many violations of women's rights occur in the area of economic, social and cultural rights and this is one of the few international forum concentrating on these rights, it is an important Committee for women's rights advocates to work with.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

While the texts of the two Covenants previously mentioned further reinforce the prohibition of discrimination, they contribute little to the articulation of specific issues affecting women. Hence the need for the Convention on the Elimination of All Forms of Discrimination against Women or the Women's Convention which was adopted in 1979.

Ilumoka, Adetoun O. "African Women's Economic, Social, and cultural rights-Toward a relevant theory and Practice. "Human Rights of Women: National and International Perspectives. Edited by Rebecca J. Cook. University of Pennsylvania Press, 1994.

This convention moves from the sex-neutral norm that requires equal treatment of men and women, usually measured by how men are often treated, to recognize that the particular nature of discrimination against women merits a legal response³. Although this convention does attempt to go beyond the norm to identify all forms of discrimination against women it still has shortcomings which will be addressed later in this chapter.

THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

The African Charter on Human and People's was adopted on 27 June, 1981, in Nairobi, Kenya, by the Organization of African Unity (OAU). It came into force on 21 October, 1986. It is a human rights instrument specifically designed to respond to "African concerns, African traditions and African conditions". The important task of enforcing the rights enshrined in the Charter is entrusted to the African Commission.

2.1 THE IMPACT OF INSTRUMENTS FOR PROMOTING WOMEN'S RIGHTS IN AFRICA

Each Convention has various components that make its impact of women adverse to its original purpose at its conception. The following limitations exist within each convention. These limitations can be applied to women in general. However, the following limitations affect African women on several levels, especially since they exist within systems dependent on global politics.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Unlike the ICESCR and CEDAW, it is possible for an individual to make a complaint directly to the Human Rights Committee without going through the State. These individual complaint procedures were established under the First optional protocol to the International Covenant on Civil and Political Rights. Despite its obvious advantages, the following are some limitations of individual complaint procedures which apply generally to any instrument that makes provision for use of these procedures:

Finding a procedure to which the State concerned is subject. In the case of

Cook, R. "Women's International Human Rights Law: The Way Forward." Human Rights of Women: National and International Perspectives. Edited by Rebecca J. Cook. University of Pennsylvania Press, 1994.

UN human rights treaties, all individual complaint procedures are optional and require the state party to the treaty to accept the jurisdiction of monitoring body to entertain complaints from individual, or groups alleging violations of rights protected by the treaties. Thus a state may be a party to a treaty and have accepted the substantive obligations under it, but not necessarily the procedure allowing individual complaints to be brought against it. We place emphasis on the state in this instance because the relationship between the State and African women is one in which the woman is seen as automatically subordinate. Women in African societies very rarely participate in politics, therefore, women have very little representation in Government. Consequently, they have very little power and their needs are not priority⁴.

- *The slowness of the procedure.* These procedures (with the exception of those under the ILO) are based on the traditional model of international redress, namely, that the national system should in the first instance remedy any violations of rights, and only if it fails, should the matter be directed to an international body. This makes the entire process very time consuming and in some cases ineffective. In most instances in which a complaint is being made it is the State that acts as violator. Therefore, the one being violated may not wish to address the State directly. Consequently, they fail to make the complaint at all, continuing to be violated.
- *Composition of the bodies.* Although there are attempts to balance the composition of adjudicatory bodies to reflect diversity of regions, legal or cultural systems and stages of development, these bodies are almost predominantly male. Consequently, the female portion of the population goes under-represented and slighted.
- *The nature of the international decision-making process.* If the national legislature, administration and courts resist change in a given area, referring the case to an international body may appear an attractive proposition. However, it is possible to lose even a good case at the international level due to such reasons as institutional demands on the system and the nature of the constituency of states that a particular treaty regime serves. Losing a case at the international level may impede prospects for political and legal change at the national level since a government may claim that changes advocated are not required by international law. Therefore, in many instances, the State fails to realize the violations being made against a person's human rights.
- *Margin of Appreciation.* This refers to the practice of international bodies in

Halim, A. Mohamed Abdel. "Challenges to the Application of International Women's Human Rights in the Sudan." Human Rights of Women: National and International perspectives. Edited by Rebecca J. Cook. University of Pennsylvania press, 1994.

deferring to the judgement of national authorities in areas where they consider that the State has discretion and is particularly well placed to make an assessment of the appropriate course of action. This practice could be used to the detriment of the complaining individual or group. Thus, limiting the complainant's human rights.

- *Legal effect of decisions of the adjudicative body.* Under the UN procedures, the views adopted by the treaty Committees are not binding as a matter of International Law. The Committees only act as recommending bodies, therefore, their conclusions do not have to be adopted or accepted. In the case that they are accepted, they still may not be put into practical use.
- *Conceptual framework of human rights adjudication.* The limitations of the conceptual framework of the mainstream human rights framework(s) have been raised. It is certainly the case that advancing particular types of claims within the mainstream is more difficult than pressing other claims that fit the dominant conceptual framework. For example, mainstream bodies can deal reasonably well with straightforward claims of differential treatment on the basis of sex in law or the practice of public authorities. However, mainstream bodies have more difficulty when addressing claims that challenge the distinction between public and private and those which seek to attribute responsibility to the State for violations committed by private individuals acting as agents of that State.
- *One State.* The procedures are generally "one statist" in nature, focusing on acts of a State within its physical territory or within its jurisdiction. Thus, there may be difficulties in using this procedure where two or more states may be implicated in cases of trafficking of women and children across national borders and sex tourism.
- *Attitude of the State.* There are obvious dangers in prosecuting or bringing a case against the State and losing. However, the effect of winning a case often depends on the mode of implementation that the State in question decides to give the decision at the national level. All in all, even if an individual wins a discrimination case against the State, the award given to the violated individual (the plaintiff), in a sense, is at the discretion of the losing party (the defendant).

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

African women face various obstacles in this convention being applicable to them. This convention stresses the obligation to their citizens to meet basic human needs. However, most African countries are in such poor economic conditions that they are not able to even meet the needs of the Government in order to function. Portions of

the African population suffer because of the instability of nations. The portion that suffers the most is women. Women are automatically viewed as subordinate to men, therefore, they are needless. African women face the following obstacles which the convention does not address:

- **Lack of Access to Land**

The persistence of customary law in many African countries means that only a few middle-class and upper-class women can own property. In a system in which property ownership is the only viable way one can acquire more property, women generally lack tangible security with which to secure loans from banks and other financial institutions in order to buy property⁵. In many instances even if a woman wishes to open a bank account she is told she must acquire her husband's signature, as is the case in some instances when applying for a passport or visa. For example in Kenya, the Registration of Titles Act is still based largely on the African customary law system of land ownership where only a man and his family or clan own land in the area in which they live⁶. Despite the fact that women constitute 80 percent of agricultural labor force in Kenya all payments of cash crops are made to landowners, men⁷! The overall commercialization of land and labor, the preference given to men by the African governments, have marginalized women in Africa even further. In Africa, women's limited legal and customary rights to land through usufruct ownership clearly affect the ability of rural women heads of household to provide for themselves and their dependents by means of agricultural production. International conventions need to stipulate the areas of customary law which violate various conventions implemented for the protection of women's rights and enforce women's rights to equal access in spite of their customary position.

Legal Status and Current Situation of African Women

As previously mentioned, the legal systems in most African countries are based on both customary and statutory laws. Most constitutions do confer certain rights to women, however, those countries still accept other sources of laws such as custom and religion as part of the overall legal system of the State⁸. Overall, with all of these factors playing a part in women's legal status, they are often denied equal treatment under the law contrary to their male counterparts.

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Muli, K. "Help me Balance the Load: Gender Discrimination in Kenya." Women's Rights, Human Rights edited by Julie Peters and Andrea Wolper. Routledge, 1995.

See Koki Muli article.

See Koki Muli article.

International Planned Parenthood Federation (Africa Region). Equal Rights for Women. Synthesized by Jean Njeri Kamau, 1995.

Additionally, most African countries have been colonies of Western countries. This fact contributes to the idea that these African countries have legal systems that were developed for other nations and are reflections of another societies experiences⁹. In these societies, when current African laws were developed, women did not have an equal standing with men. Therefore, these laws are based in patriarchy. For example, in studying the constitutions of countries such as Kenya, Swaziland, and Zambia it was found that in certain capacities women are granted fundamental rights. However, in the same constitutions certain provisions for discrimination are permitted specifically in cases that relate to custom. These allowances most often (allow) for discrimination against women⁹.

The legal status of African women is also affected by women's own literacy on the laws and the rights they have been afforded by the laws of their countries. Illiteracy levels of African women are very high, especially in comparison to the illiteracy levels of men. Consequently, women are not aware of the rights they have or do not have. The only means by which effective change can be made on behalf of women's legal status is if women themselves know how to demand their rights. In the instance that a woman is not aware of her legal rights she cannot adequately make advances toward empowerment. Therefore, she becomes a involuntary contributor to the violation of her rights.

African women face various obstacles within their own countries and on an international level. In fact they are in the most subordinate position, globally, being of the lowest status on the poorest continent in the world. Therefore, International Instruments need to be more specific in order to address the needs of women in Africa, who play triple roles as reproducers, producers, and sustainers. It has been researched that so many of the international conventions are based on Western dichotomies and, therefore, do not embrace the needs of women from the South. In fact, African women do not have equal access to the education that would promote their literacy on issues and laws that effect them, namely their rights. More efforts need to be made to promote equality in African nations despite culture and tradition. Intentional conventions need to explicitly address the needs of African countries in order for governments to nullify the excuse that violation of women rights is "African" or "Tradition". Because their governments do not apply the laws that exist, African women feel that laws are not applicable to them. Therefore, legal literacy on international human and women's rights needs to be implemented, in order to stimulate women in Africa to begin a discourse with their governments to change their current position in society and to lobby for their place on the agenda.

See International Planned Parenthood Federation article.

See International Planned Parenthood Federation article.

• Dual Legal Systems-Customary versus Statutory Law

As was previously mentioned there are many obstacles to international conventions that women in general face. However, African women also face various constraints that may not be applicable to women coming from other parts of the world. First, many African societies practice a dual legal system which is often times contradictory within itself. Both customary and statutory laws are followed which allow many African governments to allege that these conventions "do not apply" in the African context. In any case, what is practiced traditionally can be excused as "African" even if it discriminates against women. Thus, the conventions do not extend into customary law even if adopted by the State¹¹. The UN conventions, therefore, need to be more specific especially in the African context. African women may not be explicitly discriminated against in the written statutory law. However, in practice and in customary law, which has authority in the legal system, women's international human rights are being violated. The UN conventions previously described lack sufficient means to enforce the conventions. Hence, the conventions although prescribed to help women, in actuality have limited impact.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW has various limitations and practical implementation of the Convention :

- The Committee on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as CEDAW) does not have the authority to investigate individual or group claims of violation, unlike its mainstream cousin, the Human Rights Committee.
- CEDAW is marginalised in every way. It receives less staff and funds to complete its work and is based in Vienna and not Geneva, where all mainstream human rights bodies are based, thus limiting its access to the network of other human rights organizations that are vital to its functioning as an effective human rights body.
- CEDAW should formulate a General Recommendation on Article 2 of the Convention which is the general undertaking Article requiring State parties to ensure compliance by their government organs with the Convention and to take all appropriate measures to effect the elimination of discrimination in all its forms by any person, organization, or enterprise and modify or abolish existing laws, regulations, customs and practices. This would help to

See Adetoun O. Ilumoka article.

- specify the nature of the obligation of the State parties. Currently, there is no effective way to analyse if a state has complied with the convention. Consequently, many state organizations have "adopted" the convention but do not enforce its ratification nor practice the rules of the convention.
- CEDAW fails to recognise that the concept of state responsibility extends even to the "private" sphere. This has been a serious draw back to the implementation of the Convention as the majority of violations against women take place in the "private" sphere. State responsibility is a fundamental principle of International Law which provides that a State is legally accountable for breaches of international obligations under customary international or treaty law that are attributable or imputable to the State. While States are not accountable for acts of private persons that are violent to or discriminatory against women, they have to bear responsibility especially where the state facilitates, conditions, accommodates, tolerates, justifies or excuses private denials and violations of women's rights, whether as a result of the acts or omissions of the Executive, the Legislature or the Judiciary.
- Ratification of this Convention by state parties was subject to very many reservations. In fact, the Convention recorded the highest number of reservations ever made to a treaty. The rationale behind allowing reservations is to help the attainment of human rights by providing exceptions to those human rights guarantees that governments cannot immediately and fully undertake at the time of ratification. However, the effect of these reservations has been to defeat the very objectives of the Convention for they have been mainly based on religious and cultural considerations where discrimination against women is most prevalent.
- The Women's Convention does not allow individual women to submit complaints about violations of their rights as recognised by the Convention. This should be remedied for, while a complaint of discrimination on the grounds of sex may be brought under **Article 26 of the ICCPR**, this can only be done provided the State concerned is a party to the **First Optional Protocol to the Covenant**. This could have an impact in practical terms, because not only is one likely to have a more receptive hearing from CEDAW, but the substantive law under the Women's Convention is also likely to be more favourable.
- State parties under the Convention are supposed to submit reports to the CEDAW to allow it to evaluate the implementation of the Convention. The initial report is submitted within the first year of entry into force of the Convention, with periodic reports every four years thereafter. The Committee's work is extremely constrained by the constant failure to submit reports by State parties. Even where reports are submitted, they are often late and extremely sub-standard. This is despite efforts by the Committee and bodies such as the **International Women's Rights Action Watch (IWRAP)** to come up with guidelines for the preparation of reports. Like all human rights instruments, the Women's Convention is in fairly abstract terms in order for it to be applicable to as many societies as possible. Specificity and clarity are thus attained through the interpretation and application of the treaty through the reporting system. Hence its importance.

- Government reports are rarely if ever, self-critical. In most cases, they reproduce the existing constitutional and legal provisions relating to non-discrimination and do not attempt to analyse their application or the obstacles to the enjoyment of equal rights by all women. Additionally, these government reports are produced by men who often time fail to recognize the discrimination that many women face. These reports are often submitted without the input of the women they supposedly reflect. Thus making the reports themselves problematic. Not only is there often a wide gap between formal legal status and reality, but also the Convention itself requires the eradication of *de facto* discrimination. Without data on the actual position of women regarding all their human rights and fundamental freedoms, *de facto* discrimination remains invisible and policies for its eradication are difficult to elaborate. This is an area in which Non Governmental Organisations (NGO's) could provide information to both supplement and where necessary, contradict that of the government. While some treaty bodies such as the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee on the Rights of the Child are formally entitled to receive information from NGOs, others, including CEDAW do not have any formally adopted rules and procedures relating to NGOs.
- The Committee has been criticised for not declaring any national laws, policies or practices as being breaches of the Convention. Thus if the committee fails to recognize national laws which are discriminatory, in fact the State itself will follow suit and fail to see the discrimination within national laws. This has resulted in difficulties in application and interpretation of the Convention and a subsequent absence of international jurisprudence on gender discrimination.
- The costs of implementing the provisions of the Convention and of providing comprehensive reports are too high for many countries. This has meant that there are no available documentations of lessons learned in the process of convention implementation from which nations can rely upon.
- The effectiveness of international human rights law and mechanisms is also determined by its accessibility. There is a great lack of awareness by individuals and NGO's regarding the content, procedure and remedies, if any, offered by international human rights organisations. This lack of awareness hampers any possible growth of human rights law, especially when considering the importance of NGOs in the evaluation of international human rights law applications.
- While the international community continues to assert that human rights are universal, there is a lot of selectivity in terms of not only the countries condemned, but also the issues addressed. Violation of the human rights of women receives little, if any, attention from the mainstream rights bodies vis a vis civil and political rights.

THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

The following limitations for African Women are noted:

Structure of the African Commission

- *Appointment procedure:*

The Election of Commissioners is provided for under **Articles 30 - 44** of the African Charter. Commissioners are nominated by member States and appointed by the OAU Assembly of Heads of States and Government. The question is then posed if the commission will react in any way to discrimination practiced by its State, which made the appointment. The independence and impartiality of the Commissioners is therefore questionable which compromises the competence and credibility of the Commission.

- *Lack of Gender parity:*

The Commission lacks an equitable gender balance which is extremely important for the advancement of the women's agenda. There are currently two female Commissioners on an eleven member Commission which is grossly disproportional, especially when considering the role of women on the commission in relation to the population of women in Africa. Consequently, the commission itself should reflect the needs of African people and women are not being effectively represented.

- *Commitment:*

The Commissioners elected are not committed to the work of the Commission, this is reflected by the frequent lack of quorum, which is supposed to comprise 7 of the 11 Commissioners². Under **Article 39**, if a seat becomes vacant in case of death, or if in the unanimous opinion of the Commission a member has stopped discharging his or her duties, the Chairperson should inform the Secretary General immediately. Unfortunately, in practice, the Commission does not complete this task.

- *Insufficient institutional capacity:*

The Secretariat is understaffed and lacks adequate funding to undertake its activities. The effectiveness of the Secretariat is crucial in view of the fact that the Commission only meets twice a year and it has fewer commissioners than most other human rights bodies.

Mandate

The mandate of the African Commission is found at **Articles 45 - 55** of the Charter and comprises the *promotion, protection and interpretation* of the Charter and *any other activities*

² Tembo, Z. "Empowerment of Women: Violence Against Women- The African Charter and The African Commission on Human and Peoples' Rights." a paper presented to The African Center for Democracy and Human Rights Studies (ACDHRS), 1997.

entrusted to it by the Assembly of Heads and States and Government.

a. Promotion

The Commission conducts promotional activities through education and publicity in designated countries. As expected, eleven Commissioners cannot do much, specifically for women when only two of the commissioners are women. Hence, the need for NGOs to supplement the work of the Commission in this regard.

b. Protection

This is done through use of inter-state communications or complaints, NGO and individual complaints and use of the State reporting mechanism. The following limitations are noted in this regard:

- The Commission's powers under the inter-state communications procedure are less than those of a judicial body as the Commission cannot enforce its decisions against the States. This procedure, is however, rarely if ever used in practice.
- Individual and NGO complaint procedures are provided for under **Articles 55 - 59** of the Charter. As in the area of inter-State complaints, the Commission does not have the authority to bind States to its decisions. The Commission's findings are sent to the Assembly of African Heads of States and Governments and are therefore subject to the approval of the Organisation of African Unity (OAU) , a political body.
- In addition the Charter provides at **Article 59(1)**, that all measures taken by the Commission in the examination of complaints should remain confidential until the Assembly of Heads of States and Government decides otherwise. Thus the Commission cannot publish the names of the parties to a dispute, the issues raised or the action taken, thus failing to raise international attention and prohibiting international human rights bodies from taking action. The strict interpretation of this requirement for confidentiality by the African Commission means that the great deterrent effect that publicity can have on human rights abuses is lost.
- In accordance with the non adversary self reporting mechanism also used in all United Nations treaty systems, member States are required to submit a report every two years on the legislative and other measures taken to give effect to the rights and freedoms under the Charter. Unfortunately, member States do not take this requirement seriously. In addition, the Commission should streamline existing guidelines on state reports which are confusing. These guidelines should not only cover procedural matters, but also clarify the substantive obligations of States under the Charter and the responsibility of the states to submit reports..

- The African Charter does not make provision for the establishment of an African Court. Decisions of a Court would be binding on the States concerned unlike those of the African Commission. This would enforce laws to affirm that the rights of African people are being preserved.

c. Interpretation

The African Commission may interpret the Charter at the request of the OAU, State parties and NGO's. It has of its own volition interpreted some of the provisions of the Charter, by adopting resolutions on them, but unfortunately they are no clearer than the provisions they sought to clarify. This notwithstanding, the following observations are made:

Use of Claw back clauses

Unlike other human rights treaties which contain derogation or limitation clauses specifically prescribing under what circumstances previously granted rights may be limited or derogated from, the African Charter has claw back clauses which give governments the leeway to take away previously granted rights, for example:

Article 6 guarantees the right to liberty subject to "**reasons and conditions previously laid down by law**"

Article 8 guarantees the freedom of conscience and religion "**subject to law and order**"

These clauses give the State discretion in awarding people's rights, very few of which would be women, which in turn does not permit African people to live freely.

The Status of Women under the African Charter

Article 18 of the Charter provides for the preservation of the family making special mention of vulnerable groups in society such as women, children and disabled persons. This provision is complemented by other provisions in the Charter, particularly, **Article 2**, the *non-discrimination clause*, that provides that the rights and freedoms enshrined in the Charter shall be enjoyed irrespective of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. **Article 3** is the *equal protection clause* which states that every individual shall be equal before the law and shall be entitled to the equal protection of the law. Notwithstanding the above provisions, the following concerns have been raised:

- While the Charter calls on States to prohibit discrimination against women, such discrimination frequently occurs within the context of the family. Unfortunately, in many African States, the status of women in society in general and in the family, in

particular, is inferior to that of men. The inferior role of women is **protected in the name of tradition, culture and religion** and this is reflected both in **law and in practice**. The Charter's emphasis on traditional African values and the "**virtues of African civilisation**" could result in discrimination of women and their being subjected to harmful traditional practices such as **Female Genital Mutilation and Wife Inheritance**. Thus a lot will depend on the interpretation of the Charter that the African Commission decides to take.

- Unlike other human rights instruments, such as the **International Covenant on Civil and Political Rights**, the Charter does not explicitly guarantee the **right of consent to marriage and equality of spouses during and after marriage**.
- Specific articles of the Charter, although they provide overall rights, still lack gender sensitivity for example, **Article 4** states, "**Human beings are inviolable. Every human being shall be entitled to respect for *his* life and the integrity of *his* person...**"¹³

Other factors

- The political upheavals in Africa result in leaders who **compromise human rights at all costs** in order to stay in power.
- There is a general lack of awareness of women in the law and the **lack of opportunity** for them to meet and discuss their legal status and map out **strategies**. Lack of effective means of communication results in a **lack of exposure to new ideas** making efforts to change the status quo a very slow process.
- NGO's, though knowledgeable in domestic law, are **generally not conversant** on the African Charter and therefore do not include it in their **legal awareness programs**. This needs to change as NGO's have an **invaluable role to play in 'waking up' the Commission**.
- International Human Rights Law, though imposing obligations on **States to secure basic rights and freedoms for individuals**, is characterised by a **lack of reciprocity of interest among States**. Save for the **abuse of rights of aliens, which may provoke protest and possible retaliation**, the international community rarely responds to abuses directed by a State on its own citizenry.

¹³See Zoe Tembo paper.

2.3 Efforts Made by Women's Rights NGOs

African women NGOs are members and key players in civil society. The Women's Rights movement in Africa has grown significantly since the late 70s and 80s and the growth continues into the 90s. The key motivation for the Women's Rights movement is the continued oppression of women through unjust customary law and traditional practices. The emergence of a human rights framework to defend human rights has been embraced by African women alongside their sisters from Latin America, Asia, and the West.

The Women's rights Movement has been led largely by professional women who have gained knowledge and interests from networking and sharing. Whereas there is a distinct human rights sector run, managed, and controlled by women, there is also a distinctly separate structure largely made up of activists who are committed to the process of uplifting the legal status of women.

The Women's Rights movement is a political movement that challenges the present political structures in response to the deteriorating situation of African women. Although at the national level the women's rights movement will adopt unique strategies to capture the national problems at a continental level the burning issues are similar and common. There have been efforts too strengthen efforts of women's NGOs and groups at regional levels. For example, the creation of the Women in Law and Development in Africa network based in Harare, Zimbabwe is an attempt to provide a network on women's rights issues. The international Federation of Women Lawyers, a global women's rights network, has chapters in several African countries, providing legal services and literacy programmes and creating a network for country members. The southern African region has Women in Law in Southern Africa (WLSA) which researchers into women's rights issues in Southern Africa. In the East African region there is a Women in Law in East Africa (WLEA) and a similar structure exists in West Africa (WLWA).

Challenges Facing the Organizations

As the organizations have grown and gained credibility in the women's movement, they have faced various challenges.

2.4 Agencies Supporting Women's Rights Work in Africa

There are various agencies which support women's rights work in Africa. This list is by no means exhaustive.

Special Rappateur on Violence Against Women

The special rappateur was appointed to receive complaints of violations against women. The rappateur reports the complaints to the Commission on Women or the Commission on Human rights or both. It was generated to help frame the debate about the best way forward to combat violence against women in its manifestations.

Centre for Human Rights

A United Nations body established in 1987 provides technical assistance to states in activities ranging from drafting legislation to strengthening the judiciary conducting training for official working with the administration or justice, enhancing or establishing national human rights commissions, providing electoral assistance and assisting NGOs dealing with human rights.¹²

Commission on the Status of Women

United Nations Body which has a limited mandate to receive communications on the status of women. This commission may make recommendations to the Economic and Social Council as to which action to take in the case of women.¹³

African Commission on Human and People's Rights

Established in 1981 by the African Charter on Human and People's Rights. They consider communications relating to human and people's rights subject to the satisfaction of fairly standard admissibility criteria.¹⁴

Economic Commission for Africa-Centre for Women

The African Centre for Women is a United Nations Structure within ECA responding to the needs of Women in Africa. The Centre works primarily with Womens Bureaus from the various African Countries.

¹² Stamatopoulou, E. "Women's Rights and the United Nations." Women's Right, Human Rights edited by Julie Peters and Andrea Wolper. Routledge, 1995

¹³ Schuler, M. A. editor. Claiming Our Place: Working the Human Rights System to Women's Advantage. The Institute for Women, Law, and Development. Washington D.C., 1993.

¹⁴ See Schuler book.

womens organisations. The centre is based in Addis Ababa.

The African Centre for Democracy and Human Rights Studies (ACDHRS)

The (ACDHRS) as enjoined in its mandate to help the work of the African Commission in educating and popularizing the African Charter on Human and People's Rights on the whole continent. The Centre spends time training various individuals in all areas of human rights. The Centre also has become involved in fundraising activities to assist the process of contributions to the Additional Protocol in the charter.¹⁷

¹⁷See Zoe Fembo paper.

CHAPTER 3

3.1 FINDINGS OF THE STUDY-- RESULTS OF INTERVIEWS WITH REPRESENTATIVES OF WOMEN ORGANISATIONS, JUDGES, MAGISTRATES AND POLICY MAKERS

Various instruments were used to establish the need for legal literacy for African women. A questionnaire was sent out to women organisations in Uganda, Zimbabwe, Zambia, Tanzania, Ethiopia, Ghana, and Mozambique. One on one interviews were held with two women members of parliament in Kenya and three magistrates participated in a focus group discussion.

From the questionnaires it was established that various organisations have a specific objective to empower women of their rights through legal literacy campaigns, publications and training. All the organisations stated that they had developed publications in English and local languages. Samples of the materials sent from the various organisations included brochures, pamphlets, simple booklets, posters, T-shirts and flyers. The publications vary in content, colours and layout, but generally all the materials are empowering and relevant for increasing women legal empowerment.

IMPACT OF THE PUBLICATIONS

The consultant sought to establish who are the beneficiaries and target of the awareness information. All the organisations listed women and the community as recipients of the awareness information. It was not possible to establish what the impact of the publications had been in increasing women's legal literacy for various reasons. First, not all the organisations had evaluated their work to establish the impact. Other organisations are yet to send us their questionnaires and reports. However all the organisations that responded had disseminated materials through other women groups, church organisations and other members of civil society. It would be helpful later to evaluate the impact of the materials for the beneficiaries, the women.

WOMEN PARLIAMENTARIANS: During the interviews it was established that lack of women legal literacy is a major problem for their participation in decision making. Women need legal information about key legal issues affecting their basic human and women rights. These being, the right to freedom of movement, freedom from violence, the right to own and hold

property and the right to bodily integrity. Without knowledge of these basic rights it is impossible to enforce them and claim them. The members of parliament underscored the importance of legal education campaigns not only for women but for policy makers developing development programmes and working on legal matters such as prosecutors, the police force, and the judiciary. This is an effective strategy that has been used in Zimbabwe and Kenya¹⁸. Non-governmental organisations have dubbed this interaction as "engaging the state". Police training has been an attempt to create sensitization and awareness of women's rights and extending legal education with a gender bias. Raising awareness about the plight of women through this collaboration with law enforcement officials is an effective strategy to also mobilise the community to address the issues. In Kenya, this training has been extended to include judicial and prisons officers.

Judicial officers interviewed underscored the need for women to be empowered about their rights. From the experience of the respondents it was clear that women were disadvantaged by the legal system due to ignorance of legal procedures and their rights. The judicial officers find themselves having demands being placed on them therefore playing a dual role of judge and teacher. Women need to understand their rights before they can enforce and protect them. There are various issues affecting the accessibility of justice for African women. In most countries there is in existence of a dual legal system resulting from existing customary law and statutory law. This is evident in countries that were colonised in the earlier half of the century. The result of a dual legal system is to confuse the process of justice and place unnecessary burdens on citizens. For African women the situation is made worse whereby the application of customary law in almost all cases is personal law. These personal law matters include marriage, divorce, succession, custody, maintenance and inheritance. It is evident, therefore, that within patriarchal nature of society prevailing in Africa customary law empowers men and disempowers women. One only needs to look at various practices and traditions to see how women are disempowered. For example inheritance and succession in most communities is done along patriarchal lines while women are not owners of land and other immovable property, but users. Furthermore when women seek separation from their spouses most African communities will not allow them to take the children of the marriage. They must leave the children with the husband. Although written law provides some measure of protection, women lack information about the written law and what it provides. They should be the target for legal awareness and education initiatives.

At the grassroots and rural communities where women groups have initiated various strategies to increase women legal literacy, it was observed that women are in dire need of legal information. In the rural areas the levels of literacy affect the effectiveness of legal literacy campaigns through the publication of materials.

Organisations therefore have to become creative and design innovative education methods. Para-legals have been used in various countries such as South Africa, Egypt, Zimbabwe and Uganda to access legal services and information on basic rights for the rural and per-urban communities. Para-legals have been dubbed the "foot lawyers". They live in and spend their time with the

¹⁸ Musasa project in Zimbabwe and gender violence training project in Kenya.

communities being served. In Kenya, para legals have been effective in addressing legal issues at the community levels. Although this is an expensive venture, due to training costs and material production, it is an effective way of empowering women to be aware of their legal rights and enhancing their legal literacy.

Other methods that have been used include the use of drama, song and dance. Various groups have challenged the local community to use drama as a weapon for highlighting the problems facing rural communities vis-a-vis their rights. This has proved effective as a first step to developing joint intervention strategies with the communities. An example of a follow up strategy is to develop training and education seminars and the production of radio programmes in vernacular. There is a need to include the communities in the development of any legal literacy programmes. As much as possible they should be part of the process of empowerment.

RECOMMENDATIONS:

1. Organisations seeking to undertake any programmes on legal literacy should plan programmes. These programmes should clearly define the targets and beneficiaries. Needs assessments should be undertaken before the commencement of any intervention in terms of legal literacy. There should be clear indicators to assess the impact of the activities, which should be developed along with the communities.
2. The information should be packaged in a language and style that is reader friendly and accessible. There have been more publications developed in English rather than in the local languages. This is an impediment in reaching the intended beneficiaries of legal literacy who are often times not conversant in English.
3. Effective communications strategies should be used. These will include the use of radio, and where possible television. The messages need to be sharp and focused to not only empower women but the wider community.
4. Legal literacy programmes should be extended to Government agencies working with women, such as the prosecutors, judiciary and police officers. As enforcers it is critical that they have a common understanding of the issues facing the population of African women they serve.

REVIEW OF MATERIAL PREPARED BY THE WOMEN RIGHTS ORGANISATIONS. FIDA CHAPTER, WILSA, WILDAF, WLEA.

Majority of the information prepared by women groups are varied and interesting to review. Most will be simple brochures advising women where they can find the organisation and what services are available for them. The other publications that were received were help cards for women in

distress. These are particularly common in countries where women's groups have organised services for women such as legal aid services, shelters and support groups. Other materials are simple write ups providing vital information on legal information relating to the various areas affecting women such as inheritance, child custody and maintenance and succession. (These publications are enclosed with this report for your review).

WOMEN GROUPS EFFORTS TO MANAGE INFORMATION:

Regional networks such as ISIS, WILDAF have made efforts to document the different publications available for women legal literacy campaigns. This has ensured that women are well informed of other efforts in different parts of the continent. This effort provides women with networking opportunities on the development of publications. and.

MANUAL FOR WOMEN'S LEGAL LITERACY

INTRODUCTION

Awareness has been growing among women activists about the role the law plays in supporting patriarchal structures of society that continue to suppress and legitimise women's subordination. The law being an instrument of social change has functioned as a tool of control, which inhibits access to certain resources while supporting attitudes and behaviours that maintain social structures and relationships.

For women, the law plays a critical role in affirming the inferior legal status of women. First, the laws more often than not are unjust and discriminatory with regard to women. Secondly, the enforcement of the law on the other hand is often prejudicial against women and also and most importantly women tend to be unaware of the rights they possess and the effects laws have on them.

This manual is designed with a view of providing critical information for women on the law. As law is seen as an instrument for empowerment of the oppressed, it seeks to focus on the causes of oppression within the legal context by providing information on what laws affect women and how they are enforced. This manual seeks to enable readers to critically analyse the context of law as it relates to them so they can actively and meaningfully respond by seeking solutions to problems which come their way without overdependence on lawyers.

Defining the law

Laws define our positions as citizens, family members and workers. Laws determine who can or can not use economic and social resources such as schooling, health, land, jobs and credit. Laws control decision-making in government, at work and at home. The law tells us who decides and who benefits from resources and opportunities.

Ideally, laws should help us solve our problems and differences fairly at home, at work and in our communities. Laws aim to promote justice, equality and harmony. This is very important

because there are lots of inequalities between rich and poor, men and women, employers and employees, etc. If there were no laws, everybody would just do what they want, when and where they want.

Laws can therefore be defined as sets of rules which state what people, society and government can and cannot do. They provide the duties and responsibilities for every citizen. Laws exist therefore to regulate behavior and violators of laws are punished. In the same way that Parliament passes laws which control the behavior of citizens and the state, citizens can pass laws for an organization that they set up. Traditional African communities had their own laws or customary laws which regulated society with accompanying mechanisms to punish those who violated them.

LEGAL EDUCATION

Legal education in this manual is defined as non-formal legal education which can take place out of the formal schooling system. It is not intended to train lawyers, but rather to train citizens who can be critical of the legal system in which they live in so as to improve that context. The improvement sought here is one that seeks to assure justice and equity in society.

When embarking on legal education it is important to adopt an approach which is sensitive to the group you intend to train. This framework enables adult learners desire the education by enhancing participation.

The framework designed should recognize that it takes more than information to promote equality. For women to exercise their rights, women need:

- information about the law and legal procedures for claiming their rights.
- confidence and a belief that they can improve their situation.
- support from other women and men especially those in their families.

It is also critical to know and develop ways in which women will effectively use the information they receive about the law:

Step 1: Group discussions:

It is best for men and women, boys and girls, to discuss separately because women will often not express themselves in the presence of men.

Step 2: Critical thinking:

Before you take about the law, give women a chance to list some of their problems and concerns. Once they have listed them, ask questions to help them look at the causes and consequences of these problems. Relate them to various legal provisions within the community.

- Step 3: **Self analysis and criticism:**
Encourage women to talk about their attitudes and beliefs. Raise questions about how and why our lifestyles are changing. Encourage women to question myths and prejudices. This serves as an **empowering women to relate and challenge existing laws within their communities.**
- Step 4: **Sharing similar experiences:**
Assist women to see the similarities in their experiences. It helps to **build confidence** when a person can see that others have similar problems. It helps to know that we are not alone.
- Step 5: **Enhancing skills to develop empowering strategies:**
Encourage women to advise and support each other to solve **problems and to take legal action.** Ask women to accompany each other for **moral support when going to court or to the police.**
- Step 6: **Role Plays :**
Practice going to court or to the police in **role plays to help people to prepare for a new experience.**

FAMILY LAW

Family law refers to that branch of law which defines **legal relationship between members of a basic family unit of a couple and their children.** This law looks at:

- ▶ relationship between spouses and marriage institutions **especially their rights and duties to each other.**
- ▶ relationship between parents and their children and their duties to them.
- ▶ relationship between an adopted child and his guardians.
- ▶ rights of the family members to the family property.
- ▶ Break-up of the family ie divorce, separation, maintenance and **custody of the children.**

Marriage can be defined as the legal union or contract made by **man and woman to live as husband and wife.**

The law recognises four regimes of marriage.

- ▶ **Islamic marriages:**
These are marriages conducted under Muslim Law, complying with the **provisions of Islam as provided in the Koran.**

- **Human marriages:**
These are marriages conducted under Hindu Law. In almost all African countries marriages are performed according to Hindu rites and ceremonies so as to be that they are recognized. Hindu marriages may not be solemnized.
- **African customary laws of marriage:**
In order for a marriage to be baldly constituted, the customary laws of most ethnic group require the bridegroom to make payments of livestock and other property (dowry) to the father or guardian of the bride. Most systems of customary law permit men to enter into any number of marriages simultaneously while prohibiting women from entering into a subsequent marriage during the continuous of a prior marriage.

It is important to note that Customary law continues to dominate the practice of traditional marriages and permits several practices that discriminate against women. These include:

- the practice of polygamy;
- the practice of families contracting the union between their son and daughter and making arrangements to pay marriage consideration or bride price which the woman may have to refund should the marriage be dissolve;
- the practice of "marital power" which disables the wife from contractually binding the joint household without her husband's consent;
- the pledging of young girls in marriage;
- the presentation of a young girl as compensation in a dispute;
- the forced marriage of widows into their late husband's families (widow inheritance);
- prohibitions on widows remarrying;
- the practice of harsh rites at widowhood and the period seclusion of women, and the exclusion of widows from right to inheritance related to their husband's estate.

In African countries, women suffer serious discrimination due to non-uniform marriage laws applicable. Unregistered customary marriages, are, however, legally recognizable with respect to spousal claims of maintenance and the custody and rights of secession of children from the union.

DIVORCE AND CUSTODY

Divorce occurs when a husband and wife disagree and they are not able to live together, one of them decides to end the marriage relationship. As is the case with marriage, customary legal regimes rather than a uniform statutory scheme are often applied to dissolve a customary marriage. In such cases, traditional authorities, families of the couple, or courts determine whether valid grounds for the divorce under customary law have been stated, and issues of property division and child custody. But many traditional norms applied overtly discriminate against women. For example, a single act of adultery by the wife is grounds for divorce whereas the husband's adultery is never a ground for divorce. Similarly, the wife's bareness is ground

for divorce whereas the husband's infertility is not. Also, women married under non-Islamic customary law are subject to undefined grounds for divorce applied by customary law courts.

In most African customs if one is married according to customary law, they are various reasons for seeking a divorce include :-

- ▶ Witchcraft
- ▶ Wife's laziness
- ▶ Wife's adultery
- ▶ Husband's cruelty
- ▶ Husband's failure to provide maintenance to the wife or children
- ▶ Incest
- ▶ Desertion by either party
- ▶ Impotence for the husband and barrenness for the wife
- ▶ Habitual theft of either

Most customary practices related to child custody favouring the father's custody in patrilineal group and the mother's custody in matrilineal groups have given way to statutes mandating that custody decisions be made on the basis of the child's best interests. However, some statutes and customary practices continue to favour granting custody to the husband or wife. For instance under the South African law, mother retain guardianship of their children after divorce, thus reversing customary law favouring the fathers custody of the children if bride wealth was paid. Tanzania and Ethiopian laws also have the statutory presumptions favouring the mothers custody of young children.

Despite diverse laws in Africa most laws provide that both parents have equal rights to apply for custody. In such cases the court normally awards custody of children below the age of seven to the mother on the basis that mothers are best able to look after young children who are still wholly dependent on adults for survival. Where the court awards custody of a child to the mother, it may order the father to pay to her such weekly or other periodical sum as the court, having regard to the means of the father, considers reasonable for maintenance of the child. In addition, in any suit for divorce, judicial separation or nullity the court may order that the husband pay the wife such annual, monthly or weekly sum of money for any term not exceeding her life, as the court may deem reasonable.

SUCCESSION AND INHERITANCE

What is Succession ?

Succession is the process in which the property of a dead person (deceased) is shared and distributed to his or her heirs. Laws of inheritance deal with the rights to succeed to the property of the deceased person. This can either be by way of:

- (I) will -written/unwritten - testate succession.
- (II) Absence of a will -intestate succession.

Does a person who buries a dead person get a better claim to his or her property than those who do not?

In almost all African countries the answer is No. The mere fact that one buries a dead person does not mean that she or he must inherit his property. Even if a person looks after the deceased during the illness or financially, he does not acquire a better claim or position to inherit the deceased's property.

It is advisable that people should write wills to minimize burial disputes.

A will is a declaration or a statement in which a person states how he/she would like his property to be dealt with after he/she dies. A Will maybe oral (spoken) or written.

Intestate Succession

If a person dies without having written a Will or if the court declares the Will is not proper (valid), he or she is said to have died intestate (without a Will).

Testate Succession

If a person dies having written a valid Will, the deceased is said to have died testate. If a person does not in his Will distribute all his property then what is stated in the will be distributed according to the Will and if he does not mention some property, then that property will be distributed according to the Succession or inheritance laws applicable in the country.

Advantages of making a Will

- A Will makes it clear how the property of the deceased will be distributed.
- It reduces fights and disputes among family members.
- It gives the maker the freedom to give different shares to different people.

Any person whether male or female who is at least 18 years old can make a Will provided he/she is of sound mind at the time of making the Will.

Types of Wills

- (a) Oral Will

An Oral Will is valid only if:-

- ▶ It is made not more than three months before the death of the maker.
- ▶ If the maker does not die within three months, the Oral Will becomes invalid. He or she has to make a new one.
- ▶ It is made in the presence of two adults.
- ▶ It is consistent with a Written Will before or after it.
- ▶ However an Oral Will made by a person in active service such as in the Armed Forces or Merchant Marine will be valid if the maker of that Oral Will dies during such active service even if it is more than three months after the date of making the Will.
- ▶ If there is a conflict amongst the witnesses on what the deceased stated, the Oral Will will be taken to be invalid unless there is an independent witness to prove what was said.

(b) Written Will

A Written Will is a written declaration on how one's property is to be dealt with after his or her death. The Will can be made any time before the maker dies. In addition, it does not lapse with time. However under common law a will is valid only if:-

- It is signed or thumb printed by the maker (also called testator).
- The maker signs or thumb prints it in the presence of two (or more) adults of sound mind. However, the witnesses do not have to be present at the same time. It is enough if the maker acknowledges his signature to the witness.

Though the witnesses may be persons benefiting under the Will, they cannot get their share unless there is an independent witness. Beneficiaries must get two other witnesses.

- Where a Written Will is found to be invalid, the property is distributed as if the deceased died without having written one.

Revocation and Destruction of Wills

- If a person changes his mind, he can make a new Will and cancel the old one (to revoke).

- Destruction can be by burning or tearing.
- If a person marries after having made a Will, then that Will is revoked and he has to write a new Will.
- A Written Will cannot be revoked by an Oral Will.

Altering/Changing a Will

- A Written Will can be altered but the alteration has to be signed as if a new Will was being made.
- A Will must be simple and clear.

A Will may be kept by the maker, the executor, a friend, a lawyer, a bank or deposited at the High Court Registry. A Will does not become invalid because of its contents or layout before the death of the maker.

In disposing off property by Will, the principle of equality does not apply. Some people can be given more than others in the Will. The Will cannot be challenged on the basis that someone has been given more than the others. The complainant has to demonstrate a prove that he or she has been manifestly prejudiced by the distribution.

In most countries the definition of who is a dependant of the deceased person is similar though not in entirety. Some laws describe the following persons as dependants.

Wife:- The wife or wives and former wife or wives of the deceased whether or not they are being maintained by him at the time of his death. The effect of this rule is that a divorced or even a remarried wife is entitled to inherit the former deceased's husband's property. This rule is discriminatory against men since a divorced man is not entitled to inherit from a former wife.

Child:- The children of the deceased whether or not they were being maintained by him at the time of death. A legally adopted child is treated as if it was actually born of the deceased. A child born out of wedlock is deemed to be legitimate once the father of the child marries its mother and it is entitled to inherit with the other children. When a child is grown up and self-supporting at the time of death, nevertheless it is entitled to a share of the deceased's property. An illegitimate child (a child fathered by a married or unmarried man outside marriage) has no right to inherit from him unless the deceased had during his life-time accepted the child as his own or voluntarily assumed permanent responsibility to it.

Other relatives:- Other relatives of the deceased (parents, step-parents, grand-children, step-children, children whom the deceased had taken into his family as his or her own, brothers and sisters, half-brothers and half-sisters) are only entitled to a share if they were being maintained by the deceased prior to

his or her death.

If the deceased is a woman, the husband, if he was being maintained by her immediately prior to the date of her death, is entitled to a share also.

PROPERTY RIGHTS

In almost every African country women have an equal right to register title to land, although such laws were enacted in a context in which women traditionally could not own land and inheritance of land occurred by male lineage. In some instances constitutional recognition of women's property ownership as provided by the Constitution of Ethiopia providing women equal rights to 'acquire, administer, control, transfer and benefit from property' and equal treatment in the inheritance of property however, under customary laws in Northern Ethiopia a woman is not allowed to inherit land unless her father dies before giving her hand in marriage.

Despite the removal of formal legal impediments to equal inheritance rights for women, most inheritance laws do not impose any obligation on fathers to provide for their daughters. As a consequence, fathers continue the customary practice of transferring land to their sons on the assumption that a daughter will marry and gain access to land through the status of a wife. Customary laws of inheritance are still highly respected even though they are not legally enforceable.

DOMESTIC VIOLENCE

This refers to incidences of violent behaviour within the family or home. It also refers to behaviour that violates women's decency and privacy in private or public places. It includes rape, defilement, indecent assault, incest, assault and battery, wife beating, sexual harassment and female genital mutilation.

1. RAPE

A person is guilty of rape if he has sexual intercourse with a woman or girl without her consent or if she is coerced or deceived in some way into giving her consent. It has been traditionally accepted that husbands cannot be convicted of raping their wives as consent to sexual intercourse is considered to be implied in marriage: if the parties are judicially separated, the husband may be convicted of marital rape. South Africa is the only country so far that has legislated against marital rape recognising it as an offence.

Most laws make it extremely difficult to prove the offence of rape, by requiring proof of force and presence of semen. In fact rape has been found as one of the hardest crime to prove as the burden of proof for the prosecution is beyond reasonable doubt.

2. DEFILEMENT

Defilement is the term used to describe sex with children under the age of 14, regardless of the fact that the child agrees or not. The same procedure should be followed. Unlawful sexual intercourse with any girl under the age of 14 years (minors) constitutes an offence, irrespective of whether or not she consented to sexual intercourse. It is however sufficient defence to such a charge of statutory rape that the accused had no reason to believe and did in fact believe that the girl was 14 years or older or that the girl was his wife.

3. INCEST

This refers to sexual related activity with immediate blood relations like such as biological father, mother, sisters, brothers, grandparents and first cousins. Half brothers and half sisters also fall within this category. This is a crime and adult parties involved will be charged in court.

A victim of incest should report the matter to a Police Station. Some countries insist that it is necessary to obtain consent from the Attorney General or the top most Government Adviser.

A word of caution: These cases are extremely difficult because it occurs within a family setting and often victims find themselves under pressure to resolve such issues at home or not to talk about it at all. One must be courageous to ensure that such offenders are punished. Counselling is recommended to achieve this.

4. ASSAULT AND BATTERY:

This includes acts of violent or threatening behaviour which causes fear within the home. Such incidents should be reported to the Police as soon as it occurs. These are serious crimes and must be recorded in the Police station and documentation of the crime and a medical report should be provided to you. Other sexual offences which are provided by the law include;

- ▶ abduction of a woman of any age against her will for the purposes of marriage or sexual relations;
- ▶ "indecent assault" of any woman or girl;
- ▶ procurement of women or girls for the purpose of prostitution;
- ▶ inducement of sexual intercourse through duress, fraud, or the administration of overpowering drugs and ;
- ▶ detention of any woman against her will for the purposes of sexual intercourse.

5. WIFE-BEATING

Wife-beating is fairly prevalent in almost all African countries. This is due to the patriarchal

nature of society which leads to male domination and female suppression. The continuation of this practice (wife beating) may be attributable to the fact that almost every regime of customary law grants husbands the right to "chastise" their wives for "misconduct". However, only "unjustified or excessive beating" by the husband would be sufficient ground for divorce or for the wife to return to her family. Nonetheless, violence against a wife might constitute an offense as an assault. The problem with this lies in application of the law, which is often administered by men who feel that wife beating is a domestic affair which has no place in the legal enforcement agencies.

TRUTHS ABOUT WIFE BEATING

- ▶ Wife beating happens in all social classes.
- ▶ It is a problem in all cultures. Religious beliefs do not necessarily stop men from beating their wives.
- ▶ Wife beating is not mad or unusual behaviour. Most men who beat their wives do not generally behave violently towards other people.
- ▶ Alcohol is not the cause of wife beating although it can play a part.
- ▶ Not all men who beat their wives come from violent homes.
- ▶ It is not a woman's fault if she is beaten even if she has done something wrong. **Beating is a crime. If a man does something wrong at home or at work, we do not say he must be beaten.**
- ▶ Women do not "ask for" beatings because they enjoy them. **Some women put up with them for different reasons. It is difficult for women to leave a violent man.**
- ▶ Men do not beat their wives to show their love. **If beating is a sign of love, then how come if anyone beat you up you would not like it at all?**
- ▶ Well educated women are also beaten by their husbands. **Some men who beat their wives are very successful in their careers.**
- ▶ Battered women are ordinary women. **If their behaviour seems strange, this is probably because of the way they are treated.**

Wife beating is wrong and it is a crime.

6. SEXUAL HARASSMENT

All African countries identify both physical and verbal sexual harassment as **criminal offences**. In some countries an act of physical sexual harassment may constitute an offense. "Indecent assault" has been defined in Kenya to mean an assault accompanied by utterances suggestive of sexual intercourse and also an assault of touching..... The simple issue usually is **whether the assault was intentional and whether it was indecent. Utterances suggestive of sexual intercourse could change an otherwise simple assault into an indecent assault...** The problem with most of these legal provisions affect the implementation process, whereby **the women do not know that they have such protection coupled with the negative attitude by police or law enforcers who are guided by their own prejudices instead of what the legal provisos offer.**

SEXUAL HARASSMENT

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Just like any other case where women suffer violence, whenever sexual harassment of women is discussed, some men always attempt to brush off these problems by saying that it happens to men too.

Women suffer sexual harassment in the workplace, on buses, at hospitals and many other places in their day to day lives. However, there are very few if any statistics to show how often the problem occurs.

Part of the explanation for this may be that the problem is not taken so seriously, thereby not getting enough attention or any investigation.

Secondly like many problems of a sexual nature, it is often difficult for women to talk about it openly to someone else, without feeling that they, the victims will get blamed for it.

The other reason is also that women have not found a language and developed skills to analyse the problem. All most women know is that something terrible will have happened to them, but they cannot explain it to anybody or describe how they felt.

However if we are to deal with the problem we have to learn to talk about it openly. And the first step to doing this is recognizing it and recognizing it as a problem.

WOMENS RIGHTS LEGAL LITERACY

QUESTIONNAIRE

STATEMENT OF OBJECTIVE

This questionnaire is intended to facilitate the gathering of information about womens legal literacy programs in Africa. This study commissioned by the Economic Commission for Africa is interested in finding out the types of programs initiated for womens legal literacy, their impact and effectiveness. We would be grateful for any assistance that you or your organization is able to give towards facilitating this important exercise.

A. ORGANIZATION

Name of Organization:

Physical Address:

Tel/Fax:

E-mail:

When did your Organization start and why?

B. CONTACT

Contact Person:

Designation / Position:

C. INSTITUTIONAL FOCUS

Area of the Organization focus (e.g. Rights awareness, Legal Aid Para Legal Training, Research, Policy Advocacy).

1.

2.

3.

4.

5.

6.

- 7.
- 8.
- 9.
- 10.

D. PROGRAMS ON LEGAL LITERACY.

Please list the past and existing (within the last 5 years) Legal programs. Use the outlined framework in this section.

Name of Program and date Commenced	Target group/ Beneficiaries	Specific Geographical Location	Has the project achieved a desired impact? Explain	What problems has you encountered in implementing the programs?
e.g. legal aid	women	Within the city and environs.	The project has reached 200 women in the first year.	-high costs -transport -cooperation with the government.

PROGRAM IDENTIFICATION AND DELIVERY METHODOLOGIES

Have any baseline surveys, needs assessment, focus group discussions been conducted e.t.c. as part of your program implementation? Explain.

.....

.....

What Training Methodologies have you used? (e.g. radio, drama, seminars, civic education trainings, material productions e.t.c.) Please specify.

.....

.....

EVALUATION

- a) How do you evaluate the program activities e.g after workshop or seminar? (Please attach a sample of evaluation form where applicable).

.....
.....

- b) Follow-up evaluation (impact assessment) Please indicate whether this is done.

.....
.....

If yes, how long after Program delivery?

.....
.....

Who does it?

.....
.....

If no, how does the organization assess the usefulness and impact of its legal literacy program?

.....
.....

Does the organization have measurement indicators for impact assessment? Please explain.

.....
.....

COLLABORATION

What links do you have with the local Ministry concerned with womens affairs? (e.g. the Womens Bureau do they collaborate with you in any of aforementioned programs?

.....
.....

WOMENS RIGHTS LEGAL LITERACY

QUESTIONNAIRE

STATEMENT OF OBJECTIVE

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A. MINISTRIES

Name of the Ministry/Department:

Postal address:

Physical Address:

Tel/Fax:

E-mail (if any):

When did your Department start ?

B. CONTACT

Contact Person:

Designation / Position:

C. DEPARTMENTAL FOCUS

Area of the Ministerial focus (e.g. Rights Awareness, Legal Aid, Para Legal Training, Research, Policy Advocacy).

1.

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D. PROGRAMS ON LEGAL LITERACY.

Please list the past and existing (within the last 5 years) Legal programs. Use the outlined framework in this section.

Name of Program and date Commenced	Target group/ Beneficiaries	Specific Geographical Location	Has the project achieved a desired impact? Explain	What problems has you encountered in implementing the programs?
e.g. civic education	Women	within the various municipalities	-voter registration has increased -more women have been nominated by the various political parties to contest in elections.	-literacy -political interference from the ruling party.

PROGRAM IDENTIFICATION AND DELIVERY METHODOLOGIES;

Have any baseline surveys, needs assessment or focus group discussions been conducted e.t.c. as part of your program implementation? Explain.

.....

.....

What Training Methodologies have you used? (E.g. radio, drama, seminars, civic education trainings, material production e.t.c.) Please specify.

.....

.....

If the above answer is in the affirmative what resources are allocated for the programs. (e.g Concessions for air time on national radio, joint efforts or cost sharing)

.....

.....

EVALUATION

a) How do you evaluate the program activities e.g after workshop or seminar? (Please attach a sample of evaluation form where applicable).

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b) Follow-up evaluation (impact assessment) Please indicate whether this is done.

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If yes, how long after Program delivery?

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If no, how does the organization assess the usefulness and impact of its legal literacy program?

.....
.....

Does the organization have measurement indicators for impact assessment? Please explain.

.....
.....

COLLABORATION

What links do you have with the local non-governmental organizations concerned with womens affairs? (e.g. the Womens Rights Organizations, do they collaborate with you in any of aforementioned programs?)

.....

SUPPORT FOR LEGAL LITERACY PROGRAMS

Is there policy or law in your Country to support Legal Literacy programs and initiatives? (government policy prouncement, debate in parliament and statements from members of parliament)

.....
.....

List of People send the questionnaire

1. Milton Odongo
FIDA Uganda
2. Atsedeweine Tekle
Ethiopian Women Lawyers Association
3. Rebecca Osei-Boateng
FIDA Ghana
4. Zelma De Vasconcelos
Mozambican Women Lawyers
5. Scholastica Jullu
Women Legal Aidf Centre
Tanzania
6. P. Kasonde Yangailo
National Lergal Aid Clinic
Lusaka