

---

# INTERNATIONAL HUMAN RIGHTS LAW GROUP

Building the Capacity of Women=s Rights NGOs in Africa to Promote and Protect  
AWomen=s Equal Rights to Equal Inheritance≡

Report on the  
West African Regional Consultation  
Accra, Ghana  
18 - 20 November 1998  
and  
Subsequent Activities 1998 - 1999

---

Report Prepared By:  
Marie-Elena John Smith  
Coordinator, Africa Programs  
International Human Rights Law Group  
1999

*The International Human Rights Law Group would like to thank the following foundations for their  
generous support of the Regional Consultation:*

*The Ford Foundation, USA  
General Board of Global Ministries, The United Methodist Church  
The John D. and Catherine T. MacArthur Foundation, USA  
Womankind Worldwide, UK  
UNICEF, Nigeria*

*The following Law Group staff deserve recognition for their contribution to the production of this report:*

*Todd Freier  
Sameena Nazir  
Abby Richardson  
Paul Simo  
Alison Stewart*

# TABLE OF CONTENTS

---

I.		
Background.....		
1		
II.	The	Accra
Consultation.....		2
III.		Subsequent
Activities.....		11
IV.		Concluding
Comments.....		18
V.		
Appendices.....		19



## **I. BACKGROUND**

The International Human Rights Law Group is a non-profit organization of human rights and legal professionals engaged in human rights advocacy, litigation and training around the world. Our mission is to support and help empower advocates to expand the scope of human rights protection for men and women and to promote broad participation in creating more effective human rights standards and procedures at the national, regional and international levels.

We believe that the critical forces of change come from within each nation. Our challenge is to find ways to strengthen the capacity of local groups to transform their society. We seek ways to help groups protect themselves when they are under attack; to share with them our skills and resources; and to support their strategies for change. Our programs assist them in building national institutions of accountability and justice. At the same time, we work to involve these advocates in international efforts to develop and codify human rights standards.

Over the past decade, and particularly since the United Nations Fourth World Conference on Women in 1995, the Law Group has been closely following the increasing tide of activism in Africa around the issue of the right of women to inherit land and property. In taking note of this emerging campaign, we observed that, despite intense struggles by grassroots women=s NGOs and legal assistance programs, these organizations often have difficulty moving beyond recurring obstacles and challenges in their work.

In addition, the Law Group recognized that the struggle for women=s inheritance rights in Africa has gained in urgency in recent years for several reasons. These include a sharp increase in the number of women widowed at a young age due to a staggeringly high incidence of HIV/AIDS, which in some African countries afflicts as many as one-fourth of the adult population. Another major cause for the increased exigency of women=s inheritance rights is the overwhelming number of deaths caused by civil strife, which has engulfed several African countries. At the same time, recent social and economic trends, such as the decline in formal employment, are thrusting upon women increased responsibilities for the survival of their families. Women are faced with combining their existing customary roles with those of providing for basic needs, and generating income. All of these roles are, of course, greatly intensified at the loss of a male family member.

Yet despite the enormous investment increasingly required of women, long-standing gender inequalities X manifested blatantly in areas such as inheritance X prevail, often in the form of a state-tolerated customary framework. In some parts of the continent, although three in four women are engaged in productive farming, and agriculture makes the largest contribution to national Gross Domestic Product and constitutes the largest employment sector, ownership of land by women stands at virtually infinitesimal levels. With inheritance constituting the principal means of land transfer in most parts of rural Africa, women are largely excluded from ownership and are relegated into subsistence and less efficient production. The poverty that ensues thus disproportionately affects women and female headed households. In this regard, it is important to note that the Beijing Platform for Action, resulting from the United Nations Fourth World Conference on Women, affirms that

poverty among women is directly related to a lack of access to economic resources, including lack of access to land and property ownership and inheritance.

In addition to being a blatant violation of women=s rights to equality with men, particularly the right to equality of ownership outlawed in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Law Group recognizes the critical role that a lack of women=s inheritance rights plays in the economic and social development of a country. Secure land and property rights are a crucial pre-requisite to women=s full participation in sustainable development efforts. In the case of land tenure, for example, it has been established what when people have secure rights to land, they utilize and invest in more efficient and environmentally sound agricultural practices. Hence, gender-based inequities in inheritance tend to have a ripple effect, as they spur social and economic exclusion while thwarting full participation of women in sustainable development efforts.

Having established that the issue was clearly a major priority in Africa, the Law Group engaged in a year-long process of consultation with non-governmental organizations (NGOs) and individuals in Africa working on inheritance rights issues. The purpose was to determine whether or not our approach of building the capacity of local groups to promote and protect their human rights could make a significant contribution to this struggle for women=s human rights and the right to development in Africa. We concluded that such a program of support had high potential to make a positive impact.

## **II. THE ACCRA CONSULTATION**

As a first step towards developing this program of support, the Law Group planned a West African Regional Consultation held in Accra, Ghana from 18-20 November 1998. The purpose of this meeting was to discover, through direct interaction with potential partners, what were the aspects of their struggle for which assistance from an international organizations such as the Law Group would be of value; and what kind of assistance was needed for specific challenges.

The Consultation was organized with the collaboration and assistance of the leading NGOs in Ghana that are focused on women=s human rights: The Gender Studies and Human Rights Documentation Centre (co-host); International Federation of Women Lawyers (FIDA-Ghana); Women in Law and Development in Africa (WiLDAF-Ghana); Leadership and Advocacy for Women in Africa - Ghana Alumnae, Inc. (LAWA-GH); and African Women Lawyers= Association (AWLA).

The Consultation brought together 22 women from ten West African countries to exchange and examine in-depth and comprehensive information on inheritance, land and property rights in their countries, and information on the work being done by their governments and civil society to address problems faced by women in the exercise and enjoyment of inheritance rights. The key objectives, as determined by the Law Group in collaboration with its partner groups in Ghana, were as follows:

**Key Objective 1:** To gain a clear understanding of the needs of local groups and NGOs in West Africa in terms of assistance and support from the international community on women=s inheritance issues. This information would allow the Law Group, in direct consultation with West African women, to develop plans for a project supporting the work of NGOs on land and property inheritance through a participatory process with potential partner organizations.

**Key Objective 2:** To develop a concrete strategy for increasing the profile of women=s inheritance rights at the local, national, regional and international levels, including initiatives for advocacy at the level of the Organization for African Unity (OAU), the African Commission on Human and People=s Rights, the UN Commission on Human Rights and the UN Sub-Commission on the Promotion and Protection of Human Rights, the UN Commission on the Status of Women and other UN organs related to human rights, the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), and other relevant UN treaty bodies.

**Key Objective 3:** To assist local groups in their efforts to exchange information, build coalitions and establish networks for conducting a sustained campaign on women=s inheritance rights in Africa.

### **A. Selection of Ghana as the Venue**

In most West African countries, women=s groups and activists are still struggling to bring women=s inheritance rights to the attention of national law and policy-makers, compared to their Eastern and Southern African counterparts who have been relatively more successful at highlighting women=s inheritance rights issues in their countries. Ghana was selected as the venue for the Law Group=s West African Regional Consultation primarily because its Intestate Succession Law of 1985 enjoys the reputation of being the most progressive inheritance law on the continent, and certainly the most progressive law in West Africa.

It was hoped that the contribution of the Ghanaian participants at the Consultation, as well as their informal interaction with the other participants, would provide inspiration for work in other places. In addition, given the fairly advanced work on inheritance rights that the Ghanaian NGOs have done, it was the most appropriate venue for launching the process of regional networking and information exchanges between the various groups represented at the Consultation and others throughout the region.

### **B. Participants**

In choosing participants, the Law Group took great care in selecting women whose work had a strong inheritance rights focus. Based on recommendations from NGOs and informal consultation,

participants were invited from Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Ghana, Liberia, Nigeria, Senegal, The Gambia and Togo. The Law Group staff members who participated in the Consultation were Gay McDougall, Executive Director; Marie-Elena John Smith, Africa Coordinator; and Sameena Nazir, Women=s Rights Advocacy Program Coordinator (*see Appendix A for a list of participants and their organizational affiliations*).

### ***1. Background Materials Prepared by the Participants***

In order to establish a basis for discussion, each participant, prior to their arrival at the Consultation, drafted a current status report on women=s inheritance rights in their respective countries (*see Appendix B for a summary of the country status reports*). The status reports cover the following areas:

- X a brief overview of the *de jure* and *de facto* realities in each country with respect to inheritance laws and practices;
- X specific steps that have been taken by NGOs and civil society in each country to further women=s inheritance rights;
- X the position and actions of the government with respect to women=s inheritance rights;
- X specific obstacles to women=s inheritance rights, including political, social, economic, cultural, and religious obstacles; and
- X possible strategies and responses to overcome the obstacles to women=s exercise and enjoyment of inheritance rights.

### ***2. The Special Rapporteur on Women=s Rights in Africa***

One of the highlights of the Consultation was the participation of the Organization for African Unity (OAU) Special Rapporteur on Women=s Rights in Africa, Julienne Ondziel, who carries a four-year mandate (1998-2002) from the OAU=s African Commission on Human and People=s Rights (*see Key Objective 2: #1 for a description of Ms. Ondziel=s participation in the Consultation*). The primary aspects of the mandate of the Special Rapporteur are as follows:

- X to conduct a study on the situation of women=s rights in Africa;
- X to collaborate with NGOs and other groups and organizations working for the promotion and protection of women=s rights, with a view toward coordinating women=s rights initiatives;
- X to provide information and recommendations to governments in Africa for the development of policies that promote and protect women=s rights;
- X to provide information and recommendations on women=s rights to the African

- Commission on Human and People's Rights, in order to improve the implementation of the African Charter on Human and People's Rights; and
- X to pursue the elaboration of an Additional Protocol to the African Charter on Human and People's Rights relating to women's rights.

### C. Achieving the Objectives

The Consultation agenda was designed to meet the key objectives through a series of interactive discussions and presentations. The country status reports prepared by the participants were the first layer in this process. As Ghana had been chosen as the venue for the Consultation due to the relatively advanced work on inheritance rights that had been done in the country, the proceedings began with a presentation of the status report on Ghana given by Dorcas Coker-Appiah of the Gender Studies and Human Rights Documentation Centre (*see Appendix C*).

The status report on Ghana briefly described intestate succession under customary law, including an overview of the differences between matrilineal and patrilineal systems. The status report focused, however, on Ghana's Intestate Succession Law of 1985, which has been hailed as revolutionary in that it directly challenges customary notions of inheritance. The framers of the law acknowledged that with the onset of urbanization and changing lifestyles, women played a more significant role in the household economy. Thus, customary laws and practices which completely excluded women from inheritance were considered unjust. The Intestate Succession Law also emphasized the increasing importance of the nuclear family as opposed to the traditional extended family unit.

The presentation of the status report on Ghana was followed by a presentation by the representative of FIDA, Anita Ababio, who summarized the results of FIDA's ten-year assessment of Ghana's Intestate Succession Law. The study found that there are a number of problems affecting the implementation of the law, including lack of information about the law, lack of legal aid services, the persistence of customary notions of inheritance and cultural traditions such as polygamy. Thus, despite the existence in Ghana of a uniform law of succession, and additional supporting legislation, major obstacles to women's rights to inherit land and property still remain.

**Key Objective 1: Gaining a clear understanding of the needs of local groups and NGOs for assistance and support from the international community, with a view toward supporting the work of NGOs on land and property inheritance .**

#### *1. Identifying the Critical Problem Areas*

Most of the experiences and information shared by the participants during the course of the Consultation were common across all the countries represented. However, it was also demonstrated that each country has its own specific issues. One participant who shared her personal experience described the manner in which her uncles Acame and took everything, even our beds≡ when her father died. Her mother, an educated woman, refused to pursue her legal rights, accepting it as customary that she be dispossessed and forced to begin rebuilding her life. The participant expressed

amazement that today, almost 30 years later, attitudes have not significantly changed, giving an example from her own work on behalf of widows who must fight against the weight of tradition in order to recover their rightful property.

The critical problems identified by the participants could be grouped into the following broad and inter-connected areas:

- X there is a lack of uniform, comprehensive and standardized legislation on inheritance in most African countries;
- X there are multiple systems of marriage which exist concurrently in many African countries. Each marriage system has its own rules for property distribution upon dissolution and death, and there is often confusion and conflict as to which rules are applicable to a given marriage;
- X even where statutory law protects women=s inheritance rights, customary laws and traditional practices largely dominate the distribution of land and property;
- X most women in Africa lack access to information on their options and their legal rights with respect to inheritance;
- X many women in Africa are reluctant to assert and pursue their rights to land and property, given the prevailing social context, including the cultural, religious and traditional barriers to women=s equality and empowerment;
- X many women in Africa have limited access to productive resources, such as access to land, property, credit, education, etc., and are thus denied an enabling environment for economic development in general; and
- X international human rights instruments ratified by governments may contain important provisions relating to women=s rights, but they are not adequately implemented by the state, nor are they consistently used or referred to by NGOs and civil society in the struggle for women=s inheritance rights, thus remaining an untapped resource.

## ***2. Examining Steps Taken to Address the Problems Identified***

Having laid the foundation of identifying the critical problem areas, the participants examined the steps that have been taken in their respective countries to address the problems. The participants recounted their efforts to educate women on their rights to inherit land and property under the law, as well as their work to counter the overwhelming influence of cultural, traditional and religious laws and practices that prevent the full implementation of statutory and constitutional law. Some local groups described work with religious authorities (and traditional rulers) using a closed back door approach in an effort to educate these community leaders without their responses being influenced by public pressure.

Many of the organizations participating in the Consultation provide some measure of legal aid to women, including assistance with cases related to inheritance rights. FIDA-Ghana, for example, operates a part-time *pro bono* clinic out of its offices, filling an enormous need as evidenced by the masses of prospective clients that overflow the FIDA offices and corridors on a daily basis. Participants also elaborated on several success stories, such as a landmark case in Nigeria in which a widow won a long struggle to inherit her husband=s estate.

One participant described how NGOs in her country have taken the approach of discussing inheritance rights primarily in the context of economic rights. In several countries, local groups working on inheritance rights have also begun to integrate an economic element into their work by providing small loans to women seeking assistance with inheritance issues and claims.

Another participant explained how a draft bill against polygamy has been proposed in her country, with local groups and activists lobbying the legislature for support. NGOs in a number of countries have engaged in public education campaigns in an effort to raise public awareness around the international human rights instruments that their governments have ratified and are required to implement. In one country, an NGO has provided training to legal practitioners on the strategic use at the local level of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

### ***3. The Focus on the Need for Awareness-Raising and Public Education***

The participants clearly described a vast amount of intensive, community-based work on women=s inheritance rights that has been and continues to be done in West Africa by local groups and NGOs. Yet, despite the high degree of experience and expertise being brought to bear on the problem, the participants voiced definite concern over the significant and entrenched obstacles they are facing on many fronts. Over the course of the Consultation, many of these obstacles, and possible strategies for overcoming them, were identified, outlined and developed. Further, the participants proposed the nature of external assistance that would be needed for long-term, country-specific strategies to address these obstacles.

Many of the strategies and requests for external assistance focused on the need to raise awareness and increase public education and outreach on the issue of women=s inheritance rights. It was recognized that, given the high level of in-country expertise operating on the ground, supporting local expertise would be the most appropriate avenue for developing and implementing public awareness and education strategies at the local and national levels. Developing this support required a country by country analysis, which was beyond the scope of the Consultation. Attention then turned to examining ways in which the Law Group specifically, and the international community in general, could contribute to the campaign in West Africa for women=s inheritance rights by assisting and supporting local groups in their efforts to raise public awareness Africa-wide and internationally.

#### **Key Objective 2: Developing a concrete strategy for increasing the profile of women=s**

**inheritance rights at the regional and international levels, including developing strategies to work with inter-governmental and United Nations bodies and mechanisms.**

The participants agreed that while it would be desirable to develop as many areas for intervention as possible at the local and national levels at a later date, it would be most effective to immediately identify and concentrate on only one or two targeted activities at both the regional and international levels (described below).

***1. Working with the Special Rapporteur on Women=s Rights in Africa***

The Special Rapporteur on Women=s Rights in Africa, Julienne Ondziel, gave a presentation in which she described the working methods of the eleven-member African Commission on Human and People=s Rights (African Commission), focusing on two of its mechanisms: (I) the examination of petitions from NGOs and individuals alleging human rights violations, and (ii) the examination of reports which are to be submitted by the states every two years. The Special Rapporteur observed that for various reasons, information on women=s rights is often not included in examinations conducted by the African Commission. She highlighted that two major steps had been taken by the Commission to address this problem: (I) the creation of the mandate of the Special Rapporteur on Women=s Rights in Africa, and (ii) the formulation of an Additional Protocol to the African Charter on Human and People=s Rights relating to women=s rights, a draft of which had been circulated to the participants for their input.

The Special Rapporteur appealed to the participants for assistance in collecting data on the situation of women in their respective countries to be included in her reports. She also stressed the need for women=s groups to lobby their governments to respond to the reports once they are submitted, to prevent them from getting put on the shelf and ignored. In addition, she urged NGOs to increase their engagement with the African Commission, including through becoming accredited with observer status, attending the Commission=s public sessions and submitting alternate or shadow reports to the Commission to supplement the information provided by governments in their official reports under the African Charter on Human and People=s Rights (African Charter). The participants were particularly encouraged to contribute their critiques of the draft Additional Protocol.

Upon return to their respective countries, the participants agreed to develop a comprehensive response to the draft protocol, and to mobilize and sensitize other NGOs and local groups to submit their responses to the document (*see Section III.C.3: Working With OAU Special Rapporteur on Women=s Rights, Julienne Ondziel*). The participants did not take the decision at this point to lobby for the adoption of the Additional Protocol, however, the more critical decision was made to support the work of the Special Rapporteur by providing constructive criticism and feedback on the draft protocol. The external assistance needs for this aspect of the regional strategy were identified as (I) training on the regional mechanisms that exist for the promotion and protection of women=s human rights, in particular the African Commission, and (ii) technical assistance in preparing and utilizing expert documents like the draft protocol as tools for domestic advocacy and activism.

## **2. Coordinating a Regional (West Africa) ADay of Action≅ on Women=s Inheritance Rights**

The participants agreed to consult with their organizations about forming a coalition to organize a *Day of Action* on Women=s Inheritance Rights, which would feed into already-existing initiatives to highlight women=s rights issues. The date 29 July 1999 was selected to coincide with OAU=s ADay of the African Woman.≅ On the *Day of Action*, it was envisioned that a variety of activities could include, depending on the context of each country, a march from a central point in the country to the legislative building, after which draft legislation describing an ideal inheritance law could be presented to a key legislative or judicial figure. A critical aspect of any activities would be press and media strategies at the local, regional and international levels (*see Section III, Subsequent Activities, for descriptions of the successful coordination of the Day of Action* ).

## **3. Raising Awareness at the International Level**

A strategy for international awareness-raising and advocacy on women=s inheritance rights was developed based on the Law Group=s Advocacy Bridge Program. This program provides training to NGOs and activists, primarily from under-represented countries and communities, on how to access and use the various mechanisms of the UN Commission on Human Rights in Geneva. Sameena Nazir, Coordinator of the Advocacy Bridge Program, presented the program and its relevance to inheritance rights work. She described the various UN Commissions where the issue of inheritance and women=s rights has been raised by NGOs in the past, including the UN Sub-Commission for the Promotion and Protection of Human Rights in Geneva and the UN Commission on the Status of Women in New York. She presented various possible NGO advocacy options and strategies that could be implemented at these two fora and stressed the far-reaching possibilities of work at these levels. She also presented the UN Commission on Human Rights in Geneva as a forum where the issue of inheritance rights had not yet been introduced but which where, in her analysis, advocates have potential for achieving a high-profile global advocacy campaign on the issue.

The participants agreed that, given the Law Group=s pre-existing structure, its strategy would focus primarily on the UN Commission on Human Rights, setting as the goal the Commission=s adoption of a resolution on women=s inheritance rights within a three-year time frame. The Law Group staff members emphasized the following points to the participants:

- X NGO activists would need to formulate a simple and effective message or slogan to describe the theme of the campaign;
- X any campaign at the international level would require a multi-year strategy before results would be seen, thus a long-term and serious commitment from the groups was necessary;
- X any impact at the international level could only be as a result of work done by coalitions of groups representing a number of countries and meeting annually at the Commission on Human Rights, followed by year-round follow-up work and pressure on their respective

governments; and

- X governments do care about what is said about them in international fora, and although UN resolutions have no enforcement mechanisms, the public shaming aspect of international advocacy can be very powerful and important in effecting change at the national and local levels.

After extended debate, the participants agreed that the message of the international campaign would be Women=s equal rights to equal inheritance. There were two schools of thought among the participants regarding this message. One group felt that using the phrase Equal rights to equal inheritance would be problematic given the serious obstacles that would be presented by countries that implement Muslim Shariah law, which have been steadfast in opposing such language, purportedly based on various interpretations of inheritance divisions in Shariah Law. The group pointed out that at the Beijing Conference, efforts to adopt Equal inheritance language were defeated. This group of participants also pointed out that in many countries, women have no rights to inheritance at all, making the concept of inheriting even an unequal share seem like an advancement.

The other participants, whose views eventually prevailed, insisted that the message should call for equal rights to equal shares. As one participant put it: Because some countries are slow, we can=t all be held to ransom. Another participant pointed out that the Beijing Conference was five years ago, advancements had been made since then, and that it is only by pushing at the limits that frontiers are expanded. Still others argued that the concept of limited inheritance rights for women was already generally accepted, thus the push should now be for full equal rights. It was this last point that eventually won the acceptance of those who initially opposed the message Equal rights to equal inheritance (see Section III, *Subsequent Activities, for details of the Inheritance and Property Rights Team=s work at the Commission on Human Rights in Geneva in March-April 1999*).

**Key Objective 3: Facilitating communication, networking and information-sharing among local groups and activists in Africa working on the issue of women=s inheritance rights.**

This objective was an underlying theme of all discussions which took place during the course of the Consultation. It was noted that networking, information sharing and coalition building would be critical aspects of every strategy and activity in the campaign for women=s inheritance rights. Specifically, there was consensus among the participants that:

- X all of the groups present should form a network in order to coordinate the *ADay of Action on Women=s Inheritance Rights* and other regional activities;
- X the Law Group would undertake the role of coordinator and clearinghouse for the distribution of information related to the international advocacy campaign at the Commission on Human Rights;
- X the Law Group would facilitate communication and collaboration between the groups and

the Special Rapporteur on Women=s Rights in Africa; and

- X the best means of communication between the groups would be via e-mail, and the Law Group would attempt to assist those without e-mail access in finding sources of funding to obtain e-mail access.

## **Summary**

Through the Consultation, it became clear that women in Africa have indeed made inheritance rights a priority in their countries and have achieved high levels of programmatic, advocacy, and technical expertise. Yet, there remain hurdles at all levels -- local, national, and international. While at the local level, women did report facing legal impediments to attaining inheritance rights, it was the weight of tradition that appears to pose the most serious impediment. At the regional and international levels, the participants emphasized that their efforts have not received widespread attention, which hampers their efforts to marshal resources to develop and implement programs. While a great deal of work has been and continues to be done by local groups to advocate and agitate for women=s rights to inherit land and property in their respective countries, this work is rarely disseminated outside of the country and even more rarely outside of the region, due to communication and other restraints.

With respect to the work being done at the local level, in the medium and long term, the participants recognized numerous areas where assistance from the Law Group would be helpful. These interventions which were discussed in detail, would be country-specific and would need to be worked out on a country-by-country basis in the context of a holistic program of support. However, at the regional and international levels, Law Group=s networks and structures could be readily useful in the immediate future. Accordingly, participants identified that the expertise, technical assistance and support of the Law Group was needed immediately to develop and implement strategies and programs to (I) raise awareness, (ii) increase public education and outreach, and (iii) engage in human rights advocacy, at both the regional and international levels.

## **III. SUBSEQUENT ACTIVITIES**

Over the course of the Consultation, the Law Group staff present played a facilitating role in the discussions and attempted to listen carefully to the needs outlined by the participants. In particular, they sought to identify the specific points of intervention where the Law Group=s philosophy, mandate and expertise would be of greatest assistance to the participants. Although a detailed and comprehensive Law Group inheritance rights program has not yet been fully developed at this point, pending additional consultations in other regions of Africa and country-specific consultations, the Law Group has nonetheless embarked on an initial program of activities in direct response to the needs identified by participants at the Consultation. These activities focus primarily on international advocacy and awareness-raising at the international, regional and national levels.

### **A. International Advocacy on Women=s Inheritance Rights - the UN Commission on Human Rights (CHR)**

The Consultation=s recommendation to launch a three-year international advocacy campaign to raise the issue as a violation of women=s right to equality began successfully at the 55<sup>th</sup> session of the UN Commission on Human Rights, held in Geneva in March/April 1999. Four of the representatives of women=s NGOs present at the Accra Consultation were invited to join the advocacy campaign at the Commission. Representatives from Burkina Faso, the Gambia, Nigeria, and Senegal along with a Congolese partner, comprised the Women=s Inheritance and Property Rights Team. The group joined the Law Group=s annual Advocacy Bridge Training Program, where grassroots human rights activists from all parts of the world receive training in international advocacy during the annual session of United Nations Commission on Human Rights (CHR). A week-long orientation at the Law Group=s head office in Washington, DC was followed by three weeks of hands-on training at the CHR session in Geneva. The Advocacy Bridge Program is a multi-year graduated program designed to cultivate future UN experts from under-represented countries and communities. The program aims to amplify local human rights issues at global fora (*see Appendix D for a description of the Advocacy Bridge Program*).

During the three week Advocacy Bridge Program in Geneva, the Women=s Inheritance and Property Rights team worked directly with the Law Group=s resource person, Ms. Florence Butegwa from Uganda, an internationally recognized expert on women=s rights. Under Ms. Butegwa=s guidance, the team carried out a series of activities to achieve the following objectives:

- X to increase the team=s familiarity with international human rights law and the various Charter and treaty-based bodies concerned with human rights;
- X to explain how the UN Commission on Human Rights works and what advantages exist in including the Commission in advocacy for women=s inheritance rights and property rights;
- X to assist the group in creating linkages with experienced women=s human rights activists from other regions of the world present at the 55<sup>th</sup> session, enabling the African women to learn from the others and to explore possibilities for mutual support; and
- X to publicize the issue of inheritance rights at a public forum.

At the CHR, the team members met with women=s groups from other countries for brainstorming sessions, and participated in the Daily Women=s Caucus, which consisted of NGO representatives focusing on women=s rights issues at the CHR. The team made several presentations to the caucus in order to introduce the issue of inheritance rights. They also attended meetings with experienced women=s human rights activists from various parts of the world to present their concerns and receive constructive input into their own emerging strategies. These meetings proved to be of great value, both to the Law Group team and to the other partners involved. For example, in discussions with

women=s rights activists from Asia the team discovered that women in South Asia also face a similar denial of inheritance and property rights, though the NGOs in South Asia have typically articulated these violations as results of the effects of religious extremism against women and have not focused on the denial of the right to own property.

Further, it became clear that specific strategies needed to be developed to cultivate progressive interpretations of Shariah Law vis a vis women=s inheritance rights, given that any work at the

international level attempting to advocate for equal shares for women will inevitably encounter serious opposition from some conservative Muslim countries.

The team also established contact with the NGO Coalition on Housing Rights and Eviction (COHRE), and explored the possibility of collaborating on the inheritance and property rights issue as part of the broader and more recognized right to adequate housing. They met as well with the UN Special Rapporteur on violence Against Women, and with the UN Special Rapporteur on Torture and Extrajudicial Killings.

The Law Group organized a public forum on inheritance rights and invited each member of the four-person inheritance team to make country-specific presentations. The forum was attended by more than 70 people, including representatives of women=s rights NGOs, human rights groups, UN staff, and government representatives. The purpose was to set out the issue of inheritance as an entry point to understanding what is at stake when women are denied inheritance and property rights by using legal, cultural and religious arguments. The forum was moderated by Florence Butegwa, who provided an in-depth analytical summary relating the country presentations on Burkina Faso, the Gambia, Nigeria, and Senegal. The speakers elaborated on issues including law and culture as it is used to deny women the right to inherit property; the failure of the state to stop discrimination against women in the legal system; and litigation strategies that NGOs use to set legal precedents and create public awareness about the discrimination against women for their right to inherit equal property. The forum generated significant interest around the issue of women=s inheritance and property rights in Africa (*see Appendix E*).

Based on this successful first year of the Law Group=s inheritance rights initiative at the 1999 CHR, the following focus will be pursued as the team prepares for the Commission=s next session in 2000:

- X engage in research to provide systematic quantitative and qualitative data to facilitate the inclusion of language on this issue in the report of the UN Special Rapporteur on Violence Against Women;
- X undertake specific studies on Shariah, inheritance and women=s human rights, including a comparative element in which the practices and interpretation of the law in different Muslim countries would be analyzed;
- X facilitate collaboration between partners in Africa and women=s human rights groups in

South Asia;

- X develop strategies at the UN level for portraying inheritance rights as a multi-regional issue with manifestations specific to different contexts in order to strengthen advocacy efforts; and
- X collaborate and form coalitions with NGOs working on other themes such as housing rights, economic rights, violence against women, and children=s rights, for maximum impact at the international level through an integrated strategy.

**B. The Day of Action on Women=s Inheritance Rights: 29 July 1999**

The success of the *Day of Action*, planned to occur simultaneously in the home countries of each participant, serves as a testimony to the level of dedication of the involved NGOs. Although the Law Group attempted to assist in fund-raising, only one group was able to access a small amount of funding. Nevertheless, this did not deter the effort as evidenced by the excerpt below from an e-mail by a Nigerian participant encouraging her sister NGOs during the preparations:

Keep the struggle alive, do not relent in your efforts. Money or no money - we are doing it for ourselves and for our children's children. We are making history in this long struggle for equality. We need the concerted actions for any meaningful change. I recently (this June) took my state Governor to court for failure to appoint women into the State executive council. Although I lost at the High Court, the outcome has been most encouraging. The Governor has now appointed two women into his executive cabinet. It was a very popular case in Nigeria and attracted wide media publicity.....

In preparation for the Day, press releases in both English and French were sent, with the strong support and assistance of the Inter Press Service, throughout Africa, Europe, and the US. In addition, the release was e-mailed to the Law Group=s networks of women=s organizations globally, including South Asia (*see Appendix F for a copy of the Day of Action press release in English*).

Although it was not possible for all aspects of planned activities to take place in each country, the *Day of Action* on 29 July did successfully occur with a significant focus on media attention and publicity for the inheritance rights issue. For example, in several countries, particularly Togo, Senegal, and Burkina Faso, the political climate was not conducive to public events, and the marches did not take place. Numerous press conferences, television appearances and discussions, however, commemorated the *Day of Action*, and strategic contacts were made publicly and privately with key government figures. For example, in the Nigerian state of Ebonyi, the Governor's wife issued a statement that condemned discriminatory inheritance and succession practices, which was widely carried by the media. Additionally, even given severe financial constraints, many of the NGOs were still able to conduct well-attended public symposia on "Women's Equal Rights to Equal Inheritance."

Further, the effort received significant coverage in the U.S., primarily on Pacifica Radio, the first US listener-supported, community based radio network, consisting of 60 affiliate stations in 27 states. In an in-depth radio interview on Pacifica Network News, a weekday evening newscast reaching millions

of listeners, Law Group Africa Coordinator, Marie-Elena John Smith, was given the opportunity to elaborate in detail on the issue of women=s inheritance rights in Africa, and to publicize the *Day of Action* and the letter writing campaign (see below).

### **C. Letter Writing Campaign to the Special Rapporteur on Violence against Women**

During the planning for the *Day of Action*, many of the groups involved realized that the Day would have to rely on a heavy publicity effort with little or no financial outlay. The idea was thus developed to generate additional international attention on women=s inheritance rights issues through an e-mail letter writing campaign to the UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy.

Hundreds of women=s human rights NGOs were contacted through extensive e-mail networks, requesting organizations and individuals to support women activists working on women=s inheritance rights. NGOs were requested to contribute to the process of raising awareness of this critical problem at the international level, by e-mailing a letter to the UN Special Rapporteur on Violence Against Women on 29 July, the *Day of Action*.

The decision to attract the attention of the Special Rapporteur on Violence Against Women was made in light of her mandate to research and recommend measures aimed at examining gender-based abuse of women, as well as its causes and consequences, and to suggest remedies at the international, national, and regional levels. The groups noted the connection between the issues of violence against women and denial of inheritance and property rights of women by referring to the Preamble of the UN Declaration on the Elimination of Violence against Women, which states that violence against women is a manifestation of historically unequal power relations between men and women. Economic discrimination is an important aspect of these power relations, since economically disadvantaged women are more vulnerable to violence and exploitation. Because the denial of inheritance rights of women is a form of economic discrimination that impacts violence against women, the groups decided to urge the Special Rapporteur on Violence Against Women to use her mandate to examine this problem by conducting field missions and by recommending recommend measures at the national, regional, and international levels to eliminate this significant contributing cause of violence against women. The letter also specifically requested her to help create awareness of the link between violence against women and the denial of the right to inheritance by presenting an analysis of this violation in her year 2000 report. The NGOs also planned to lobby the Special Rapporteur to undertake a regional visit to research and to report upon this issue, and to contact and collaborate with the OAU Special Rapporteur on Women=s Rights, Julienne Ondziel, whose mandate also includes reporting on women=s inheritance rights (*see Appendix G for the full text of the letter. You may also visit the Law Group=s web site, [www.hrlawgroup.org](http://www.hrlawgroup.org), to access and send an electronic copy*).

In addition to the general awareness-raising effect of this effort, there have been two very specific outcomes of the *Day of Action* letter campaign, both of which have the potential to be major catalysts for further attention to this issue at the international as well as local levels:

***1. Working with the Special Rapporteur on Violence against Women, Radhika Coomaraswamy (Sri Lanka)***

In response to the volume of letters received by her office, the office of the Special Rapporteur on Violence Against Women contacted the Law Group and requested assistance in providing documentation to support the linkage between violence against women and the denial of their inheritance rights. Working with our partners in the field, we are currently attempting to:

- X present case studies that illustrate the link between the failure to guarantee women=s inheritance rights/property rights and violence against women;
- X analyze the cases under international law to establish the various levels of accountability (state and non-state) (This would involve tracing the complex causes, in particular the ways in which the state, the community and the family may act in concert in violating women=s human rights); and
- X make recommendations for action at the international and national levels in both a general and, where appropriate, country-specific manner.

***2. Working with Expert Member of the UN Human Rights Committee, Justice Elizabeth Evatt (Australia)***

Following the activities carried out on the *Day of Action* for Women=s Inheritance Rights by partner NGOs in Africa, and the letter campaign that accompanied it, the Law Group was contacted by Justice Elizabeth Evatt, an expert member of the UN Human Rights Committee. A national of Australia, Justice Evatt is one of 18 international experts who serve on the body that monitors states= compliance with the International Covenant on Civil and Political Rights (ICCPR). Justice Evatt is one of three women on the Committee, and has served since 1992. Signatories of the Covenant are required to submit periodic reports on its domestic implementation to the Human Rights Committee. In considering these reports, Committee members draw on a variety of reliable sources of information in order to pursue an informed dialogue with government representatives and to establish accurately what factors and difficulties are impeding the Covenant=s implementation.

In this regard, Justice Evatt requested information on the situation of women=s inheritance rights in Cameroon, a country which was reporting to the Committee in 1999. The Cameroon government=s third periodic report to the Committee was filed in 1997 and is under consideration by the Committee. By ratifying the Covenant, Cameroon has undertaken to ensure the equal right of men and women to all the civil and political rights set forth therein. It is also required to guarantee equal and effective protection against discrimination on grounds of sex.

The Law Group, in collaboration with advocacy groups from Cameroon that participated in the Accra

Consultation and a Cameroonian human rights lawyer currently working with the Law Group, prepared an information packet for Ms. Evatt, the main component of which is a briefing paper (*see Appendix H*) that:

- X identifies the formal legal framework in Cameroon governing inheritance by women, both as widows and as daughters;
- X surveys discriminatory practices under customary law;
- X explains the cultural and economic factors that preserve this state-tolerated customary framework in place;
- X presents the inadequacy of government efforts aimed at reversing inheritance practices adverse to women; and
- X describes the impediments inheritance rights advocates face in the country.

It is hoped that being subjected to scrutiny on compliance with its international obligations, the Cameroon government would embark on concrete steps towards addressing inheritance practices that discriminate against women. The information prepared will also be used by the women=s NGOs in Cameroon for advocacy on women=s inheritance and property rights, as well as by the Law Group=s advocacy team to the CHR in 2000.

### ***3. Working with OAU Special Rapporteur on Women=s Rights, Julienne Ondziel***

Following the Ghana Consultation, through the initiative of the Togolese participant, a group of women=s and human rights organizations in West Africa, led by WiLDAF, united in an effort to contribute to the elaboration of the Additional Protocol pertaining to Women=s Rights of the African Charter of Human and People=s Rights. This two-month project began in August 1999 and continued until October. The main effort of the project focused on mobilizing women=s and human rights organizations in seven West African countries to contribute their ideas on the elaboration of this protocol, which was to be adopted at the 26<sup>th</sup> Session of the African Commission on Human Rights in Kigali, Rwanda in November.

The effort began with national workshops that were held in Burkina Faso, Togo, Cameroon, Senegal, Cote d=Ivoire, and Guinea in mid-September 1999. These workshops convened women=s rights and human rights organizations in each of these countries in order to provide information on the Additional Protocol and to brainstorm about possible ideas for its revision. They targeted critical issues that would form the basis of discussion at the following sub-regional workshop, held in September in Cote d=Ivoire. There, participants from all across the region consolidated their ideas and produced an article by article critique of the existing protocol, complete with suggested revisions and additions. The revisions focused on issues that would better protect women=s rights, such as women=s rights to freedom from violence, to inheritance, to political participation, to custody of their children in case of divorce or widowhood, and to choice in marriage, as well as others.

At the Commission in Kigali in November, a committee of women from the Cote d'Ivoire regional meeting successfully lobbied Commissioners to include several of their recommendations in the text of the Draft Protocol, as well as for the acceptance of the Draft Protocol by the Commission. This first victory is significant because the adoption of the Draft Protocol by the African Commission is the first in a series of steps that must be taken before the Protocol is ultimately adopted by the OAU and its member states.

Subsequently, Julienne Ondziel has continued to provide generous support to the women=s inheritance rights NGO network. Her involvement has been critical in achieving these and other women=s inheritance rights related successes. Also, in future activities, the 2000 Advocacy Bridge Inheritance team will advocate on the Additional Protocol pertaining to Women=s Rights of the African Charter of Human and People=s Rights in Geneva at the UN Commission on Human Rights (*see Appendix I for copies of the Draft Protocol in English and French*).

#### **IV. CONCLUDING COMMENTS**

One year after the initial Consultation in Accra, a significant number of concrete activities have already been undertaken and processes have been set in motion and continue to build momentum: raising the profile of the issue through work at the UN Commission on Human Rights, which will continue at the 56<sup>th</sup> Session in April 2000; the establishment of strong collaborative initiatives with the OAU=s Special Rapporteur on Women=s Rights, resulting in concrete action on inheritance rights at the level of the OAU with respect to the African Charter; the establishment of ties with the UN Special Rapporteur on Violence Against Women; and successful awareness-raising campaigns at the local and national levels.

The meeting in Ghana was the direct catalyst for these activities and marked a defining point for many of the participants, providing a valuable and rare opportunity for them to take time out to collaboratively share information and examine their work from a strategic perspective. Participants were also able to take note of the areas in which significant inroads had been made in the struggle for women=s inheritance rights. More importantly, however, they were able to identify specific challenges that needed to be tackled in order to take their work to the next level, and to map out unified action towards meeting some of those challenges.

The Law Group looks forward to a continued role in supporting and facilitating the initiatives of these organizations, and to supporting the efforts of groups that strive to ensure gender equality in inheritance practices in Africa as they struggle to dismantle a substantial impediment to the development of women in particular and communities as a whole.

## V. APPENDICES

Appendix A: List of Participants at the Accra Consultation.....	21
Appendix B: Summary of Status Reports on Inheritance in West Africa.....	23
Appendix C: Ghanaian Intestate Succession Under Customary Law.....	43
Appendix D: Advocacy Bridge Program Description.....	57
Appendix E: Invitation to Forum on Inheritance and Property Rights in Geneva.....	63
Appendix F: Day of Action Press Release.....	65
Appendix G: Letter to UN Special Rapporteur, Radhika Coomaraswamy.....	69
Appendix H: Briefing Note to Justice Elizabeth Evatt, Expert Member of the UN Human Rights Committee, on Inheritance Rights in Cameroon.....	73
Appendix I: Draft Protocol on Women=s Rights to the African Charter on Human and People=s Rights.....	87



# **APPENDIX A: List of Participants and Organizational Affiliations**

## List of Participants and Organizational Affiliations

### Benin

Julienne Ondziel  
OAU Special Rapporteur on Women=s Rights  
Cotonou

Nana Rosine Ngangoue  
Inter Press Service  
Cotonou

### Burkina Faso

Yolande Gisele Kambou  
Interafrican Union for Human Rights (IUHR)  
Ouagadougou

### Cameroon

Betty Luma Lickowo  
FIDA-Cameroon  
Douala

Mary Orock Tabe Ebob  
FIDA-Cameroon  
Douala

### Cote d=Ivoire

Paulette Ba  
AIUF  
Abidjan

### Gambia

Ida M.E. Jallow  
Foundation for Research on Women=s Health  
Productivity and the Environment (BAFROW)  
Banjul

### Ghana (Hosts)

Dorcas Coker-Appiah  
Gender Studies and Human Rights  
Documentation Centre

Leonora Awua-Kyerematen  
African Women Lawyers= Association (AWLA)

Beatrice Duncan  
Leadership and Advocacy for Women in Africa  
(LAWA) Ghana Alumnae

### Ghana (continue)

Angela Dwamena-Aboagye  
LAWA - Ghana Alumnae Inc

Hilary Gbedemah  
LAWA - Ghana Alumnae Inc

Anita M. Haymann Ababio  
International Federation of Women Lawyers  
(FIDA)

Akua Kuenyehia  
Women in Law and Development in Africa

Sheila Minkah-Premo  
LAWA - Ghana Alumnae Inc

Betty Mould-Iddrisu  
African Women Lawyers Association (AWLA)

Gloria Ofore-Boadu  
LAWA - Ghana Alumnae Inc.

### Liberia

Sie-A-Nyene Yuoh  
Association of Female Lawyers in Liberia  
Monrovia

### Nigeria

Joy Ngozi Ezeilo  
Women in Nigeria (WIN)  
Enugu

Uju Agbanu-Obiora  
Shelter Rights Initiative  
Lagos

### Senegal

Penda Mbow  
University Cheikh Anta Diop,  
Dakar

### Togo

Kafui Kuwonu  
Women in Law and Development  
in Africa (Wildaf-Togo)  
Lome

# **APPENDIX B:**

## **Summary of Status Reports on Inheritance in West Africa**

## Summary of Status Reports on Inheritance in West Africa\*

### TABLE OF CONTENTS

I.	Introduction.....	2
		5
II.	Framework.....	26
	A. Legislative/Statutory	
	Provisions.....	26
	B. Customary	
	Laws.....	34
	C. Religious	
	Laws.....	37
III.	Steps Taken by the Women=s Inheritance	
	Movement.....	38
	A. Education and Public	
	Awareness.....	38
	B. Legal/Administrative Aid and	
	Assistance.....	38
	C. Legislative Advocacy and Law	
	Reform.....	38
IV.	Positions and Actions of	
	Governments.....	39
V.	Specific Political, Cultural and Economic	
	Obstacles.....	40
	A. Political	
	Obstacles.....	40
	B. Cultural	
	Obstacles.....	40
	C. Economic	
	Obstacles.....	41
VI.	Possible Response	
	Strategies.....	41

*\*Reports were presented by the participants at the Consultation and have been summarized by Law Group staff.*

## I. INTRODUCTION

A survey of applicable laws on inheritance as they impact on women in the nine reporting countries in West Africa reveals a number of close similarities. The legal systems of many reporting countries contemplate more than one type of marriage relationship: Islamic and statutory or civil marriages are recognized in *The Gambia*; in three other countries (*Nigeria, Cameroon, Burkina Faso*) marriages could either be statutory or civil, Islamic, or customary. In Liberia, marriages could either be statutory or customary. In *Ghana*, customary and statutory marriages are recognized, although legislation has been passed specifically to eliminate any disparities arising from the different type of marriages contracted.

In addition to these categories of marriage arrangements and their resulting inheritance laws, substantial cross-country similarities exist in the actual content of the respective systems. Historical and anthropological factors (such as patterns of settlement and common ancestry) are possible explanations for the many similarities in customary law provisions from across the region. Many customs and traditions that deprive women of inheritance rights are held by several tribes across the region: primogeniture, inheritance of real property only by persons of the customary family, the prohibition of inheritance by widows, and a preference for male over female children as successors. Also prevalent are the granting of only narrow possessory interests -- such as life interests or possession valid during celibacy -- to wives or daughters who inherit, and a general aversion to inheritance by married daughters. The cultural norms that inform these practices are also remarkably similar: a concern about losing family or tribal land, and the notion of women as property, or chattel that could themselves be transferred or possessed by way of inheritance. It is also discernible that in inheriting property, widows on the whole fare worse than daughters, while unmarried daughters are better off than married daughters.

Owing to their common origins in the Koran, the provisions of Islamic inheritance law in the countries where it is applied (*Nigeria, Burkina Faso, Senegal, the Gambia and Cameroon*) were largely identical. The reception of colonial statutes and codes -- mainly from England and France -- accounts for similarities in statutory provisions in several countries in the region.

With the exception of *Ghana*,<sup>1</sup> the applicable law in matters of inheritance generally depends on the type of marriage contracted. As such, in countries where the matrimonial law is obsolete (French-speaking *Cameroon*), or where its definition of key concepts (such as who constitutes a child) was inadequate (*Ghana*), there are direct repercussions on women's inheritance. Inheritance laws that have lagged behind matrimonial laws in reform were also a discernible problem, as in *Cote d'Ivoire* where the recent recognition of the matrimonial regime of separation of property has voided the legislator's intent in passing an inheritance law that remains on the books. This interface between the

---

<sup>1</sup>As discussed below, however, the type of marriage contracted still retains significance in Ghana since polygamous marriages tend to reduce the amount of the estate the Acontributing widow is entitled to.

basic laws governing marriage and the law of succession is a critical one, as developments in either area tend to have significant effects on the rights of women in the other.

## II. LEGAL FRAMEWORK

### A. Legislative/Statutory Provisions

In some of the countries studied, legislation had been passed to alleviate the inequities suffered by women in the area of inheritance under customary law. In *Ghana*, the 1985 Intestate Succession Law (PNDC Law 111) was enacted to change the prevailing situation under which widows were excluded from all inheritance under customary law. It also sought to prevent the deprivation of inheritance suffered by children of the deceased in matrimonial communities where males do not, by virtue of marriage, add members to the customary family (or family of the blood) who are entitled to inherit. In *Cote d'Ivoire*, a law of 7 October 1964 reversed the denial of inheritance to widows that prevailed under both matrilineal and patrilineal systems. It also outlawed practices that transferred women (either the widow or the sister of a deceased wife) to other men as part of the inheritance process.

In *Cameroon*, the Civil Status Registration Ordinance (Law No. 81-02 of 29 June 1981) sought to insulate the widow's personal freedom and her share of the inheritance from claims by the customary family. In *Senegal*, a Family Law (*Code de la Famille*) with repercussions on inheritance was adopted in 1972 as an attempt to harmonize the three strands of applicable law: Islamic law, local customs and received French law. The New Decedents Estates Law of *Liberia* was designed to offer better inheritance than prevailed under customary law, as it sought to grant widows an irrevocable share of the deceased's property.

*Togo's* Family and Personal Law, the *Code des Personnes et de la Famille* passed in 1980, improves on customary law by recognizing the widow's right to inherit from her deceased husband. In *Nigeria*, statutory inheritance law is governed by legislation that dates back to the period preceding independence. In both the Eastern and Western regions, the relevant statutes displace the application of customary law in inheritance matters where the decedent is involved in, or is the issue of, a statutory and not a customary marriage. In the Eastern states, the Marriage Act requires the application of contemporary English law of intestate succession where there are eligible beneficiaries.

In the Western states, the Administration of Estates Act similarly displaces customary law in favor of its own scheme for devolution of property on intestacy. However, in *The Gambia*, the 1992 Wills Act limits the possibility for testators to manoeuvre out of the unequal property distribution scheme under Islamic law. It is therefore apparent that there have been some efforts by way of legislation, to offer better inheritance rights to women, including widows who have generally been worse off at customary law.

However, this semblance of reform of and improvements upon customary law through statutes is largely deceptive. These laws neither reach far enough in eradicating adverse customs, nor are they consistently applied even in their limited form.

### ***1. Dual Systems of Law: Legislation Providing an Alternative to, Without Replacing, Adverse Customs***

Only one country (*Ghana*) has attempted through legislation to obliterate the distinction between customary and statutory marriages, and the resulting different zones of application of customary law and statutory law. Although other countries, such as *Cameroon* (in 1981) and *Cote d'Ivoire* (in 1964) have passed legislation that prohibits the practice of transferring women in inheritance situations, other unequal inheritance customs remain applicable in both countries. The extent of any reform under most statutes in the region is qualified by the fact that they do not generally prohibit those customary practices from which they depart. Rather they create an alternative arrangement that exists separately from customary law.

The Marriage Act that governs intestate succession in the Eastern region of *Nigeria* applies only where the decedent had contracted a marriage according to its provisions, or was born of such a marriage. Similarly, the Administration of Estates Act applicable in the Western region applies only where the decedent contracted a marriage in accordance with the Marriage Act. The effect of these provisions is to exclude from the scope of the modern legislation inheritance matters emanating from marriages celebrated under customary law. In fact, in Eastern Nigeria, the dualism is brought into sharp relief because inheritance matters are either decided according to the laws currently in force in England, or Igbo customary laws. Furthermore, the displacement of customary law in these statutes is only partial since in both the Eastern and Western regions, the legislation specifically defers to customary law. Both statutes require that where customary law prohibits the disposition of real property (land and immovables) by will, such property shall pass under customary law.

In *Liberia*, the rule established by the recent Decedents Estates Law whereby the widow is entitled to one-third of the decedent's estate, does not extend to rural and indigenous women. They remain subject to customary law, and are governed by the Aborigines Law and Hinterland Regulations. This distinction exists despite a legislative provision guaranteeing to all aborigines residing in Liberia, full protection of their persons and property, as well as enjoyment of the same Arights, privileges and immunities granted to all other citizens of the Republic.<sup>2</sup>

In allowing both monogamous and polygamous marriages, the *Cameroon* Civil Status Registration Ordinance guarantees a zone of application for customary law. Under Cameroonian law, matters of inheritance, guardianship, divorce and financial settlements upon the dissolution of marriage are decided according to the type of marriage contracted. Although the Ordinance prohibits certain grave inheritance customs, it leaves unruffled several unequal customary practices.

---

<sup>2</sup>Section 370, Aborigines Law and Hinterland Regulations (Liberia)

It is therefore discernible that while statutes have often improved upon customary inheritance law, they have generally not attempted to completely cover the field: the result is the patently discriminatory treatment of women depending on whether their marriages are categorized as customary or statutory. For a number of reasons, women in the region do not always have control over the type of marriage they contract. Some lack awareness of the exact consequences of customary marriages, and can hardly be considered to have given informed consent to them.<sup>3</sup> Inadequately-trained marriage registrars, may -- as has been the case in *Cameroon* -- not give effect to the actual wishes of a spouse.

## ***2. Legislation Allowing only Limited or Unequal Inheritance by Widows***

In some countries, while legislators have attempted to remedy the defects of customary law by allowing women to inherit, the actual distribution schemes implemented contain glaring inequalities. Widows are often granted something short of a full proprietary interest in the property, or a fraction of the estate at odds with their contribution to the household and their needs.

On its face, the Administration and Succession (Estate of deceased persons) Law applicable in some Eastern States of *Nigeria* treats widows and widowers unequally. Under the statute, where a woman dies intestate leaving her husband and children, one-third of her estate goes to the widower, who takes an absolute interest in the property thus received. However, when a man dies intestate leaving a wife and children, the widow receives one-third of the estate, but her interest in the property lasts only as long as she lives, or remains unmarried. Upon her death or remarriage, her portion reverts to her late husband=s customary family. In allocating fractions of the estate to the surviving spouse that vary depending on the composition of the class of beneficiaries, this statute makes distinctions depending on whether the surviving spouse is a man or a woman. The former generally receives an absolute, alienable interest, while the latter receives only a limited interest that is extinguished upon her death or remarriage. She may therefore neither dispose of the property, nor bequeath it to her own successors.

While purporting to depart from customary law, *Cote d=Ivoire*=s inheritance law of 1964 limits the inheritance of widows by ranking them low in the order of eligible beneficiaries, and granting them only small fractions of the deceased=s estate. The statute completely excludes widows from the inheritance where the deceased died intestate leaving children. Furthermore, when the deceased had no children but leaves behind brothers and sisters that were dependent on him, the widow is also completely excluded from inheriting any part of the estate. It is therefore the case -- in view of the extended family system where older siblings sponsor younger ones -- that widows are displaced from inheriting by persons who are not members of the nuclear family. When the widow is included in the class of beneficiaries, the portion of the estate is derisory. Where the widow and ascendants of the

---

<sup>3</sup>Only in *Nigeria* was it reported that a law (the Eastern States= Marriage Act) required officials registering marriages to explain to intending spouses what the consequences of their marriage would be as regards succession to property; even then the requirement applies to statutory, and not customary marriages.

deceased comprise the class of beneficiaries, she receives only a quarter of the estate, while three-fourths go to the ascendants. Even where the deceased leaves behind only siblings or ascendants that were not dependent on him, the widow shares the estate equally with them.

### ***3. Inconsistent and Unsuccessful Application of Legislation on Inheritance***

In addition to not completely eradicating customs that are adverse to inheritance by women, the extent of compliance with the statutes has been disappointingly weak. A multitude of factors, either linked to the substantive provisions of inheritance statutes, or internal to the administrative and judicial systems that apply them have stalled their implementation. In attempting to achieve equality and uniformity, legislators have often overlooked key components of inheritance legislation -- such as the range of eligible beneficiaries -- that are affected by other social phenomena. By enacting statutes radically at odds with long-standing customary norms without creating accessible enforcement structures, and without providing auxiliary facilities necessary for their application, governments have virtually assured the ineffectiveness of these laws. In addition, broader societal forces and perceptions have militated against successful implementation of these statutes. In several countries, such institutional and enforcement lapses combined with competing pressures for the maintenance of existing inheritance practices, have led to the preservation of customary law in rural areas.

#### ***a. Internal Weaknesses in Inheritance Reform Laws***

Although Ghana's Intestate Succession Law of 1985 is the most generous of all modern inheritance statutes in the region, in its actual application, the Law has worked its own injustices, and created further difficulties for women's inheritance. Although one of its stated objectives was to eliminate the impact that different forms of marriage (polygamy or monogamy) had on inheritance, practice under it reveals that the type of marriage very often determines the nature of the estate the widow receives. The Ghanaian legislator's avowed aim of making the nuclear family the principal beneficiaries of inheritance has been defeated by the preservation of polygamy as a lawful form of marriage. Although the law specifies what portions of the estate the surviving spouse is entitled to (either three-sixteenths or one-half, depending on the composition of the class of beneficiaries) it was oblivious of the effect of polygamy on the size of the inheritance widows actually received.<sup>4</sup> With several wives, each widow's portion diminishes accordingly.

In trying to achieve equality, the Law also fails to be equitable. The greatest victim of this situation is a wife who has contributed her time, skills and resources towards the acquisition of property with her husband, who must split her share of the estate in equal parts even with recent co-spouses. This Acontributing spouse≅ is not even entitled to keep the matrimonial home. Furthermore, the law grants fully self-supporting, adult children the same share as minor children, in spite of the greater

---

<sup>4</sup>In the absence of widespread polyandry in Ghana, (marriage between one woman and several men) the fact that the law ostensibly applies even-handedly to any A surviving spouse≅ is no proof of equality. In practice women are those required to split a surviving spouse's share of the estate, as co-wives in a polygamous marriage.

needs of the latter. Furthermore, the fractions mandated by the 1985 law and the acrimony that results when beneficiaries are compelled to hold as co-tenants often means that the estate has to be liquidated into cash for each beneficiary to receive their exact due.

***b. Prohibitive Costs***

Administrative costs, and cumbersome procedures associated with obtaining letters of administration have also impeded inheritance by women under some of the new statutes. Under *Burkina Faso's* Personal and Family Law Code,<sup>5</sup> women are expected to present documents in order to obtain letters of administration, that are not required of men. For rural women without fixed money incomes, the costs involved in processing these documents are often prohibitive. In *Ghana* as well, proper application of the 1985 Intestate Succession Law often involves the use of expensive legal and financial professionals. Paying their fees from the estate diminishes the portion that each beneficiary ultimately receives.

***c. Access to Justice/Legal Services***

These administrative costs are emblematic of broader difficulties in gaining access to the judicial system that were reported in many countries in the region. The high cost of legal representation, especially for rural women, as well as lack of familiarity with, and confidence in the judicial system also explain the minute number of transgressions of inheritance statutes that are litigated. There generally are no adequate support mechanisms, such as effective social services and workers to counsel widows, facilitate their understanding of inheritance statutes and help them in processing applications in inheritance matters. Legal aid services that could handle more contentious aspects of the inheritance process are also largely deficient.

***d. Resistance from Traditional and Religious Institutions***

Legislators in the region also appear to have underestimated the levels of resistance and opposition that modern inheritance statutes would generate. Yet, it was evident that in passing laws that were radically opposed to customs in place for generations, governments were on a collision course with institutions and structures that endorse the application of customary law. In *Ghana* for instance, where both matrilineal and patrilineal succession systems were built around the reality of the customary family, linked by blood, the legislator sought in one fell swoop to redefine the family for purposes of inheritance around the concept of marriage. This was diametrically opposed to the matrilineal succession system where a man did not, by marriage, add *any* members whatsoever to his customary family that is entitled to inherit from him.<sup>6</sup> Vigorous opposition to this complete reversal was to be expected.

---

<sup>5</sup>*Code des personnes et de la famille*, Law No. AN VII 0013/FP/PRES of 16 November 1989.

<sup>6</sup>In patrimonial succession systems, the children of the deceased were at least considered to belong to his customary family, and were entitled to inherit his property.

In *Senegal*, despite widespread adherence to Islam, the Family Code of 1972 sought to reaffirm the secular nature of Senegalese state and society. The Code=s drafters had the unenviable task of harmonizing Islamic law (The *Shariah*), pre-Islamic native customs prevalent in the country, and received French law, as embodied in the *Code Civil*≡ that dates back to the time of Napoleon. Ultimately, the Family Code opted for strong recognition of individual rights, and the principle of equality in the context of a non-secular society. Islam and local customs were casualties of the Code, and opposition from these quarters was also to be expected.

In the specific cases of *Ghana* and *Senegal*, the passing of legislation alone was consequently hardly sufficient to keep the forces of custom at bay. In Ghana, only moderate success was achieved in enforcing and promptly reviewing legislation to ensure that several vested interests did not stifle its implementation. More vigorous resistance prevailed in Senegal upon the passing of the Family Code. Actively opposed by the most senior Islamic authorities in the country, the Code has become confined to urban settings. In rural areas, where there is a greater confluence between religious and temporal authority, it has remained for the most part, unenforced. Manifestations of actual resistance abounded, and the Head of one Islamic Caliphate even issued an edict annulling the Family Code in a region of the country.

#### *e. Rural-Urban Disparities*

This trend of disparity between urban and rural areas, with customs and traditions retaining most of their force in rural areas, is discernible in many countries in the region. In *Burkina Faso*, tribal customs and beliefs, such as accusations of witchcraft against the widow, most strongly impede women=s inheritance in rural areas. In *Ghana* administrative hurdles and a strong forces competing towards the retention of customs account for low levels of compliance with the 1985 Law in rural areas. In *Cameroon*, the higher prevalence of polygamous marriages in rural areas and lower education levels among rural women have contributed to the greater incidence of unequal inheritance in these areas. A widely-shared factor that explains this rural-urban divide is the separate existence of customary and statutory systems of marriage and inheritance (such as in *Nigeria, Liberia, Cameroon, Burkina Faso*). In *Togo*, judicial decisions have enabled inheritance of land by women in urban areas, while excluding rural lands from the inheritance daughters are able to receive, thereby reinforcing customary practices in those areas.

### **4. Interface between Inheritance Statutes and Related Laws**

#### *a. Inheritance and Land Laws*

In the reporting countries, land is generally the specific property type that is of most concern in matters of inheritance,<sup>7</sup> as it involves the greatest stakes for both sides of the women=s inheritance

---

<sup>7</sup>The matrimonial home, itself an item of immovable property and a vital component of the estate for widows is also a major concern in the region.

debate. On the one hand, since most women are engaged in, and depend for their livelihood on agriculture, land for farming is a prized asset for women. The matrimonial home and grazing land are also crucial components of the estate and often determine whether the woman's immediate and future livelihood is secure. On the other hand, many tribal customs that deprive women of inheritance are grounded in concerns about the alienation of family land, of which women are seen to be a vector. Some tribes, such as the Fulbes in Northern *Cameroon* in fact >compensate= daughters who receive an unequal share of land in the deceased's estate with other forms of property. In *Cote d'Ivoire*, the customs that were abrogated by the 1964 inheritance law specifically prohibited women from inheriting land that belonged to the customary family. In *Nigeria*, under Igbo customary law even where the decedent is the mother, her daughter is excluded from inheriting immovable property, which all goes to the son. The daughter can however inherit other movable property such as domestic utensils and livestock.

While customs have largely prevented women from owning land through inheritance, women are -- at least in theory -- allowed to own and dispose of land under land laws applicable in most countries. However, the situation is rendered complex because the land law regimes in several countries accommodate the concept of tribal lands, and on occasion defer to customary law on the issue of how these lands may be transferred.

On the positive end of the spectrum, some countries do not have any formal restrictions on the ability of women to own land. The law of *Burkina Faso* even specifically prohibits gender discrimination in the acquisition of both urban and rural land. Its Agrarian and Land Reform Law,<sup>8</sup> passed in 1996, provides that state-regulated urban and rural lands can be owned by physical persons irrespective of their gender or matrimonial status, as well as by corporate entities. In *Cameroon*, the land law [Law No. 74/1 of 6 July 1974] does not discriminate between persons on grounds of gender in the acquisition of definitive land title deeds, and women may acquire them, once they meet the same statutory requirements as apply to men.

Although these land laws allow ownership by women, in effect women's inability to inherit land (the principal means of land acquisition) often means that this power is futile. Rural lands are the principal concern in many countries, and the sale of land to women in urban settings is more common. A decision from an appellate court in *Togo*, interpreting the state of customary law among the Ewe tribe is illustrative. In deciding a case that involved competing applications from male and female potential beneficiaries, the court held that considering the evolution of African customs and its own prior holdings applying customs of the Ewe people, both male and female successors could inherit property. The court, however, stated that this >equality= did not allow female successors to inherit rural lands. While women may therefore have the right to use and occupy rural lands they may not acquire proprietary interests. As such, in *Togo* where there are competing aspirants to a common ancestor's rural farmlands, the first linked to the ancestor by a male parent and the second by a female parent, the first takes priority. This is because the female parent cannot pass on property

---

<sup>8</sup>ALoi No. 014/96/ADP du 23 Mai 1996 portant sur la reorganisation agraire et fonciere (Burkina Faso).

(even if she occupies it) to her descendants, since the interest she receives in the rural land is not proprietary. A male parent, however, can pass ownership interests.<sup>9</sup>

In *Nigeria*, relevant statutes in both the Eastern and Western states defer to customary law on the issue of inheriting real property. Although they purport to displace customary law in favor of modern inheritance schemes, both statutes contain provisos to the effect that real property which cannot under customary law be disposed of by will, descends in accordance with customary law. In both regions therefore, there is provision for customary law (which excludes succession by widows) to be applicable where customary law itself requires that the testator not dispose of that property.

### ***b. Inheritance and Matrimonial Laws***

Matrimonial laws also have a significant effect on women=s inheritance in the region. Upon the death of a spouse, their provisions on property or financial settlements upon the dissolution of marriage come into play. *Cote d=Ivoire* illustrates the nature of the interface between these two areas, and demonstrates how matrimonial laws influence modern inheritance laws. An inheritance law passed on 7 October 1964 sought to deviate from customary practices such as the transfer of women upon death and the complete prohibition of inheritance by the widow. It allows widows to take one-quarter of the estate where the co-beneficiaries are ascendants of the decedent that were dependent on him. A widow takes one-half of the estate where the other beneficiaries are ascendants, or brothers and sisters that were not dependent. However, where the decedent leaves children or grandchildren, the law bars the widow completely from inheriting. Even where the deceased leaves only dependent brothers and sisters the widow may not inherit. For a law purportedly departing from the unequal practices of customary law, the 1964 statute is thus very restrictive.

In 1964 when this law was passed, the legislature considered its distribution scheme fair because matrimonial laws applicable at the time recognized only community of property as a valid type of marriage settlement. When one spouse passed away, thus dissolving the marriage, the surviving spouse was automatically entitled to one-half of the marital property. The 1964 inheritance legislation thus sought to spread the benefits from the estate among other relatives (such as parents, and brothers and sisters) who were likely to be dependent on the deceased during his lifetime. Subsequently, however, a law passed on 2 August 1983, recognized separation of property as an alternative marital regime. For widows in marriages under the latter regime, the assumption underlying the inheritance law (that widows automatically receive one-half of the estate) is wrong. There now exists no guarantee that the widow would receive property under a community of property regime to >compensate= for the meager amounts accorded to her under inheritance law. Developments in matrimonial law have thus materially altered the circumstances of widows without a corresponding

---

<sup>9</sup>An almost identical situation prevailed in *Ghana* under customary law, where widows get only a limited life interest, with ownership reverting to the decedent=s customary family upon her death.

reform of the inheritance law reflecting these changes.

In *Senegal*, matrimonial laws have also created tensions in the inheritance regime. The country's *Code de la Famille* establishes community of property as a marital regime. However, this has created immense resistance from traditional and Islamic quarters because it directly contradicts the role of the customary family in the inheritance process. That the widow, who is not part of this family receives one-half of the estate is perceived as undermining the continuity of wealth within the customary family.

## **B. Customary Laws**

### ***1. Status and Scope of Application***

Customary laws apply selectively, in that they only govern matters such as inheritance and marriage for a portion of the population. In *Liberia*, in spite of clear legislation granting them the same rights, privileges and immunities as other citizens of the republic, persons in rural areas and indigenous people continue to be governed by customary laws. In *Nigeria* and *Cameroon*, customary laws on inheritance remain largely applicable to rural populations. This is either due to the absence of state laws or because the law contemplates that inheritance matters emanating from polygamous marriages (that are celebrated in accordance with customs) shall be dealt with under customary law. In *Togo* and *Burkina Faso* as well, customary law co-exists with statutory law and is applicable to polygamous marriages.

Customary law appears to have a most prominent status in *Togo* where the law effectively creates a presumption in favor of its applicability. *Togo's Code des Personnes et de la famille* states that its provisions are only applicable where the decedent opted to renounce customary law through a will or before the civil status registry. Therefore, in the event of intestacy, customary law is the >default= system that governs inheritance matters. Since in practice many husbands have not expressly opted out of customary law as required, it is widely applied in the country.

Unlike other countries (such as *Cameroon*) where women may by contract a monogamous/statutory marriage in order to opt out of the customary law system, in *Nigeria*, customary law may apply even where a statutory marriage is contracted. The Marriage Act (Eastern States) and the Administration of Estates Law (Western States) both provide that where customary law prohibits the disposition of certain property by will, such property may only pass under customary law. These provisions apply even to inheritance matters emanating from statutory marriages. In the legal systems of the region where customary law is applicable, it tends not to be a >closed= system, although cases arising under customary law that are brought before state courts, are primarily decided according to customary law. As such, in at least three of the reporting countries, some customs on women's inheritance have been modified or repealed based on statutory or constitutional principles of equality or natural justice.

### ***2. Substantive Aspects of Customary Law on Women's Inheritance in the Region***

#### ***a. State of the Most Oppressive Customs: Widows as Transferable Chattel?***

In several reporting countries, the most oppressive customs were those that retained the notion of women as chattel, or items of property in the household. These customs make the question of inheritance by widows a non-issue: since the woman herself is considered property it is simply unthinkable that she may aspire to own other items of property. In fact, the widow=s own personal freedom is at stake since as part of the estate that the customary family of her deceased husband is entitled to, she is transferred to a male relative of her husband.<sup>10</sup> This practice still occurs in *Burkina Faso*, where under some customary laws the widow remains part of her deceased husband=s estate until the bride-price paid for her is reimbursed to the husband=s family. Similarly, among the Igbos of Eastern Nigeria, the widow is considered part of the personal property of the deceased which descends to the eldest son as heir, or in the absence of a son, to the eldest male relative of the deceased. In *Togo* as well, widows may under customary law be taken as wives by brothers of their deceased husbands.

A somewhat moderated -- and possibly beneficial -- version of this custom prevails in *Liberia* where though the widow cannot be forced to marry a male relative of her deceased husband, she remains a member of his family, whose head is entitled to cater for her welfare.

In a number of countries, the variant of these customs compels a widow to marry one of her husband=s male relatives, or remain within his customary family unless she can repay the bride-price, have been repealed. In a law of 1964 that recognized the widow=s right to inherit, *Cote d=Ivoire* abolished practices such as the *levirat* and the *sororat*. The Civil Status Registration Ordinance of 1981 in *Cameroon*, prohibited any members of the deceased husband=s customary family from making any claims on the widow=s person or her share of the inheritance. It also allows her -- once she has observed the mandatory 180-day widowhood period -- to remarry and prevents the customary family from claiming any entitlement to a refund of the bride-price. Therefore, while steps have been taken in some countries to abolish this custom -- by far the most restrictive of women=s inheritance -- it remains applicable in other countries.

### ***b. Customs Completely Depriving Widows of Inheritance***

In several countries reported on in the region, this was a prevalent custom. In *Togo*, customary laws generally only allow for inheritance by male relatives of the deceased. Even though judicial decisions have allowed some inheritance by daughters, this has not been extended to widows. In *Burkina Faso*, customary law generally does not allow widows to inherit from their husbands: the decedent=s property is taken by the eldest male of the deceased=s lineage, who is typically the of head of the customary family. Under customary law in *Cote d=Ivoire*, since a deceased man=s property had to pass within the customary (or blood) family and marriages were as a rule exogamic, the widow was

---

<sup>10</sup>This practice is referred to as the *levirat* in Francophone countries, and together with the *sororat* (the transfer of a sister of a deceased wife to the widower) fostered the notion of women as property that could be transferred upon death.

never eligible to inherit his property.<sup>11</sup>

Two rationales are offered in these countries for the inability of widows to inherit. The first, seen above is the notion of widows as part of the estate itself and thus cannot own property. The second, is the rule that land should pass within the customary family, which the widow does not become a part of by virtue of marriage.

### *c. Customs Allowing No Inheritance by Daughters*

A number of customary laws in the region generally allow for no inheritance by daughters. The Igbos of *Nigeria*, for instance, do not allow daughters to inherit from their fathers. The eldest sons or son of the deceased is the eligible successor. Only in very extreme circumstances -- examined below -- may a daughter administer her father's property, and then only with very limited interests. In *Togo* as well, customary laws generally do not allow for inheritance by daughters from their parents. In *Burkina Faso*, daughters do not inherit under customary law, since the eldest male is designated as heir. In a similar practice to what daughters obtain in Eastern Nigeria when a woman dies leaving both sons and daughters, the daughter of a deceased man in Burkina Faso is only entitled to items such as harvested foodstuff. In *Cameroon*, some customary laws do not allow inheritance by married daughters. These customs arise from concerns that the inheritance of immovable property by a married daughter would unjustly deprive the customary family of property that has passed within it through generations.

### *d. Customs Allowing Inheritance, albeit limited, by Daughters*

Customs granting daughters an unqualified right to inherit property from their parents are by far the exception and not the rule in the region. Among the Yorubas of western *Nigeria*, although widows are not allowed to inherit, daughters of the decedent are entitled to receive equal shares of the estate as sons receive. In many other countries in the region, although daughters may inherit, they only receive limited interests. Even these meager developments have often resulted from judicial decisions reversing, modifying or refusing to apply customary laws and not from a change in customary laws as such.

Among the Igbos of Eastern *Nigeria*, daughters may only exercise some control over property owned by their deceased father where there is no male heir. In this case, the daughter often remains unmarried in her parents' home; if she does get children she is succeeded by her sons and the rules of succession by the eldest male continue. In *Togo*, daughters do not have full rights to inherit immovable property, especially in rural areas. Courts applying the customs of the Mina tribe have held for instance that when they do receive such property, they may only use it, but not dispose of it. The effect of these customs is manifested in the different standing of heirs, descending from a common ancestor (such as a grandparent), but linked to the ancestor by a male and female parent respectively. In such cases, the person claiming through a male parent (the son of the ancestor)

---

<sup>11</sup>Customary laws applicable in *Ghana* also completely excluded the widow from inheritance whether in patrilineal or matrilineal communities.

receives full rights of ownership to the exclusion of the other claiming through a daughter of the ancestor. The daughter would only have received a limited interest which reverts to the customary family. She may not bequeath the property to her own progeny.

There have been judicial decisions in a number of countries in the region rejecting customs that deprive daughters of inheritance. In *Togo*, an appellate customary court held that in respect of inheritance of immovable property, the customs of the Ewe tribe had evolved so far as to allow equality between sons and daughters inheriting from their parents. However, this decision was watered down by a subsequent one where it was held that the customs of the same Ewe tribe contemplated equality of the sexes in inheritance, except in respect of rural lands, that may not be inherited by women.

In *Cameroon*, the Supreme Court in 1993 held that a custom of the Mankon tribe that prevented married daughters from inheriting was unenforceable. The Court held that this custom violated a statute that provides for the application of customary law in English-speaking Cameroon, which requires that customs should not be repugnant to natural justice, equity and good conscience. In *Nigeria* as well, the Supreme Court is scheduled to hear an appeal from a decision that declared the exclusion of daughters from inheritance under Igbo customary law to be unconstitutional, and repugnant to natural justice, equity and good conscience.

### C. Religious Laws

Islamic laws are the principal religious influence on inheritance in the region. Islam is reported to have significant repercussions on women=s inheritance in *Senegal, Cameroon, The Gambia and Nigeria*. In at least three of these countries (The Gambia, Cameroon and Nigeria), Islamic succession law is formally applicable as part the personal law of practicing Muslims. In Senegal, although a uniform family Code has been passed there is still widespread application of Islamic law in rural areas where religious authorities have vigorously warded off reforms.

Islamic inheritance law tends to be identical across different countries in the region since the practices draw upon interpretations of the Holy Koran. Generally, an elaborate distribution scheme under which a widow is entitled to one-eighth of the estate left by her husband is adhered to. The widow shares the estate with children left by the deceased, the parents and grand-parents of the deceased and his brothers or sisters. Each of these other groups of beneficiaries receives a larger portion of the estate than the widow. Widows without children are however entitled to one-fourth of the estate.

As between male and female children of the deceased, the distribution of the estate is not equal. In *The Gambia, Senegal, Cameroon and Nigeria*, daughters receiving an inheritance under Islamic law are entitled to one half of what sons receive. There are also instances where national laws defer to the inheritance scheme provided for by Islamic law. This is often achieved by placing a fetter on the ability of the Islamic testator to bequeath his property as he wishes. In *The Gambia*, legislation passed in 1992 requires that the wills of persons subject to Islamic law be interpreted in accordance with Islamic law. Therefore, a testator whose personal law is Islam cannot through a will alter the

distribution of the estate required under Islamic law.<sup>12</sup>

### III. STEPS TAKEN BY THE WOMEN=S INHERITANCE MOVEMENT

#### A. Education and Public Awareness

In most countries of the region, women=s groups have embarked upon public education and awareness campaigns to inform women about positive changes in the law, or generate public debate and concern about women=s inheritance. In *Nigeria*, these campaigns have focused on informing women of the advantages that statutory marriages have over customary marriages in matters of inheritance, and encouraging men to make wills. In *Ghana*, Alegal literacy programs facilitated by volunteers with an understanding of inheritance law have been organized, and inheritance statutes have been translated into local languages. In *The Gambia*, women=s groups have encouraged men to make *inter vivos* transfers of property since the power to dispose of property by will has been restricted. In *Cameroon*, advocates have prepared simple guides on how to make wills, and have appeared on national television to raise concern about the deprivation women face in inheritance. Women=s rights groups in Cameroon have also organized training for state-appointed Civil Status Registrars, because of the importance of their functions in conducting marriages and preparing marriage certificates. In *Burkina Faso*, trainers briefed on marriage and inheritance laws work in rural areas to educate women=s and community groups. In *Togo*, advocacy groups have also designed schemes to educate -- through amicable settlement procedures -- male siblings and members of the customary family who deprive women of inheritance.

#### B. Legal/Administrative Aid and Assistance

In some countries in the region, legal aid programs that facilitate the process of obtaining letters of administration for widows have been set up. In *Burkina Faso*, a membership based association of widows collects data on the difficulties faced by widows in inheriting property, and assists its members in compiling the dossier needed to apply for letters of administration in court. For reasons of security and to reassure the widow, applications filed in court are brought in the name of the organization on behalf of the widow, and its staff appear with the widow and represent her at court hearing. In *Togo*, organizations have embarked on the training of paralegals in inheritance law, with an emphasis on skills of negotiation and amicable settlement. In the event that no amicable solutions are found, the paralegals guide women towards qualified lawyers. A legal consultation and assistance center that plans and dispenses legal education on inheritance matters has been opened. Among its important functions is facilitating the widow=s task of obtaining payments that are due to her from third parties, such as social security/insurance funds or former employers of the deceased husband.

#### C. Legislative Advocacy and Law Reform

---

<sup>12</sup>Similarly, in *Nigeria* the courts have held that a person subject to Islamic law can only bequeath a third of their estate to persons that are not recognized as eligible beneficiaries under Islamic inheritance law.

Despite a difficult task environment prevalent in several countries in the region, a number of law reform initiatives have been carried out. In *Liberia*, female lawyers have petitioned the government for the amendment of legislation that maintains the dual systems of statutory and customary inheritance. They have succeeded in putting the issue on the legislative agenda, and have been consulted by legislators for input in drafting the law. Liberian women's groups have also proposed laws that would guarantee widows a third of their husbands' estates, prohibit restrictions on the freedom of widows, and abolish customs that compel widows to marry the kin of their deceased husbands. They have also organized public workshops bringing together concerned sectors of society with a view to generating public interest in proposed legislation. In *The Gambia*, women's groups have proposed legislation that would compel husbands in potentially polygamous marriages to declare the number of wives they intend to marry. In *Senegal*, the law reform process has mainly consisted in advocacy by female Islamic scholars of progressive interpretations of Islamic law -- or *Ijtihadj* -- that attempt to place the text of the Holy Koran in the context of modern-day issues and realities.

#### IV. POSITIONS AND ACTIONS OF GOVERNMENTS IN THE REGION

While most governments in the region are aware of the extent of deprivation of women's inheritance, very few have taken effective steps to redress the situation. In *Nigeria*, there is a lack of political will especially on the part of the federal government, to initiate reform of inheritance laws. Proof of this is that it has refrained from implementing the recommendations of a commission that studies and prepares reforms in the areas of personal and family law. Notable among the reforms suggested is the elimination of the different status of customary and statutory marriages. Federal bodies charged with promoting women's affairs and human rights have not been used to further inheritance law reform.

A number of governments are also not committed to enforcing laws that guarantee equal inheritance by women. Although the Nigerian government has ratified the Convention on the Elimination of Discrimination Against Women, no specific body is charged with ensuring the municipal implementation through legislative or other measures, of the Convention. In *Togo*, the government has frequently documented and reiterated the invaluable contribution of women to agricultural output and the importance of agriculture to the economy. Yet it has failed to respond to these realities with sustained efforts to facilitate women's access to land for agriculture. Having passed the *Code des personnes et de la famille* in 1980, the government has not sought to ensure its vigorous enforcement.

In *The Gambia*, the government has steered clear of reforms to improve inheritance by women. It secured the passage of the 1992 Wills Act that limits the capacity of husbands to dispose of their property by will in a manner inconsistent with Islamic law. The government has also not supported legislation that would compel potential polygamous husbands to put their future spouses on notice as to how many wives they intend to take. In *Liberia*, while the government has ratified the Convention on the Elimination of Discrimination Against Women, in the incorporation of the treaty into national law, a number of limitations have been placed on its guarantees of equality. In *Cameroon*, although a national commission charged with the reform of family law has consulted with women's groups, its

process has frequently been stalled.

## V. SPECIFIC POLITICAL, CULTURAL AND ECONOMIC OBSTACLES

### A. Political Obstacles

Several political obstacles, especially linked to inequalities prevalent in decision-making institutions and processes have impeded reform of inheritance practices adverse to women. In *Liberia*, despite a constitutional mandate to pass legislation governing inheritance, the male-dominated legislature has failed to make the issue a priority on its agenda for over twelve years. In *The Gambia*, efforts by women=s advocacy groups to get the legislature to curb the deleterious effects of polygamy on women=s inheritance have been frustrated by a legislature that is 98 per cent male. In *Nigeria*, the small number of women who hold high office are unable to generate enough government action for reform.

Inequalities in the composition of decision-making bodies are not only prevalent at the level of the national legislature, but also in the customary courts and traditional institutions that have enforce customary law. In *The Gambia*, local administrative districts are headed by Chiefs and Alkalos who wield enormous power since they are responsible for administering customary and Islamic law. These officials are invariably men; a situation that existed for several decades since only men (heads of individual homesteads) constituted the electorate for these local elections. Women could also not run for these positions. Although there has been a change in the law to allow women to serve in these functions, the culture of female leadership is understandably frail and none have as yet been elected. Similarly in *Liberia*, tribal leaders and enforcers of customary law are overwhelmingly male.

Other political difficulties, such as the absence of avenues for influencing the law-making process have impeded women=s inheritance advocacy in *Nigeria*. There is furthermore the lack of a clear constituency from which to raise the profile of the issue, since women with statutory marriages are not confronted with the harsh realities faced by women subject to customary law.

### B. Cultural Obstacles

The most prevalent cultural obstacles faced in the region are tribal customs and societal attitudes that give women second-class status, and justify inequalities in access to economic resources and education. Such cultural perceptions are highly prevalent in *The Gambia*, where decision-making powers normally lie with the male head of the household. Women are often subject to objectification and viewed as expendable, including in some cultures in *Nigeria* and *Senegal* where there is a strong preference for male children. In other countries, cultural beliefs about the sanctity of land militate against inheritance by women. In *Togo*, there is a strong customary tenet that land forms part of a sacred and inalienable trust handed down to the head of the family. As such, it possesses not just material, but also spiritual value, and its current holders have an obligation to their ancestors to

preserve its continuity within the family line. It is argued that inheritance by widows places this property in the hands of a stranger, while inheritance by daughters who will get married into another customary family alienates sacred property.

Also prevalent are views that immovable property constitutes a community asset. Individualistic inheritance laws that emphasize splitting property into individual shares are therefore perceived with suspicion. As such, sheer resistance and obstinacy prevails in countries such as *Nigeria* and *Burkina Faso* where even women who have contracted statutory marriages are deprived of their inheritance rights through the application of customary law.

In some countries in the region, such as *Togo*, strong societal pressures dissuade women from adopting confrontational or contentious positions. This explains why several dispossessed daughters and widows neither actively resist encroachments upon their inheritance, nor lodge formal complaints with the authorities. Having been brought up in cultures that prioritize values such as forbearance, tolerance and obedience, women readily opt for unfair settlements rather than insist upon their due from customary families. Women also tend to have a greater fear of alienation by their immediate community and place a high premium on compliance with societal norms, however discriminatory. A number of deplorable funeral customs that impose harsh mourning conditions on women and subject them to insults and accusations of involvement in causing the death of their husbands, such as exist in *Togo*, further subjugate widows.

### **C. Economic Obstacles**

Economic constraints faced by women are also significant. In *Ghana*, applying for letters of administration often entails hiring expensive financial or legal professionals. In *Togo*, the trend towards giving rural land an economic value has deprived women of even possessory rights over land, since male heirs more readily sell land. Significantly lower literacy rates and less access to education often mean that women lack awareness of basic legal rights and access to productive sectors of the economy. The higher poverty level among women that results from these inequalities reinforces the cultural and societal norms that maintain a second-class status for women.

## **VI. POSSIBLE RESPONSE STRATEGIES**

Participants from most reporting countries emphasized the importance of an integrated approach towards addressing women's inheritance issues that would comprise law reform initiatives, sustained and more focused public education campaigns, and a greater emphasis on identifying and solving gender problems in judicial training. Capacity-building in the techniques of legislative advocacy was identified as important in *Nigeria*, where groups proposing reform of women's inheritance laws have yet to make a significant impact on the law-making process. Developing effective lobbying efforts was also a preoccupation of several advocacy groups in the region that have drafted model inheritance legislation and seek to bring the issue on the legislative agenda.

*Ghanaian* participants reported that actual awareness of provisions of the improved inheritance law

remained low. This necessitated emphasis on training volunteers who would further disseminate information on the law at the community/rural level. Education and training initiatives directed at customary authorities, with the aim of securing compliance with improved laws was also identified as an urgent necessity in *Togo*. *Cameroonian* participants noted the importance of extending education and consultation initiatives beyond women, to include custodians of customary law such as traditional rulers and village notables. Since such strategies require alternative skills in negotiation and dispute resolution, it is necessary to build the capacity of such organizations to handle this dimension of public education and consultation. The importance of recourse to amicable negotiations was also emphasized by *Togolese* participants, who recommended a reorientation of the judicial process towards exhausting possibilities for amicable settlement of inheritance disputes.

Substantively, participants from both *Nigeria* and *Liberia* saw the need for strengthening law reform proposals to eliminate the separate existence of customary and statutory systems of inheritance. Participants from *The Gambia* suggested that efforts at enhancing inheritance by women should be placed in the context of initiatives to improve access to education by women, and to facilitate women=s involvement in decision-making processes. This approach insists not only on remedying the immediate causes and consequences of inequalities in inheritance, but also on addressing its broader institutional and remote causes. This perspective was endorsed by *Cameroonian* participants who emphasized on empowering women economically by making accessible to them laws and processes that allow access to natural resources such as land.

The need for more dynamic international networking between organizations seeking reform of inheritance law was stressed by both *Nigerian* and *Liberian* participants.

# **APPENDIX C: Ghanaian Intestate Succession Under Customary Law**

Presented at the Consultation by  
Dorcas Coker-Appiah  
Executive Director, Gender Studies and Human Rights  
Documentation Centre

## INTESTATE SUCCESSION UNDER CUSTOMARY LAW

The family unit constitutes the most significant institution in the Ghanaian traditional society which determines and regulates political and socio-economic rights of individuals. Under Ghanaian customary law, an individual's membership of a family regulates not only his right of succession to political office in the traditional set-up, but also governs his right to use and ownership of land as well as rights of succession to property. For purposes of intestate succession particularly, the composition of the family unit assumes paramount importance under Ghanaian customary law.

The "family" has been defined by Bentsi-Enchill as "the group of persons linearly descended from a common ancestor exclusively through males (in communities called patrilineal for this reason) or exclusively through females starting from the mother of such ancestor (in communities called matrilineal for this reason) and with which group succession to office and to property is based on this relationship."<sup>1</sup> Thus the two kinds of family systems which are generally recognized under Ghanaian customary law are the patrilineal and matrilineal systems and every individual is deemed to belong to either of these for purposes of succession, depending on the tribe to which one belongs.

The matrilineal family is deemed to consist of all persons, male or female, who are in direct female line of descent from a common female ancestor. Thus in matrilineal communities, the devolution of property upon death intestate is determined on the basis that the rights of succession are conferred by tracing one's descent through one's mother.

The patrilineal family on the other hand, consists of all persons, both male and female who are direct descendants in the male line from a common male ancestor. In patrilineal communities, the right to succeed to and enjoy rights in property or political office is determined by membership of a family traced through the male line, that is through the father.

The composition of the family under both the matrilineal and patrilineal family systems has a direct impact on the rights of succession of women upon the death intestate of their husbands. In both matrilineal and patrilineal communities, the wife of a man does not form part of the man's family and neither is the man deemed to be a member of the woman's family. According to the rules of customary law, children born to a man from a matrilineal community are not considered as part of the man's family even though they count as members of the family of a man from a patrilineal community. In both patrilineal and matrilineal communities therefore, a woman did not have any right to inherit any portion of her husband's estate upon his death intestate and the man also could not inherit any part of the woman's estate upon her death. In the case of matrilineal communities the children of the man were also excluded from benefitting from any rights of inheritance from their father's estate. These rules in practice worked a far greater injustice to women than it did to men, since invariably, the man was the breadwinner and predominant earner and owner of property, while the woman in most cases was exclusively responsible for domestic roles, without much opportunity of acquiring substantial assets.

In patrilineal communities, widows had no right of inheritance of any part of their husband's estate upon their death intestate. The children, being part of their father's family, are entitled to inherit from

---

<sup>1</sup> k. Bentsi-Enchill, Ghana Land Law, 1964, p.25

their father, a fact which in some cases inured to the benefit of their mothers. The fact remains however that since the rules of succession failed to take cognisance of the woman's contribution to the acquisition of the property, great injustice was done to the surviving widow. The customary law rules granted the children of the man by other women who may not have contributed anything to the acquisition of his property, rights of succession which were traditionally denied to his wife, whose contribution could hardly be disputed.

In matrilineal communities, the plight of widows upon the death intestate of their husbands was even more pathetic, since both the widow and her children were completely excluded from inheriting any part of the man's estate. The entire estate devolved on the customary family of the man, who in some cases would turn the widow and children out of the man's home, leaving them destitute.

### MATRILINEAL COMMUNITIES

Among the matrilineal communities, it was generally accepted principle that upon the death intestate of a man, his self-acquired property becomes family property and is distributed to his family in accordance to customary law. It is a well established principle that in matrilineal communities, the wife and children of a man who dies intestate are not entitled to succeed to any specific portions of the intestate's estate even though they have certain limited rights with regard to maintenance from the intestate's estate and residence in the matrimonial home. The hardship caused to women and children upon the application of these customary laws of succession were very grave since the widows were invariably saddled with the burden of maintaining their children without access to their deceased husband's estate even where they had contributed to the acquisition of the properties in question.

#### **Right of maintenance and residence in the house of the intestate**

Even though the children of a man from a matrilineal community had no right to succeed to any alienable right in their father's intestate estate, they were not entirely without any right of support under customary law. The courts have over the years made some effort to improve the position of surviving widows by emphasizing this right accorded to widows and children by the customary law. In Manu v. Kuma<sup>2</sup>, the Supreme Court held that a successor under customary law was under an enforceable obligation to maintain and educate the children of the deceased even though they could not lay claim to any specific portion of his estate. This obligation is said to be based on the principle generally recognized at customary law that a man is responsible for the maintenance and training of his children and this obligation is deemed beyond the death of the man.

---

<sup>2</sup> [1963] 1 G.L.R 464

In matrilineal communities, the general position which has been recognized by the courts is that the children of the intestate are entitled to be maintained out of their deceased father's estate subject to good conduct and their not disputing the right of the family. This qualification in practice tends to undermine the full enjoyment of the right by surviving widows and children. This was observed by Wiredu J. in the case of Amissah-Abadoo v. Abadoo<sup>3</sup> when he stated:

*"The injustices and hardships caused to children and widows by tacking on the phrase "subject to good behavior" as a limitation of their rights to reside in houses which their deceased father and husband respectively die possessed of, irrespective of how they came by such property have been ignored indiscriminately in the past to the detriment of the children and widows. The conduct of the family flowing from this neglect must be frowned upon as behavior not countenanced by customary law and calls for an urgent need for a more realistic and practical reappraisal of this aspect of customary law in view of the fast social changes in the community caused partly by the high rate of inter-tribal marriages and partly by the development of the money economy which has provided other modes of acquiring wealth."*

### **Rights of widows in intestate estate of deceased husband**

As already stated, among the matrilineal communities of Ghana, the widow of a man who dies intestate does not traditionally have any specific share in the estate of the deceased husband since the definition of the matrilineal family clearly excluded the wife and children. Upon the death intestate of a man, the rules of customary provided very little protection for the widow and children, who upon the assertion of the rights of the respective relatives eligible to succeed to the estate, were often left destitute. Significantly, the rules of customary laws of succession failed to recognize the contribution of the wives to the acquisition of the property. Even where the wife had assisted the man to build on family land, it was a well established principle of customary law that the matrilineal family of the man could take possession of the house and turn the wife out.<sup>4</sup> Customary law considers it the woman's duty to assist her husband in whatever occupation he is engaged in and stipulates clearly that she does not thereby become a co-owner of assets acquired by her husband with such assistance.<sup>5</sup> The interest of the widow was generally limited to a right of residence in the matrimonial home only.

With time, however, judicial intervention has sought to ameliorate the plight of widows somewhat by holding that a woman could acquire an alienable interest in a house which she assisted her husband to acquire if she could prove substantial contribution which should far exceed what is expected from a wife at customary law.<sup>6</sup> It must be noted however that these principles have been overridden by the provisions of the Intestate Succession Law (PNDC Law 111) which gives spouses of persons who die

---

<sup>3</sup> [1974] IG.L.R110

<sup>4</sup> See, Swapim v Ackuwa. Sarbah, Fanti Customary laws, p. 19

<sup>5</sup> See, (Pusey v. Martev), [1959] G. L. R 377

<sup>6</sup> See, Abebreseh v. Kaah [1976]2 G. L. R. 46

intestate specific portions of the estate irrespective of the kind of family system to which the intestate belonged.

### PATRILINEAL COMMUNITIES

Among the patrilineal communities, the right to succeed to property is derived from membership of the family through one's father. Thus when a man dies intestate, it is his children who succeed to his self-acquired property. As in the case of the matrilineal system, the widow of a man from a patrilineal family, not being a member of the customary family, does not, under customary law, have any alienable interest in her deceased husband's property, even though she has a right of residence in the deceased husband's house and a right to be maintained out of his estate during her widowhood.<sup>7</sup>

#### **Children as successors**

Among the patrilineal communities, it is the children of an intestate who succeed to his estate as of right even though their respective entitlements or specific shares are subject to the determination of the patrilineal family and to some considerations based on gender. Generally, among most patrilineal communities, where the intestate is survived by only one issue, that child succeeds to all his interests in property automatically and as of right. A sole female child however succeeds to the interest in the estate but only for her own lifetime. Upon her death, the interest in the property devolves as if the original owner had died intestate and without any children. This is because the female child's own children are not normally members of her patrilineal family through which the right of succession is traced.

#### **Female children**

Even though the position of children in patrilineal societies was demonstrably better than that of children from matrilineal communities, the rules regulating the devolution of the intestate estate were in some cases patently discriminatory against the female children. In most patrilineal communities it used to be the position that women were not entitled to succeed to rights in property except a few chattels. Thus in the past, women were not considered in the distribution of property in intestacy. Even though the rule has been relaxed considerably, it is still the general principle that male successors are given preference over female ones. Thus even where there are older sisters, they are usually bypassed in favor of younger brothers and as between brothers and sisters, immovable property was normally allotted to the male children, who invariably receive the bulk of the intestate property.

In most patrilineal societies where a woman succeeds to property on intestacy, she was regarded as taking life interest only, so that the interest in the property does not devolve to her own children upon her death as it would in the case of male successors. A female successor cannot alienate the interest in inherited property *inter vivos*, nor could she exercise any testamentary capacity with respect to the property.

---

<sup>7</sup> See A.K. P. Kludze, *Ewe Law of Property*, 1973, pp 310-311

## INTESTATE SUCCESSION LAW, 1985, PNDC LAW 111

Prior to 1985, intestate succession in Ghana depended on the type of marriage contracted or whether the deceased came from a matrilineal or patrilineal system of inheritance. In view of the injustice generated by the application of the customary law rules of intestate succession, particularly in the matrimonial communities and the anomalies in the general law on intestate succession, it was deemed imperative that a statutory enactment be introduced to establish a uniform system of intestate succession which would be applicable throughout the country, irrespective of the type of marriage contracted by the intestate or the kind of community to which he belonged.

It was the opinion of the Legislature that the existing law on intestate succession had been overtaken by significant changes in the Ghanaian family system, primarily the increasing importance of the nuclear family as opposed to the wider traditional family units.<sup>8</sup> With the onset of urbanization and changing lifestyles women were beginning to play a more significant role in the household economy, a fact which was not sufficiently recognized by the existing law. These changes have led to the fortifying of bonds within the nuclear family and a corresponding weakening of the ties which existed in the extended family system upon which the customary law rules of intestate succession were based. In view of these socio-economic changes, customary law rules of succession which completely excluded a man's wife from benefitting from the estate of her husband were increasingly seen as unjust and unconscionable. This was borne out by increasing litigation on the Revolution of intestate property and tensions between members of the intestate's nuclear family and the extended family. There was also the added problem, particularly in matrilineal communities of successors taking over the intestate estate and neglecting their corresponding duty at customary law of ensuring the maintenance of the intestate's widow and the children.

Thus it is that the Memorandum to the Intestate Succession Law states as one of the most predominant objectives of the Law, the bid to provide greater protection for the surviving spouse and the children of a person who dies intestate than was available under the customary law. The Memorandum states:

*"The growing importance of the nuclear family brings with it its own logic of moral justice. Simply put, this argues that a surviving spouse be compensated for his or her services to the deceased spouse; that a spouse is more likely to look after the children on the death of the other partner than anybody else; and that expectation of the spouses are probably best satisfied by giving the property of one to the other on the former's death.≡*

---

<sup>8</sup> See, Memorandum on the Intestate Succession Law, PNDC Law 111

The Intestate Succession Law was also aimed at removing the anomalies in the existing law of intestate succession as discussed and establishing uniform rules of intestacy for all Ghanaians irrespective of the kind of marriage contracted and the kind of family system to which one belonged. The Intestate Succession Law thus repealed section 48 of the Marriage Ordinance (Cap 127) and section 10 of the Marriage of Mohammedans Ordinance (Cap 129)<sup>9</sup> which hitherto provided special rules of intestate succession depending on the kind of marriage contracted by the intestate.

### THE INTESTATE SUCCESSION LAW - MAIN FEATURES

In order to ensure equity and to safeguard the interests of the nuclear family of an intestate, the Intestate Succession Law establishes specific portions of the intestate estate which must devolve on the various beneficiaries, namely, the surviving spouse, the children, parents and the customary law family of the deceased. The method of distribution was clearly predicted on the view that the spouse of the deceased person was more likely to look after the children of the marriage upon the death of a partner than anybody else, and that the expectation of the spouses are probably best satisfied by giving the property of one to the other upon death of the former.<sup>10</sup> The Law seeks to achieve these objectives by prescribing the specific portions of the estate which must devolve on the four categories of beneficiaries recognized by the Law, namely, the surviving spouse, children, parents and customary family of the deceased person.

First of all, the Law stipulates that the spouse and children are entitled to the household chattels of the intestate and to one house of the deceased. Where the deceased left more than one house, the spouse and the children are entitled to select one of their choice.<sup>11</sup>

The remainder of the estate, described as the residue is to be distributed as follows:

(A) Where the intestate is survived by a spouse, child and parent the residue shall devolve as follows:

- X Three sixteenth to the surviving spouse;
- X Nine sixteenth to the surviving child;
- X One eighth to the surviving parent;
- X One eighth in accordance with customary law.

(B) Where the Intestate is survived by a spouse but no child the residue of the estate devolves as follows:

- X One half to the surviving spouse;
- X One fourth to the surviving parent;
- X One fourth in accordance with customary law.

---

<sup>9</sup> See, section 19 of P.N.D.C. Law 111

<sup>10</sup> 43 Memorandum to P. N.D. C. Law 111

<sup>11</sup> See Sections 3 & 4 of P.N.D.C Law 111

(C) Where the Intestate is survived by a child but no spouse the residue devolves as follows:

- X Three fourths to the surviving child;
- X One eighth to the surviving parent;
- X One eighth in accordance with customary law.

(D) Where the Intestate is survived by a parent, but no child and no spouse the residue devolves as follows:

- X Three fourths to the surviving parent;
- X One fourth in accordance with customary law.

(E) Where the Intestate is not survived by a spouse, child or parent, his estate shall devolve in accordance with customary law.

It is significant note that the Law defines a child to include "a natural child, a person adopted under any enactment for the time being in force or under customary law relating to adoption and any person recognized by the person in question as his child or recognized by law to be the child of such person."<sup>12</sup> This definition covers all the biological children of the Intestate, who have equal rights of succession, thus removing any pre-existing liability suffered by children born outside marriage.

Further, the Law, envisaging possible interference with the distribution of the property under the rules established by it, makes it an offence to interfere with the interests of the beneficiaries and prescribes penalties for such unlawful interferences.<sup>13</sup> Subsequently experience showed that members of the intestate's customary family continued to resist the application of the Law by ejecting the widow and the children from the matrimonial homes even before the funeral date was announced. The Law was therefore amended to specifically prohibit the ejection of an Intestate's widow and children from the matrimonial home and making it an offense.<sup>14</sup>

One issue which affected the operation of the Intestate Succession Law soon after its enactment arose from a provision in the Customary Marriage and Divorce (Registration) Law, PNDC Law 112, a law passed at the same time as the Intestate Succession Law to ensure the registration of customary marriage and divorces in Ghana. The provision, which has since been repealed, yet bears mentioning, stipulated that " the provisions of the Intestate Succession Law, 1995 (PNDC Law 111) shall apply to any spouse of a customary law marriage registered under this Law."

---

<sup>12</sup> See, Section 18 of PNDC Law 111

<sup>13</sup> Section 17 of PNDC Law 111

<sup>14</sup> Intestate Succession (Amendment) Law, 1991, PNDC Law 264

The Customary Marriage and Divorce (Registration) Law further imposed a deadline for the registration of customary marriages and divorces: three months from the date of marriage for newly married couples and three months from the commencement of the Law, for existing marriages.<sup>15</sup>

For a number of reasons the impact of the law in encouraging the registration of customary marriages to serve as proof of marital status under customary law was very limited. Apart from administrative problems such as the non availability of registration forms several months after the promulgation of the law, it was found that most people married under customary law remained unaware of the existence of the law. There were other obstacles to compliance with its provisions. First of all, since the process of registration required a statutory declaration supported by the parents of the spouses or persons standing in loco parentis to them, where the man was unwilling to register the marriage, the wife would almost certainly be handicapped in her attempts to do so on her own. In fact a husband who was minded to deprive his wife of any share in his estate simply had to refuse to cooperate in the registration effort to ensure this.<sup>16</sup> In addition, the fact that a great majority of people married under the customary law are illiterate further reduced the level of compliance with the prescriptions of the law.

Within a short time after the commencement of the Law, it was recognized that far from achieving its objective of ensuring the registration of all customary marriages and divorces, this provision in PNDC Law 112 rather undermined the main objective of the Intestate Succession Law since its enforcement would effectively deprive the majority of those intended to benefit from the protective provisions of PNDC Law 111. Through the efforts of women's groups and other interest -groups this provision in PNDC Law 112 was eventually amended and its limiting effect on the operation of Law 111 thereby curtailed.<sup>17</sup>

#### PRACTICAL PROBLEMS ASSOCIATED WITH THE IMPLEMENTATION OF PNDC LAW 111

The Intestate Succession Law, PNDC LAW 111 has been hailed as a very progressive legislative intervention in the law of intestate succession in Ghana. It must be pointed out that the enactment of PNDC Law 111 introduced very fundamental changes in long held customary law concepts of marriage, family and rights of succession, especially in the matrilineal communities where it has met with considerable resistance. Even though the law makes radical changes in the law and practice of intestate succession in Ghana, its implementation over the past twelve years has revealed a number of drawbacks which have limited its effectiveness in achieving its stated objectives.

#### **Problems associated with the distribution of the estate - polygamy and its consequences**

---

<sup>15</sup> Section 2(2) of PNDC Law 112

<sup>16</sup> See, Mensa-Bonsu, 'the Intestate Succession Law of Ghana: Practical Problems in Application' 8 Yearbook of African Law, p 105, 114.

<sup>17</sup> Customary Marriages and Divorce (Registration) (Amendment) Law, 1991, PNDC Law 263

One of the most fundamental problems affecting the practical implementation of Law 111 arises from the fact that the drafters of the Law appear to have given little or no consideration to the issue of polygamy and its consequences in defining the "nuclear family". Since customary marriage is potentially polygamous a man who dies intestate may leave behind more than one lawful wife and several sets of children from different mothers whose interests invariably conflict, and who are nevertheless expected to succeed to property as co-owners. It is also possible that there may be children who are not natural children of the surviving spouse. These may be children born to the man outside a monogamous marriage or children of the man or woman from previous marriage terminated by death or divorce. In such situations the assumption that surviving spouse of the Intestate would be the best person to look after the children may not hold true. The simple reference to "spouse" and "child" in the Law thus creates situations where various spouses and various sets of children with conflicting interests would have to claim particular property as co-owners and hold it as such. A lot of litigation has been generated by situations of this nature as can be seen in the case of " In the Matter of the Estate of Major Kwame Asante Deceased."

In practice, therefore, where the Intestate has more than one lawful wife, all of the them being entitled to the household chattels as co-owners as required by the Law, this results in protracted conflicts which in most cases can only be resolved by selling the chattels and sharing the proceeds. In a polygamous situation the problem is further compounded since there would be different sets of children with conflicting interests, each seeking to protect his interest in the estate. Such conflicts tend to get even more bitter and acrimonious where there are children born to the man outside a monogamous marriage, in some cases unknown to the lawful wife until the man's death. The situation appears even more unjust where the widow has made significant contribution to the acquisition of the properties in question, and is required to have her share re-apportioned among her children and other children of the Intestate.

Further the issue of requiring several wives or one widow and different sets of children to choose one out of several of the Intestate's houses also tends to create intractable problems. The extreme variations in the interests of the parties or factions are bound to generate a lot of ill will and litigation. Where there is more than one lawful wife or one lawful wife and different sets of children, who hold the property as tenants-in-common, they may finally be compelled to agree to rent out the house or sell it altogether and share the proceeds, thereby depriving the widow who lived there of her matrimonial home. Considering that the objective of the Law in section 3 was to enable the widow and the children to retain their matrimonial home after the death of the man, it has been suggested that the Law should have specified that they are entitled to the matrimonial home in particular.<sup>18</sup>

It has also been observed that particularly in the case of smaller estates the implementation of the rules could lead to further impoverishment of the widow and children. Where a man dies leaving one house and a car, which must be shared by the widow, her own children and children born outside the marriage, or by a number of widows and different sets of children, the beneficiaries could be left with the only option of selling the property and converting it to cash, leaving the family with no immovable property at all.

---

<sup>18</sup> Kludze, *Modern Law ad Succession*, p 170

It has thus been advocated that where there is only one house, it must go to the spouse and children with whom the Intestate lived in the matrimonial home even if the man had other children outside the marriage. Where there are other lawful spouses the surviving widow who lived with the deceased in the matrimonial home should have the right to any household chattels and be settled properly before the other spouses. In determining the rights of the various spouses in polygamous situations the courts should have regard to the economic role played by the spouse, the duration of the marriage, and in particular, it must be ensured that the widow who lived with the Intestate in the matrimonial home is able to retain and maintain their previous way of living. To prevent friction, it is important that the widow who did not live in the matrimonial home should not be forced into the matrimonial home, but rather must be satisfactorily settled elsewhere if at all possible.

### **Definition of child under PNDC Law 111**

The definition of "child" under the Law has also given rise to a number of difficulties in the implementation of the Law. It has been observed that the assumption that all children of the Intestate need looking after may not be accurate, as in case where the children are self-supporting adults who are in no way dependent on the Intestate.<sup>19</sup> Even though it is clear that the Law set out to provide protection for widows and young children of the Intestate who are dependent on him, the absence of any age limit or condition of dependency in the wording of the relevant provision creates a situation where a self-supporting adult child of the Intestate could claim equally as a child who is a minor and is fully dependent on the Intestate. Also a situation is created where such adult children, under the provisions, would be entitled to a larger portion of the estate than a dependent, ageing surviving parent.

There is also the issue of giving all the natural children of the Intestate equal rights of succession and its consequences. This position appears most unfair to the lawful wife, who in most cases has contributed significantly to the acquisition of the property in question, who now with her children have to share the property with children of concubines sometimes unknown to her until her husband's death.

### **Role of the customary successor**

In its bid to protect the interests of the nuclear family which is barely recognized by the traditional society for purposes of succession, Law 111 inevitably diminished the significance of the role of the customary family, a fact which is reflected in the provisions on the distribution of the estate. Prior to the enactment of PNDC Law 111, the customary family performed a central role in the life of an individual, especially among rural people and the urban poor. It was common for the customary family to sponsor the education of deprived members of the family and provide security and support for such members. The customary family also usually contributed towards the funeral of its members, including those who were destitute. With the introduction of PNDC Law 111, which gives priority to the nuclear family to the detriment of the customary family, it has become clear that the customary

---

<sup>19</sup> Mensa-Bonsu H.J.A.N., *Intestate Succession Law of Ghana: Practical Problems in Application*, supra, p 114

family now has less reason to make massive investments in the lives of its members, especially the needy ones since upon their death, most of their estates goes to their nuclear family. It would seem therefore that the protection provided to the nuclear family has been achieved at the cost of sacrificing, almost entirely, the crucial role performed by the customary family. It is essential that some strategy be devised to ensure the continued support of the customary family even after the enactment of Law 111, especially among rural people and the urban poor.

### **Administrative and enforcement obstacles**

It is significant to note also that attempts to enforce one's rights under the Law may be seriously hampered by financial considerations. An application to the courts for the enforcement of the provisions of Law 111 in one's favor in most cases involve the services of professionals including lawyers, valuers, accountants etc. In some cases a significant portion of the estate would have to be sold for the payment of fees for such services which are indispensable if the application is to be successfully pursued. Legal aid would be a useful option especially in the case of small estates and where the claiming spouse and children do not have adequate means.

Excessive funeral expenses also tend to whittle away the estate of a deceased spouse, leaving the beneficiaries very little. It has therefore been suggested that funeral expenses be kept at the barest minimum. Traditional authorities could impose ceiling on the amount of money spent at funerals as is the practice in the Amansie and Offinso Traditional Areas in the Ashanti Region, where drinks, wake keeping and unnecessary funeral rites are banned and the amounts of funeral donations controlled.

Delays in the administration of justice could also negate the protection granted.

### **Fragmentation of the estate**

Even though the Intestate Succession Law 111 had as one of its objectives the prevention of fragmentation of the intestate estate, the application of its provisions in some cases inevitably leads to fragmentation of the estate. The specific proportions of the residue allocated to the various beneficiaries under the Law inevitably result in the fragmentation of the estate, especially where there is more than one spouse and different sets of children. In cases where there is one lawful wife and other children born outside the monogamous marriage, the lawful wife may find that what was to go to her children would have to be re-apportioned among her children and other children of the man of whom she may have never heard until the death of her husband. More often than not, different wives and different sets of children have conflicting interests, making it impossible for them to hold and retain the property as co-owners. In practice therefore the parties are compelled to convert the property into cash and share the proceeds instead of retaining it.

In some cases determining the various proportions of the estate which should devolve on particular beneficiaries is almost impossible without converting the property into cash. Where the residue consists of one composite property such as a house or a farm, it is almost impossible to determine or allocate specific proportions as required by the Law without converting the property to cash and thereby reducing the economic value of the property.

Further, where the intestate is a member of two customary families, the proportion which should devolve in accordance with customary law would have to be split up, requiring that the one eighth portion be further divided into two. Where the Intestate is survived by two parents, living apart or divorced, the portion allocated to them would have to be divided into two, leading to the further fragmentation of the estate.

### **Ignorance of the law**

As a result of the high rate of illiteracy, especially among rural people and the urban poor, a lot of women intended to benefit from the protection afforded by Law 111 remain unaware of the existence of the Law or its effect on their rights of succession upon the death of their spouse. Since access to legal information tends to be extremely limited to rural folk a number of non governmental organizations groups, such as FIDA, WiLDAF, have been involved in disseminating such information to women in the rural areas and some of the relevant laws have been translated into local languages for their benefit.<sup>20</sup>

### **Possible response strategies**

As has been stated immediately above, ignorance of the law is one of the obstacles in the implementation of the law. Again, as already pointed out some NGOs have already taken steps to address this problem through public education, seminars and training of legal literacy volunteers to address public education within the communities. In spite of the efforts of FIDA and within the past ten years and also WiLDAF in the last five years, there are still areas in this country where the law is still not known. There is therefore still a need to continue the public education on the Intestate Succession and other related laws. Training of legal literacy volunteers based at the community level will also have to be intensified.

There is also a need to amend certain portions of the law to ensure equity for the surviving wife. To succeed in getting the required amendments, serious field investigations will have to be conducted to ascertain the impact of the law and what areas need to be amended.

---

<sup>20</sup> This situational report is extracted from a paper written by Christine Dowuona-Hammond on "Women and Inheritance" in a yet to be published publication, " Women and Law in West Africa."



# **APPENDIX D: Advocacy Bridge Program Description**

# INTERNATIONAL HUMAN RIGHTS LAW GROUP

## *1999 ADVOCACY BRIDGE PROGRAM*

Annual Delegation of International Human Rights Law Group  
to the United Nations Commission on Human Rights, Geneva

### ***Introduction***

The International Human Rights Law Group (Law Group) is a non-governmental international organization engaged in human rights advocacy, litigation and training around the world. Realizing that the strong human rights movements proliferating at the local levels in many developing countries remain unknown internationally, the Law Group instituted our Advocacy Bridge Program in 1996. Since then, each spring we invite grassroots human rights activists from throughout the world to receive training in international advocacy during the annual session of the United Nations Commission on Human Rights (CHR). Law Group experts have trained over 35 human rights and women=s rights activists from over 15 countries in international advocacy.

In 1999, we will expand the Advocacy Bridge Program to include underrepresented issues of minority communities in the United States, making our program one of the rare initiatives taken by a U.S.-based international human rights organization to raise the issue of U.S. government accountability at the international level and to bridge the gap between grassroots work domestically and international advocacy globally.

### ***The Advocacy Bridge Program***

The two-year graduated structure and intensive training components of our Advocacy Bridge Program prepare grassroots human rights activists from historically underrepresented areas to assess the usefulness of international advocacy mechanisms as it relates to their day-to-day work. It also contributes to the process of developing human rights standards by preparing a growing cadre of grassroots, nongovernmental experts who can provide critical input at international forums, such as the CHR.

**The Advocacy Bridge Program is guided by the following four principles:**

- 1. to facilitate access of human rights activists from historically underrepresented communities by providing hands-on training and mentoring aimed at amplifying local concerns;***
- 2. to create opportunities for cross-regional information and strategy sharing for local human rights activists from different continents;***
- 3. to ensure equal participation of women activists and to integrate women=s human rights at every level of the program; and***
- 4. to assist grassroots NGOs in evaluating the scope and usefulness of various UN mechanisms for their strategic program development.***

Each spring, Advocacy Bridge participants engage in one week of intensive preparatory training at

our office in Washington, followed by two to three weeks of hands-on training in the use of UN human rights mechanisms at the CHR during its annual session in Geneva. Two consecutive years of participation allow participants to use the knowledge and skills acquired during the first year at home throughout the year; in the second year, they progress to an intermediate skill level and more fully develop their advocacy strategies during their participation as a Law Group delegate at the CHR.

The CHR is one of the major UN Commissions where human rights violations from any part of the world can be brought to the attention of government representatives from over 150 countries. It meets in Geneva each March-April for six weeks and is responsible for monitoring existing international human rights standards, investigating rights violations and providing assistance to countries that request assistance in protecting human rights. Nongovernmental organizations have a formal relationship with the CHR that allows them to raise human rights violations or issues about any country in the world. Few human rights organizations, particularly human rights groups from developing countries, are aware of the full scope of the CHR=s mechanisms, though it has been in existence since 1948. More than half of the issues discussed at the CHR concern developing countries, yet it is NGOs from the industrialized world that continue to have the greatest influence at UN meetings.

Participants in our Advocacy Bridge Program serve as representatives of the Law Group delegation while at the CHR. Our consultative status with the Economic, Cultural and Social Council for the United Nations enables delegates to deliver interventions and respond to and present information challenging their governments. The hands-on training given by Law Group experts facilitates the effective and credible participation of the Advocacy Bridge delegation in the CHR process and their ability to affect this process by providing first-hand information to UN experts and government delegates.

### ***The 1999 Delegation***

Advocacy Bridge 1999 begins this year with a one-week preparatory training at the Law Group office in Washington (27-31 March). Following this, a two-week hands-on training will be conducted in Geneva during the 56<sup>th</sup> session of the CHR (3-19 April). We anticipate that twenty-eight human rights and women=s rights activists from twenty countries will participate in our Advocacy Bridge Program, as follows:

<b>Africa:</b>	Benin, Burundi, Cameroon, Democratic Republic of Congo, Ghana, Nigeria, Sierra Leone, Togo
<b>Asia:</b>	Afghanistan, Burma, Cambodia, Pakistan
<b>Latin America:</b>	Argentina, Brazil, Nicaragua, Peru
<b>Europe:</b>	Bosnia and Herzegovina
<b>Middle East:</b>	Jordan, Morocco/Yemen
<b>North America:</b>	United States

### ***Program Design***

### **A. Pre-training Preparation**

The Advocacy Bridge Program is designed for mid-career human rights/women's rights activists working at local/national levels in their countries. Selected from among nominees provided by our field offices and partner NGOs, participants receive information in advance about the program, the Law Group and the CHR. Participants are required to prepare a 30-minute presentation about the general human rights situation in their countries and the specific issues on which they work to be delivered to the other participants at the onset of the program in Washington. Participants are also encouraged to consult with partner NGOs at home prior to the program so that they can incorporate as many local concerns as possible into their work at the CHR.

### **B. Training Methodology**

The core of the Advocacy Bridge Program is the two-part intensive training. The first part is a preparatory week spent at our office in Washington during which participants introduce themselves through structured presentations and discussions of the human rights situations in their countries. Participants also receive in-depth briefings from the Law Group's regional and thematic coordinators and an intensive introduction to the principal UN bodies concerned with human rights and the role of NGOs within the UN system and CHR process. Orientation week sets the stage for the cross-regional learning that is central to the Advocacy Bridge Program's development of international human rights activists who are well versed in regional and global human rights issues.

### **C. Technical Assistance and Training**

The second part of the training takes place in Geneva during the annual session of CHR. The different types of technical assistance and hands-on training provided by the Law Group during the two weeks in Geneva are described below.

#### **1. Briefing Manuals**

Briefing manuals are prepared for every member of the delegation according to their respective activities and responsibilities. The manuals provide background and procedural information on the CHR and the role of NGOs. Every attempt is made to provide UN documents in the five UN languages.

#### **2. Daily Briefings and Debriefings**

The Law Group reserves a daily briefing room at the CHR and equips it with computers, office supplies and telecommunication devices to facilitate intensive meetings, drafting of statements and press releases and other activities integral to the delegation's effective functioning at the CHR. Available only to NGOs accredited at the UN, daily briefings are held in the briefing room for the delegation members where they report, discuss issues that are evolving at the CHR and formulate strategies for their advocacy efforts. Speakers, including UN, NGO and government experts and UN Special Rapporteurs, are invited to daily briefings to provide expert information to delegates.

#### **3. Oral Interventions**

By virtue of our accreditation with the UN Economic, Cultural and Social Council (ECOSOC), the Law Group can register to deliver a five-minute oral intervention for each item on the agenda of the CHR. Giving the delegates the hands-on training to prepare this highly technical document and speech is an important focus of our activities. All oral interventions become part of the

official UN record.

#### **D. Women=s Human Rights Training**

Women=s human rights training is integrated into each part of the Advocacy Bridge Program from the selection of background materials to the introduction of UN Rapporteurs and how their mandates include (or do not include) a focus on women=s human rights. In addition, the program includes two three-hour sessions on the UN and women=s human rights aimed at preparing delegates to play an active role in ensuring that the agenda on the promotion of women=s human rights moves forward. After participants provide country-specific examples, the Law Group staff works with them to find ways to present their local concerns as issues of global importance.

#### ***Advocacy activities planned for the 2000 Delegation of the Law Group during the 56<sup>th</sup> session of the Commission on Human Rights***

In 2000, country-specific advocacy of our delegation will focus on the situation of human rights including women=s human rights in the following countries:

1. Afghanistan
2. Argentina
3. Cambodia
4. Democratic Republic of Congo
5. Nigeria
6. Peru
7. USA

Thematic issues will include:

1. Integration of women=s human rights
2. Women=s Inheritance Rights in Africa
3. Preparation of World Conference Against Racism
4. Strengthening of the Commission=s Mechanisms
5. Elimination of Violence Against Women
6. Religious Extremism and human rights
7. Impunity

***For more information about the Law Group=s international advocacy training, please contact Sameena Nazir, Director, Advocacy Bridge Program by fax: 202/822-4606 or by e-mail: [AdvocacyBridge@hrlawgroup.org](mailto:AdvocacyBridge@hrlawgroup.org)***



# **APPENDIX E:**

## **Invitation to Forum on Inheritance and Property Rights in Geneva**

# International Human Rights LAW GROUP

*cordially invites:  
NGO delegates, Government delegates, UN experts and staff to attend  
a daily Caucus on:*

## **Women=s Inheritance and Property Rights in Africa Challenges and Strategies**

DATE: APRIL 12 to 22  
TIME: 1:00 - 3:00 PM - DAILY  
Coffee Lounge - next to CHR conference room No. Xviii (18)

AT THE UNITED NATIONS COMMISSION ON HUMAN  
RIGHTS 55<sup>TH</sup> ANNUAL SESSION - GENEVA

### **Speakers Include:**

- ! **Florence Butegwa** - Associates for Change - Uganda
- ! **Yolanda Gisele Kambo** - Interafrican Union for Human Rights - Burkina Faso
- ! **Ida M.E. Jallow** - Foundation for Research on Women=s Health Productivity and the Environment (BAFROW) - the Gambia
- ! **Dr. Penda M=Bow** - University Cheikh Anta Diop - Dakar, Senegal
- ! **Sameena Nazir** - International Human Rights Law Group, USA

*Facilitator: Florence Butegwa*

**For more information, please contact: Sameena Nazir:**  
Program Coordinator: IHR LG to the 55<sup>th</sup> Session of the UN Commission on Human Rights  
E-Mail: [advocacybridge@hrlawgroup.org](mailto:advocacybridge@hrlawgroup.org)

# **APPENDIX F:**

## **Day of Action Press Release**

## **West African Women=s Rights Groups Organize Day of Action on Women=s Inheritance Rights, July 29, 1999**

On July 29, 1999, for the first time in West Africa, a "Day of Action for Women=s Inheritance Rights" will be occurring simultaneously in eight countries. Women=s rights activists in Burkina Faso, Cameroon, The Gambia, Ghana, Liberia, Nigeria, Senegal, and Togo are coordinating this effort to promote awareness of the discriminatory and devastating effects of inheritance laws and practices on women in Africa. The event is being coordinated with the assistance of the International Human Rights Law Group, a non-governmental human rights organization based in Washington, D.C.

The Day of Action is part of a long-term campaign to bring national, regional, and international attention to the customary inheritance practices that deny women their right to inherit land and other property. These practices persist despite some statutory or constitutional laws in countries that provide limited protection of women=s rights to inherit. It is estimated that millions of women are unable to own and inherit land and property in most African countries.

### Day of Action Activities

Women=s organizations in the eight countries are coordinating a program of preparatory activities, including creating public awareness and developing drafts of a model inheritance law from a women=s rights perspective. On July 29<sup>th</sup>, the Day of Action, the main features of activities throughout the above countries will include:

- < A march in the capital city
- < Presentation of draft legislation on women=s inheritance rights
- < Press conferences and media events

Participants in these activities will include African women activists, lawyers, journalists, and prominent women leaders, as well as citizens supportive of improved inheritance rights for women.

Although there is little international recognition of African women=s unequal inheritance rights, the magnitude of the problem is enormous. In particular, it devastates the lives of millions of women who become completely destitute upon the death of their husbands, when, according to customary practice, the family of the deceased immediately assumes possession of his property, including land, home, and moveable property. Millions of women are impoverished through this widespread practice, creating a problem that has been greatly exacerbated over the last decade with the increase in AIDS-related deaths in Africa. As a result, women are widowed at a younger age when they and their children are most vulnerable to the consequences of economic dispossession. The negative impact on countries= macroeconomic development is also staggering.

The women=s organizations involved in this initiative came together for the first time in Accra, Ghana in November 1998 for a three day regional meeting, facilitated by the International Human Rights Law Group. All participants are actively involved in the struggle for women=s inheritance rights in their countries. They sought to identify the difficulties they faced in their work, and the assistance needed to overcome those obstacles. Key obstacles identified by the participants included the low profile and lack of awareness of the issue, particularly outside Africa and at the international level.

The participants then formed an informal coalition to implement a series of activities aimed at overcoming these obstacles, including the Day of Action on Women=s Inheritance Rights taking place on July 29th.

For more information or contacts to reach women=s groups in West Africa, please contact:

Marie-Elena John Smith

Coordinator for Africa

International Human Rights Law Group

(202) 822-4600

822-4606 (fax)

[marieelenas@hrlawgroup.org](mailto:marieelenas@hrlawgroup.org)



**APPENDIX G:**  
**Letter to UN Special Rapporteur on  
Violence Against Women,  
Radhika Coomaraswamy**

Radhika Coomaraswamy  
UN Special Rapporteur on Violence Against Women  
E-mail: radhika@sri.lanka.net  
cc: ondziel@cafe.tg

Dear Ms. Coomaraswamy:

This letter is part of an effort to support and participate in a landmark initiative by a group of West African women=s rights organizations to promote awareness of the devastating effects of discriminatory inheritance rights practices on women and children in Africa. Included in their initiative is a "Day of Action for Women=s Inheritance Rights", which will take place on July 29, 1999, simultaneously in eight West African countries. Women=s rights activists in Burkina Faso, Cameroon, the Gambia, Ghana, Liberia, Nigeria, Senegal, and Togo are coordinating this effort with the collaboration of the International Human Rights Law Group, based in Washington, D.C.

The Day of Action is part of a long-term campaign to bring national, regional, and international attention to customary inheritance practices that deny women their right to inherit land and other property. These inheritance practices have devastating repercussions directly on the lives of women and children, the most significant of which is the loss of rights to shared property, leading to destitution and pauperization. Yet these practices persist, by virtue of tradition, religion, and lack of information despite the presence of statutory laws in most countries that provide at least limited protection of women=s rights to inherit.

The question of women=s inheritance rights has become particularly urgent in recent years for a number of reasons, including the high incidence of HIV infection and AIDS and the widespread civil strife that has engulfed many countries throughout Africa. The result is that large numbers of women are being widowed at a younger age -- at a time when their access to productive resources are essential if they are to continue providing for themselves and for their dependents. The negative impact on countries= macroeconomic development is also staggering, given that, in their most productive years, half of the population are denied their means of production.

The Preamble to the Declaration on the Elimination of Violence against Women states that violence against women is a manifestation of historically unequal power relations between men and women. Economic discrimination is an important aspect of these power relations, since, as you have noted, economically disadvantaged women are more vulnerable to violence and exploitation. In your Preliminary Report on Violence against Women, Its Causes and Consequences in 1995, you stated that "denying women economic power and economic independence is a major cause of violence against women because it prolongs their vulnerability and dependence.. ." (Par. 53)

Because the denial of inheritance rights of women is a form of economic discrimination that has proven to be a major cause of violence against women, we urge you, as the UN Special Rapporteur on Violence Against Women, to use your mandate to recommend measures at the national, regional, and international levels to eliminate this significant cause of violence against women. We request that you undertake a regional visit to research and to report upon this issue. We further urge you to

contact and collaborate with the OAU Special Rapporteur on Women=s Rights, Julienne Ondziel, whose mandate also includes reporting on women=s inheritance rights. She can be reached at [ondziel@cafe.tg](mailto:ondziel@cafe.tg).

We congratulate you on your successful efforts to date and hope that you will be able to include this important issue in your work.

Sincerely,

Name

Organization



## **APPENDIX H:**

# **Briefing Note to Justice Elizabeth Evatt, Expert Member of the UN Human Rights Committee, on Inheritance Rights in Cameroon**

## **WOMEN'S INHERITANCE RIGHTS IN CAMEROON**

---

### **A briefing note on obstacles to inheritance by widows and female children in Cameroon**

Prepared by Paul Simo, Law Group Program Associate

*including :*

- X Constitutional, legislative and judicial standards
- X Prevalent customary laws and practice
- X Cultural and economic factors preserving adverse customs
- X Inheritance as a barrier to ownership of land by women
- X Governmental and private efforts towards equal inheritance

This note covers the present state of inheritance by women, whether as widows or as daughters of deceased persons in Cameroon. It first identifies the relevant >formal= legal framework, including the Constitution, legislation and some case-law. It then surveys the practice under some widely prevalent customary laws and traditions, and illustrates and explains the cultural, religious and economic factors that have kept this state-tolerated customary framework in place. It describes the role and consequences of inheritance as a barrier to *ownership*, as distinct from *use* of land by women. It then presents the failure of government efforts at reversing inheritance practices adverse to women, and identifies efforts by, and obstacles to, private groups that seek to eliminate discrimination against women in inheritance.

## I. Legal framework

The Constitution, statutes and Codes received from the legal systems of former colonial powers and legislation enacted by the National Assembly are the formal sources of inheritance law in Cameroon. The Supreme Court=s case-law (and in the English-speaking region of the country, decisions of higher provincial courts) also forms part of the relevant body of law. They are either binding precedents in the English-speaking provinces that apply the Common Law, or persuasive *Ajurisprudence*≡ in the civil law courts of Francophone Cameroon. Existing alongside these >formal= legal provisions and institutions, is a significant body of customary law, deriving from the local customs and traditions of the country=s over 250 tribes, which is primarily administered by a largely autonomous system of customary courts. Although modern legislation, urbanization and the development of the state=s court structure have limited its reach, customary law remains influential in some aspects of personal law, especially in rural areas.

## II. Formal law

### The Constitution

The Constitution of Cameroon, as revised in 1995,<sup>1</sup> unequivocally adopts the principle of equality between the sexes. Its preamble proclaims that all persons -- without distinction on grounds of race, religion, gender or creed -- enjoy certain fundamental and inalienable rights. While stating that all persons are equal in their rights and obligations, it declares that the state shall protect women, the youth, elderly citizens and mentally-handicapped persons. The Constitution guarantees the right to property, including its use, enjoyment and disposal. The state is also responsible for securing to Cameroonian citizens of both sexes, the rights and freedoms enumerated in the preamble. Although these guarantees are only mentioned in its preamble, these rights and freedoms are justiciable. Article 65 of the Constitution states that the preamble is part and parcel of the Constitution, and therefore the preamble=s contents are as much a part of its operative provisions as any other.

The Constitution substantially incorporates Cameroon=s international treaty obligations into municipal law. Article 45 states that upon their publication, duly-ratified treaties or international

---

<sup>1</sup>Law No. 96-06 of 18 January 1996, revising the Constitution of 02 June 1972.

agreements rank superior to legislation. The Constitution envisages the determination of whether a treaty conforms to it, prior to ratification. Where it is in conflict with the Constitution, the latter must be revised before the treaty can be ratified. While this process does not address the relationship between the Constitution and already-ratified treaties, its enforceable preamble also affirms Cameroon's attachment to fundamental freedoms as contained in the Universal Declaration of Human Rights, the UN Charter, the African Charter on Human and Peoples Rights, and all duly-ratified international human rights treaties. Therefore while a treaty cannot be ratified so as to override a provision to the contrary in the Constitution, the latter by way of its preamble, essentially renders duly ratified treaties legally enforceable in Cameroon.

### Legislation

Legislation on inheritance by women in Cameroon is somewhat progressive. The 1981 Civil Status Registration (CSR) Ordinance [Law No. 81-02 of 29 June 1981] reversed the practice that had prevailed under a number of customs whereby a woman was considered as an item of property belonging to her husband. Upon his death, the husband's family (having paid a bride-price for her) claimed the widow for themselves, and she was expected to be taken into the household of a relative to the husband. Section 77 (1) of the CSR disallows any claims being made by the husband's heirs on the widow and on her share of the property. It states:

In the event of the death of the husband his heirs shall have no right over the widow, nor over her freedom or the share of the property belonging to her. She may, provided that she observes the period of widowhood of 180 days from the death of her husband, freely remarry without anyone lying claim to whatever compensation or material benefit for dowry or otherwise, received either at the time of engagement, during marriage or after marriage.

The reforms of CSR should insulate the widow personal freedom and her property from any claims whatsoever being made by her husband's family. It was thus intended as a sharp departure from practices that treated women as commodities that could be transferred as part of the inheritance process.<sup>2</sup> These customs are the most extreme form of inheritance rights deprivation for women, since their being considered as property made the prospect of inheritance even more remote.

In effect, however, the Civil Status Registration Ordinance has not brought about the comprehensive reform of adverse inheritance practices that was envisaged. The practice of laying claim to the widow as part of the deceased's estate, although outlawed by the Ordinance, has remained a facet of inheritance under customary law in some parts of rural Cameroon. Similarly, many widows remain afraid to re-marry, because relatives of the deceased would demand the reimbursement of the amount paid as bride-price for her. Where such demands are made of the widow in rural areas in particular (where resistance of modern inheritance law is greatest), the pressure on widows to comply are significant.

---

<sup>2</sup>In addition to the practice where a male relative of the deceased man takes his widow, it is also the case, according to some tribal customs that upon the death of a married woman, a sister of hers is transferred to her husband.

Several Cameroonian organizations have observed as a result of outreach projects carried out in rural areas that several women are simply not aware of the fact that these practices are prohibited by law.

### Judicial Decisions

The Supreme Court has also issued a series of decisions which clearly apply the principles of equality of the sexes over inheritance. With respect to inheritance by female children, the Court held in two judgements delivered on 11 June 1963 and 19 May 1964 that in accordance with the guarantee of gender equality under the Constitution applicable at the time, nothing should prevent girls from inheriting from their fathers in the same way as boys.

In a further landmark decision in 1993, the Supreme Court had the occasion to directly confront and reject a major customary practice that impeded women's inheritance. In Zamcho Florence Lum v. Chibikom Peter Fru,<sup>3</sup> the Court dismissed a ruling from the North west Court of Appeal which held that under customary law, a married daughter cannot inherit her father's estate. The case arose out of competing applications for letters of administration by a male and female offspring of a decedent involved in a polygamous marriage. The customary law involved was part of the customs of the Mankon people (who mainly inhabit Bamenda, the capital of the North west province). In restricting the application of this custom that deprived married women of inheritance, the Court declared that such customs were repugnant to natural justice, equity and good conscience. The decision thus applied the Southern Cameroons High Court Law, 1955 which governs the application of customary law in Anglophone Cameroon and states that customs shall be applicable to the extent that they are not repugnant to the principles mentioned.

But in spite of these positive aspects, some legal provisions are less favorable to inheritance by women. In recognizing polygamous marriages as valid marriages, the CSR in effect guarantees a zone of application for customary law, since customary law is invariably applied in resolving inheritance questions under polygamous marriages. Furthermore, French-speaking Cameroon lacks a modern family law or code, that should govern a variety of marital or post-marital issues such as the effect of dowries and bride-price, guardianship, alimony and the status of family members.<sup>4</sup> In French-speaking Cameroon, the applicable law is the Code Civil, a remnant of the colonial experience that dates back almost two centuries and has not been significantly amended to accommodate changes in the legal status of women that have occurred since.<sup>5</sup> Issues such as determining the composition of a family for purposes of entitlement to inheritance are unclear and can be manipulated to reduce a female child's portion of the estate.

---

<sup>3</sup>Judgment No. 14/L of 4 February 1993

<sup>4</sup>In English-speaking Cameroon, matrimonial causes and probate matters (where not governed by customary law) are decided according to the law currently in force in the United Kingdom.

<sup>5</sup>See Norbert N. Ouendji, *Time to ditch code left by Napoleon*, Inter Press Service, 13 August 1998.

### III. Customary law and practices adverse to inheritance by women

#### Inheritance by daughters from their parents

There are over 250 ethnic groups in Cameroon, as well as significant variations in inheritance practice even between neighboring tribes.<sup>6</sup> A number of variable factors, such as the prevalence of inter-tribal marriages, as well as literacy and education levels also impact the degree of adherence to strict customs that limit inheritance by women. A number of customary practices are nonetheless shared by several tribes, and some of these are examined next, for illustrative purposes.

At one end of the spectrum are tribal customs that simply do not countenance inheritance by women. It is most often married women that are victims of these customs. In Endeley v. Endeley, the Court of Appeals upheld and applied a customary rule of the Bakweri tribe (who principally live in, and in the immediate vicinity of Buea, capital of the South west province) to the effect that married women could not inherit from their father's estate. Three daughters who had sought their share of their late father's estate were thus deprived of an inheritance, and the decedent's property was distributed among the remaining siblings, to the exclusion of the married daughters.

In Zamcho Florence Lum v. Chibikom Peter Fru, the customary law rule at issue was one which prohibited a married woman from inheriting property from her deceased father's estate. While the Supreme Court effectively declined to enforce this custom for its repugnancy to natural justice, equity and good conscience, and this holding is now applicable, the custom itself is still prevalent. It has not ceased to exist among the Bakweri and Mankon tribes, respectively, which were involved in the above cases.

Unlike these customs that tend towards completely depriving women from inheriting from their parents, others allow women to inherit, but grant them only a fraction of what male siblings receive. In the largely-Muslim Agrand North of Cameroon that comprises the Adamawa, North and Far North provinces, this practice arises from a set of beliefs inspired by both restrictive tribal customs and Islamic religious beliefs. Muslim women in Northern Cameroon have the right to inherit land from their parents. However, daughters receive one half of what their male siblings receive, the notion being that their present or future husbands would make up for what they do not receive by way of inheritance. Among the Fulbe-speaking Muslims of Northern Cameroon, where Islamic inheritance practices are not strictly adhered to, daughters also do not generally receive land, but are compensated for this deprivation by receiving greater portions of other types of property.<sup>7</sup>

It is discernible that there are some similarities in the way customary laws regulate women's inheritance, (such as the issue of married women inheriting from their parents) even between ethnic

---

<sup>6</sup>In the North west province for instance, the Kam people practice matrilineal succession whereas other neighboring ethnic groups practice patrilineal succession.

<sup>7</sup>See Nana Rosine Ngangoue, *Culture and Religion limit women's access to land*, Inter Press Service, 29 April 1998.

groups that are neither geographically nor culturally proximate. Underlying these customs are a number of belief systems and notions that are shared by these tribes.

*Firstly*, both the allocation of only half the male sibling's share to a daughter inheriting from her father, and the complete denial of any inheritance in other tribes take their root in fears about the alienation of family property.<sup>8</sup> Most tribes maintain a patrilineal system with elder lineage males holding the land, and being responsible for allocating plots or parcels for cultivation to female siblings. Daughters are expected to marry, and even where they marry a person of the same tribe it is believed that any family property to their name becomes the property of their husband's family. Where daughters marry outside of the tribe, the further concern arises that if they own land (by way of an inheritance from their fathers, for instance), the tribe would lose that land to a different tribe.

As a result of this concern about another family or tribe >improperly= benefitting from family property by way of marriage, girls are seen as transient members of the family. The repercussions of this theory that female children are a >bad investment= are strongly felt in the area of inheritance, and it also accounts for disparities in access to education.

*Secondly*, several customs retain strong presumptions about the capabilities of male and female siblings to manage the estate of their parents. Tasks such as administering the decedent's on-going commercial affairs and taking care of younger siblings are presumed to be destined for male children. This >division of labor= often places the male sibling as owner of the inherited property while the female is allocated portions of the property (such as farmland) by the male sibling.

### Inheritance by widows

For widows, the obstacles to inheritance found in customary laws can be traced to certain beliefs and cultural practices that render them ineligible for, or disinterested in inheriting.

One recurrent customary practice that has a great bearing on widows' inheritance and which is informed by traditional beliefs hostile to women, is the imposition of extreme mourning conditions. Both in rural and urban Cameroon the deaths of young or middle-aged husbands are not generally accepted as due to natural causes, such as disease. Frequently, in-laws or tribes people of the deceased levy accusations of witchcraft or other sordid involvement of the widow in causing the death. Amidst these accusations, and either as a way of disproving them or as a penalty for their presumed >crime=, widows are commonly known to spend entire weeks in forced mourning prior to, and after their husband's funerals. The customs of some tribes require that the widow remain secluded, not attend to her personal hygiene for weeks, and may even refuse her access to the husband's corpse, and her children. During this period, she is repeatedly subjected to verbal insults and accusations from female in-laws (relatives of the deceased). These incidents have severe repercussions on the woman's capacity to adjust to widowhood and its responsibilities, such as

---

<sup>8</sup>It is important to remember a family is not used here in the sense of a *nuclear* family, comprising husband, wife and children. Rather the family whose property and wealth these traditions seek to preserve is the extended family of brothers, uncles, cousins, parents and grandparents, etc of a male individual.

management of marital property. Two main reasons account for this.

*Firstly*, these periods of seclusion and ill-treatment occur at a critical stage immediately after the death of the husband when decisions on the future of the family property are being made by relatives of the deceased. Even when she does come out of this >mourning= period, the task becomes one of reversing decisions already made.

*Secondly*, the psychological and emotional scars from this ordeal are of such proportions that for many widows, attempting to fight back and seek redress so as to regain their rightful entitlement from the same in-laws is a most unattractive option.

Partly as a response to traditional practices which impair the woman's ability to readjust into society after her loss, the 1981 Civil Status Registration Ordinance also stipulated that once a widow had kept the mandatory 180-day widowhood period, she could re-marry without anyone laying claim to person (her freedom) or her share of the property. (Section 77(1)). Undoubtedly this provision outlawed the undesirable customary practice whereby widows were afraid to remarry for fear of being asked to return the bride-price paid by the former (deceased) husband -- and his family-- for her. However, compliance with the 180-day period of mourning required by law does not suffice to insulate women from accusations of witchcraft and the ensuing loss of social acceptance. On the contrary, a widow exercising the option granted by the Ordinance to remarry >barely= six months after her husband's death would be fueling the flame of suspicion over her alleged responsibility for his death.

#### **IV. Factors explaining the prevalence of customary law, including customs adverse to women's inheritance**

The application of customary laws in Cameroon is largely the responsibility of traditional institutions, headed by village notables or elders with extensive knowledge of the laws and customs of particular tribes. In the area of inheritance especially, traditional authorities and councils of village elders take on greater importance and influence in dispute resolution in rural Cameroon where the formal state structures are less effective. There is much less familiarity with the entire judicial system and with courts having probate jurisdiction. The Ministry of Women's and Social Affairs (and social workers under its control), and to a lesser extent police and security services, are significantly less present in rural areas.

The enforcement of customary law is not the exclusive responsibility of customary courts, which in fact have limited jurisdiction. In English-speaking Cameroon, by virtue of an Ordinance that has not been adjusted for inflation, customary courts should only have jurisdiction over matters with an amount in controversy not exceeding 68000 F CFA. (Approx. 130 US dollars) Since the vast majority of succession cases involve property worth more than this amount, it is in effect state courts that have jurisdiction. Although they are decided *in* state courts, matters such as the inheritance of property in a *polygamous* marriage -- a subject matter governed by customary law -- are decided *according to* customary law. In such cases, the regular courts rely upon the testimony of an expert on the relevant tribal customs.

When marriages are contracted in Cameroon, an entry in the marriage certificate states that the marriage is celebrated according to the laws and customs of the tribe of the male spouse, or of both spouses, if from the same tribe. An appeals court in the South-West province has held that such marriages, are *potentially* polygamous, since as a matter of fact, the laws and customs of most tribes contemplate that marriages are polygamous. Therefore, for several women, even those believing to have chosen a monogamous union (with the consequence of opting out of the customary law system) the possibility of the husband contracting a second marriage and rendering their union polygamous is real. Since very many marriage certificates carry this entry, the number of marriages that are potentially governed by customary law is enormous.

#### Enforcement of adverse customs through informal social pressure

The often identified structures of customary law, such as customary courts are not very prominent and have narrow jurisdiction.<sup>9</sup> However, while customary law is also enforced by the formal system of state courts in probate matters, these are only the readily identifiable structures. There are broader social institutions that exert pressure towards the application of customary law and account for its enforcement. Traditional chiefs, village heads, Fons, Lamidos, village quarter heads, traditional honor societies, and tribal associations (that typically regroup members of the same tribe living in a distant urban area, such as Yaounde or Douala) are all examples of such institutions.

Customary law consists of the laws and customs of a particular tribe, or village. They almost invariably are not written, drafted, critiqued, amended or repealed like legislation. Rather village leaders and elders familiar with its application over the years are repositories of the laws and customs of the people. These persons tend to coincide with the institutions that wield significant social influence, in rural and to some extent in urban areas.

In addition to this, there is a strong inclination in Cameroon to identify oneself with persons of the same tribe, village or ethnic group, even in urban areas. The same tribal customs and traditions that deprive women of inheritance rights are the bonds that bring people together in social unions and communities across the country. Although inter-tribal marriages and urbanization have modestly eroded this sense of attachment to one's tribal kin, several informal pressures continue to secure compliance with traditions. *Firstly*, many institutions of authority in the typical village have been replicated in an urban setting. This is partly attributable to residential or settlement trends in urban areas along ethnic lines. Significant examples include the Briquitterie neighborhood in the nation's capital (predominantly inhabited by Hausas from the North) and Metta Quarters in Kumba (inhabited by persons from Momo Division in the North West). As such, customs and traditions survive amongst persons of a particular tribe in an urban environment where they have tribal meetings, run by tribal heads and councils.

---

<sup>9</sup>Unlike neighboring countries such as Nigeria for instance, there is no collection, or repertory of customary court decisions.

Secondly, the sense of commitment to one's tribe is reinforced by other largely beneficial aspects of traditional society. Rotative savings and credit groups,<sup>10</sup> support networks that assist families in the event of bereavement, credit unions and farmers' cooperatives are often organized on ethnic or tribal lines, or among inhabitants of the village. There is therefore a high premium placed on social acceptance by one's tribal or village community, and ostracism from it, often entails social or economic risks. The pressure to adhere to tribal customs that is exerted by these institutions accounts for the unwillingness of many women who have been deprived of inheritance under these customs to seek alternative redress. In rural Cameroon, the village or tribe is the defining unit of identification and alienation from it is perilous. However even in urban Cameroon, such practices are not actively challenged by some women, in part because of the heavy price one pays for alienation from one's tribal community.

As such, there have been several instances -- including one brought to the fore on the popular AWomen and Development program that airs on national television, CRTV -- of the deprivation of a widow's legitimate inheritance among urban, educated elite. In the case aired on television, a widow had been expelled from the marital home by her in-laws who hail from one of the grassfields tribes of the Northwest province, although the couple (as well as some of the in-laws) were university-educated, urban professionals.

#### State remoteness and responsibility

It is perceptible that the forces that secure compliance with some of the customary laws on inheritance are twice removed from actual state involvement. First, substantive and procedural customary law are not actively managed by the state. A custom or tradition would only be rendered unenforceable when it fails to meet only basic standards of fairness.<sup>11</sup> The customary court structure mirrors tribal institutions and not other judicial bodies. Second, the enforcement of customs and traditions is not only carried out by these identifiable organs, but rather is delegated to social institutions that are grounded on village, tribe or ethnic affiliation, that forge compliance with customs through the power they wield over social and community acceptance.

The administration seems to perceive the remoteness of these practices from the state apparatus as a mitigating factor. As such, in the government's Second Periodic Report to the Committee, after stating that gender equality under the law had been given effect by a number of legal measures in the civil, political and criminal fields, it also admitted that powerful factors militating against equality between men and women that are due to the influence of tradition and religion continue to exist.<sup>12</sup>

---

<sup>10</sup>These are groups whose members contribute a fixed amount of money at pre-determined intervals (such as weekly or monthly), and the total amount contributed is handed to one member for a personal investment or project. Members take turns as recipients of this interest-free credit facility.

<sup>11</sup>Under the Southern Cameroons High Court Law, customary laws are inapplicable where they are repugnant to equity, natural justice and good conscience.

<sup>12</sup>U.N. Doc. CCPR/C/63/Add.1, Second Periodic Reports of States parties due in 1990: *Cameroon*, 05/04/93, at paras. 32 and 39.

The government of Cameroon has a poor record at preventing, investigating and punishing human rights violations by non-state entities, especially traditional rulers. The question of state-sponsored violence in Northern Cameroon, involving grave human rights abuses by guards employed by the Lamidos of Rey Borba, a politically-influential traditional ruler, has attracted international attention. Similarly, in the Southwest province, thugs employed by Nfon Mukete, the traditional leader of Kumba perpetrated severe abuses including torture, on political opponents. The government be reminded of its responsibility under international law,<sup>13</sup> for protecting persons from violations carried out by private groups, especially when these practices are supported or tolerated by the state.

## V. Inheriting land: customs depriving women of *ownership*, while allowing them *use of land*

Women in Cameroon, face significant difficulties in owning land, especially arable land for agriculture. Land stands out among other property forms as one where the need for ownership by women is crucial. Cameroon has a predominantly agricultural economy, and the contribution of agriculture to the national Gross Domestic Product (GDP) has been steadily increasing, accounting for 44.7 per cent of the GDP in 1997. Agriculture is a growing component of the economy, with an annual average growth of 7.5 per cent in 1997,<sup>14</sup> and is also the nation's largest sector of employment. Especially among the rural population of working age, the majority of whom have not received formal training and do not have access to work in the public service or industry, agriculture is the determinant of economic prosperity.

The principal form of private farmland acquisition in Cameroon is by way of inheritance within the family. The sale of land is common, especially land intended for residential and commercial use in urban areas, but for the vast majority of the population in rural Cameroon, land accessible for farming passes within the family. At the discretion of traditional rulers, persons may also be allowed to farm on non-privately owned village lands, considered sacred and inalienable.

Precisely because of the importance of land as an economic resource, some traditional customs deliberately seek to exclude women from actually owning land. These customs can be traced to fears that ownership of land by women, such as through inheritance, would lead to alienation of land upon marriage. A high social premium is placed especially in rural areas on continuity of wealth and resources within the direct lineage of a man who owns land. Several communities are also concerned about preserving land among the indigenous population. The interposition of a female owner through

---

<sup>13</sup>Cameroon is also in violation of its obligations under CEDAW, whose Preamble cross-references the gender equality obligation of the ICCPR. Cameroon has undertaken, with a view to pursuing Awithout delay a policy of eliminating discrimination against women. . . *to take all appropriate measures to eliminate discrimination against women by any persons, organization or enterprise*, and to take all appropriate measures, to modify customs and practices which constitute discrimination against women. Articles 2(e) and 2(f), Convention on the Elimination of All Forms of Discrimination Against Women, ratified by Cameroon, 23 Aug 1994.

<sup>14</sup>See *Cameroon-at-a-glance*, The World Bank (last visited 13 September 1999) <[http://www.worldbank.org/data/countrydata/aag/cmr\\_aag.pdf](http://www.worldbank.org/data/countrydata/aag/cmr_aag.pdf)> (contains key indicators tracing the trends in social and economic development of Cameroon in the last three decades).

inheritance who is, or will eventually get married to a >foreigner= is perceived as adverse to this.

By law however, women are equally entitled to own land. Law No. 74/1 of 6 July 1974 which reformed the land tenure system in Cameroon does not make any distinction in terms of gender in regulating access to land titles. The law creates a formal system of registration of land title deeds, specifying what forms of previous ownership, occupancy or use of land entitle persons to definitive title deeds. Therefore as a matter of Cameroon land law, if women were to acquire land through inheritance, there would be no impediment to their holding the land as owners, as they may take title deeds in their own names. In practice however, especially because of traditional attitudes, farmland passes to the male offspring instead.

This does not mean that women do not use these lands that are typically inherited and owned by men. With relatively lower rates of rural-urban migration than men, women constitute over 65 % of the predominantly agricultural rural labor force. This impressive presence in the most productive sector of the economy does not translate into higher incomes for women because 88.6% of the female labor force is active in growing lower-yielding food crops.<sup>15</sup> Thus although women far exceed the number of men engaged in full-time agriculture, it has been estimated that rural farmland ownership by women stands at just over 1%.<sup>16</sup> Women thus have to work on farms they do not own as temporary occupants at the whim of the actual landowners. Customary beliefs and traditions limiting women's inheritance, combined with women's inability to correct this gross imbalance by buying land have preserved this situation.

#### Effects of barriers to land acquisition by women

1. The lack of permanent ownership of land among farming women creates significant insecurity in their land use. Women may only continue to farm a particular piece of land as long as the owner permits, and even where the owner is a family relative of the woman, they may withdraw this facility at will. Since women are insecure about how long they will be allowed to farm on a particular piece of land, they are less inclined to expend further resources on developing the land, or improving its capacity. They also tend not to grow cash crops (such as cocoa and coffee) that yield relatively higher revenues since these require a greater financial investment for planting and maintaining the crop, and take longer periods to offer a yield. The agricultural productivity of women is thus reduced, since they either practice subsistence farming, or prefer the quick yield offered by low-paying food crops. This division of labor according to gender is very prevalent in the agricultural systems of the southern and eastern forest areas, as well as in the western highlands.<sup>17</sup> Consequently, the work of women is significantly undervalued, since without land ownership, their farms do not develop into efficient, value-added businesses.

---

<sup>15</sup>*Cameroon: Country Gender Profile*, The World Bank (last visited 13 September 1999) <<http://www.worldbank.org/gender/info/camero.htm>>.

<sup>16</sup>*Cameroon: Women journalists attack biased customary law*, Inter Press Service, 13 April 1995.

<sup>17</sup>*Cameroon: Country Gender Profile*, note 9 *supra*.

Furthermore, because they grow food crops, women were until recently less likely to benefit from state-funded agricultural input, extension and research programs, that were mostly geared towards cash crops. This occurs, even though the low-paying food crops women grow are often the only food source for rural families and may even be sold to supplement household incomes. Women currently produce about 90% of food crops in Cameroon.<sup>18</sup> It has been observed that Cameroonian customs paradoxically impose on women the obligation to feed their families, but prevent them from inheriting farmland.<sup>19</sup>

2. Even when women attempt to improve their farming techniques or grow high-paying but more costly cash crops, the inability to own land is a hurdle since it limits women's access to loans, and credit facilities. Banks require collateral for loans, and while most male farmers are able to offer land they own as collateral, women are generally unable to do so. Women also had minimal access to credit from the now defunct development banks with more flexible collateral requirements (BCD and FONADER).

The disparity in the number of men and women who own land is caused by other problems, such as a much higher female illiteracy rate. This is responsible for the lack of awareness among women, even about favorable legal provisions such as equal their right to own land under the 1974 land Ordinance. Unequal access to educational institutions (itself engendered by similar customs and beliefs about female children being a >poor investment= because they will marry and become part of another family) accounts in part for female literacy levels.

In order to confront low literacy through adult education programs, reverse exclusive male ownership by buying land, halt inefficient farming through improved agricultural techniques, or farm cash crops through self-help projects, women must command financial resources. Yet while women's work continues to be undervalued they cannot generate these resources. Entrapped in what has been described as a vicious cycle<sup>20</sup> of poverty and underdevelopment, women are victims of customary practices allowing them to *use* land, but which place barriers on their *ownership* of land.

Therefore, while women technically can inherit even at customary law (see the Zamcho case discussed above), and can own land (according to the 1974 land law) several rural women remain disabled by the economic consequences of customs that place a higher premium on male education and instruction, and property ownership.

---

<sup>18</sup>*Id.*

<sup>19</sup>*Cameroon: Women Journalists attack biased customary law*, Inter Press Service, 04/13/1995 (quoting Seraphine Tata, Secretary-General of an NGO that campaigns for women's inheritance).

<sup>20</sup>*Id.*



**APPENDIX I:  
Draft Protocol on Women=s Rights  
to the African Charter on Human  
and People=s Rights**

**DRAFT PROTOCOL ON WOMEN'S RIGHTS TO THE AFRICAN CHARTER**  
**( Kigali, Rwanda 15<sup>th</sup> November 1999)**

**THE STATES PARTIES TO THIS PROTOCOL:**

**CONSIDERING** that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements if necessary to supplement the provisions of the African Charter and that the OAU Assembly of Heads of State and Government has in June 1995, endorsed the decision of the African Commission on Human and Peoples' Rights to elaborate a draft protocol on the Rights of Women;

**CONSIDERING** that Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

**CONSIDERING** also that Article 18 of the African Charter on Human and Peoples' Rights calls on all African states to eliminate all discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

**RECALLING** that women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, CEDAW and all other international conventions and covenants relating to the rights of women are now recognised as being inalienable, interdependent and indivisible human rights;

**NOTING** that women's rights and women's essential role in development have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;

**CONSIDERING** also that the plans of action adopted in Dakar in November 1994 and in Beijing in September 1995 call on all Member States of the United Nations to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women;

**NOTING** that Articles 60 and 61 of the African Charter on Human and Peoples' Rights recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the Charter;

**CONCERNED** that despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by African States and their solemn commitment to eliminate all forms of discrimination against women, discrimination against women in Africa continues;

**NOTING** that many people in Africa continue to perceive human and peoples' rights as being the

exclusive preserve of men despite the fact that women play a fundamental role in all spheres;

## **HAVE AGREED ON THE FOLLOWING:**

### ***Article 1:*** Definition of Discrimination

For the purposes of this present Additional Protocol, and in conformity with Articles 2 and 18 of the African Charter on Human and Peoples' Rights (hereafter referred to as the African Charter) discrimination against women means any distinction, exclusion or restriction based on sex or any differential treatment whose effects compromise or destroy the recognition, enjoyment or the exercise by women regardless of their marital status on an equal basis with men of human rights and fundamental freedoms in all spheres of life.

### ***Article 2:*** Respect for Dignity

Women shall enjoy rights and dignity inherent in human beings.

Women shall contribute to the preservation of those African values that are based on the principles of equality, dignity, justice and democracy.

### ***Article 3:*** Women's Perspective in Policy Development

In order to eliminate effectively all forms of discrimination against women, States Parties to this Protocol shall take all necessary measures to integrate a women's perspective in their policy decisions, legislation, development plans and all spheres of life.

### ***Article 4:*** Discrimination Against Women

States Parties to this Protocol shall undertake to :

- take specific positive action in those areas where discrimination against women in law and in fact continues to exist; and
- modify through special measures such as public education, 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.

### ***Article 5:*** Right to Physical Security

In conformity with Articles 4 and 5 of the African Charter, States Parties to this Protocol shall:

- not pronounce or carry out death sentence on a pregnant woman;
- prohibit the commercial exploitation of all women;
- prohibit medical or scientific experiments on women without their consent;
- prohibit all traditional and cultural practices which are physically and/or morally harmful to women and girls and which are against recognised international norms such as force feeding and female genital mutilation;
- protect girls and women against rapes and all other sexual violence; and
- ensure that in period of conflict and/or war, rape, sexual abuse and violence against girls and women when carried out with a political motive, be considered a war crime and punished as such.

### ***Article 6:*** Specific Protection of the Elderly and Women with Disability

In conformity with the provision of article 18 of the African Charter, elderly women and women with

disability have the right to specific measures of protection in relation with their physical and moral needs.

**Article 7: Marriage**

No marriage shall take place without the consent of both parties.

The minimum age of marriage for men and women shall be 18.

Polygamy shall be prohibited.

Women and men shall be regarded as equal partners in marriage.

In order to be legally recognised, every marriage shall be recorded where possible in writing as soon as possible and registered in accordance with national laws.

The husband and wife shall by mutual agreement choose their place of residence.

A married woman shall have the right to keep her maiden name, to use it as she pleases jointly or separately with her husband's surname. By mutual agreement she may also give her maiden name to her children.

A married woman shall have the right to retain or change her nationality .

A man and a woman shall have the same rights and responsibilities towards their children.

During her marriage, the wife shall have the right to acquire her own property and to administer and manage it freely; and in cases of joint ownership of property the husband and wife shall have the same rights.

**Article 8: Separation and Termination of Marriage**

Divorce or annulment of a marriage shall be effected only by judicial order.

Women and men shall have the same rights to seek divorce or annulment of a marriage.

After divorce or annulment, women and men shall have the same rights with respect to the children and property of the marriage.

In the event of separation women and men shall have equal rights with respect to the children and property of the marriage.

**Article 9: Widows' Rights**

It shall be prohibited to subject widows to inhuman, humiliating and degrading treatment.

After the death of the husband, the widow shall be entitled to be the guardian of her lawful children.

A widow shall have the right to marry a person of her choice.

A widow/widower shall have the right to inherit each other's property. In the event of the death of her husband the widow has the right, whatever the matrimonial regime, to continue to live in the matrimonial house.

Women and girls shall have equal rights to inherit their parents' properties as men and boys.

**Article 10: Right to Information and Legal Aid**

With reference to Articles 7 & 25 of the African Charter, States Parties to this Protocol shall:

-take all appropriate measures to facilitate the access of women to legal aid and services; and

-put in place adequate structures including appropriate education programmes to inform women and make them aware of their rights.

**Article 11: Right to Participation in Political Process**

In conformity with Article 13 of the African Charter, States Parties to this Protocol commit themselves to take specific positive action to promote the equal participation of women in the political life of their countries, ensuring that:

- women can participate without any discrimination in all elections;
- women are represented equally at all levels with men in all electoral and candidate lists; and
- women are included with men at all levels of the development and implementation of state policy.

**Article 12: Right to Peace**

In conformity with Article 23 of the African Charter, women shall have the right to promote and maintain peace and to live in peace.

State Parties to this Protocol commit themselves to take all appropriate measures to involve women:

- in programmes of education for peace and a culture of peace;
- in the structures for conflict prevention, management and resolution at local, national, sub-regional and international levels, in particular within the mechanisms of the OAU; and
- in the local, national, sub-regional and international structures for the establishment and management of camps for refugees and displaced persons and for humanitarian assistance and aid.

States Parties additionally commit themselves to reduce military expenditure significantly in favour of spending on social development, while guaranteeing the effective participation of women in the distribution of these resources.

**Article 13: Violence Against Women**

In this Protocol, violence against women shall mean all acts directed against women which cause or could cause them physical, sexual, or psychological harm, including the threat of such acts; or the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situation of conflict.

State parties to this Protocol shall commit themselves to take appropriate measures to:

- prohibit all forms of violence against women be it physical, mental, verbal or sexual, domestic and family whether they take place in the private sphere of in society and public life;
- identify the cause of violence against women and take appropriate measures to prevent and eliminate such acts of violence;
- punish the perpetrators of such violence committed against women; and
- provide for the rehabilitation and reparation for victims of such violence.

**Article 14: Right to Education and Training**

State Parties shall take all appropriate measures to:

- eliminate all forms of discrimination against girls and women in the sphere of education and training; and
- eliminate all references in text books and syllabuses to the stereotypes which perpetrate such discrimination.

State Parties shall take specific positive action to:

- promote an increased literacy rate among women;
- promote vocational training for women and girls; and
- promote the keeping of girls in school by providing free secondary education through grants and bursary.

**Article 15: Economic and Social Welfare Rights**

With reference to Article 15 of the African Charter, States Parties to this Protocol shall guarantee women equal opportunities to work. In this respect, they commit themselves to:

- promote equality in access to employment, terms of remuneration and conditions of work and taxation for women;
- promote the right to equal remuneration for the same job for men and women;
- ensure transparency in employment and dismissal relating to women;
- allow women freedom to choose their occupation, and to protect them from exploitation by their employers;
- regulate the occupations and economic activities dominated by women, in particular the informal sector of the economy;
- establish a system of protection and national insurance for women working in the informal and formal sectors of the economy;
- introduce a minimum age of work and prohibit children from working below that age, and to - prohibit the sexual exploitation of children and especially the girl-child;
- recognise the economic value of and to protect the work of women in the home;
- guarantee adequate pre and post-natal maternity leave;
- ensure equality in taxation for men and women;
- recognise the right of salaried women to be responsible of their spouse and children; and
- recognise motherhood and the upbringing of children as a social function for which both parents must take responsibility.

**Article 16: Health and Reproductive Rights**

With reference to Article 16 of the African Charter, women shall have the right to health. This right includes:

- a) the right to control their fertility;
- b) the right to decide whether to have children;
- c) the right to space their children;
- d) the right to choose any method of contraception;
- e) the right to protect themselves against sexually transmitted diseases; and
- f) the right to be informed on one's health status and on the health status of one's partner.

State Parties to this Protocol shall take appropriate measures to:

- provide adequate, affordable and accessible health services to women especially those in rural areas;
  
- establish pre-and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; and
- protect the reproductive right of women particularly in cases of rape and incest.

**Article 17: Right to Food Security**

Women shall have the right to access to nutritious and adequate food. In this regard State Parties to this Protocol shall take appropriate measures to:

- provide women with access to clean drinking water, sources of domestic fuel, land, and the

- means of producing food; and
- establish adequate systems of supply and storage to ensure food security.

**Article 18: Right to Adequate Housing**

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, State Parties to this Protocol commit themselves to grant to women, whatever their marital status, access to adequate housing.

**Article 19: Cultural Practices**

Women shall have the right to live in a positive cultural environment and to participate at all levels in the determination of cultural policies.

State Parties to this Protocol shall take all appropriate measures to:

- favour the participation of women in the conception of cultural policies at all levels; and
- protect women and society against all forms of intolerance and repugnant cultural and religious practices.

**Article 20: Environmental Rights**

In conformity with Article 24 of the African Charter, women shall have the right to live in a healthy environment.

State Parties shall take all appropriate measures to:

- involve women in the management of the environment at all levels;
- promote research into renewable energy sources; and facilitate women=s access to them;
- regulate the management, processing and storage of domestic waste; and
- ensure that the proper standards are followed for the storage, transportation and destruction of toxic waste.

**Article 21: Right to Development**

With reference to Articles 21, 22 & 24 of the African Charter, women shall have the right to fully enjoy their right to development.

State Parties to this Protocol shall take all appropriate measures to:

- ensure that women can participate fully at all levels in the conceptualisation and implementation of development policy programmes;
- facilitate women=s access to land and guarantee their right to property, whatever their marital status facilitate women=s access to credit and natural resources through flexible mechanisms;
- take into account indicators of human development specifically relating to women in the working out of development policy programmes; and
- ensure that in the implementation of trade and economic policy programmes such as globalisation, the negative effects of such on women are minimised.

**Article 22:**

This Protocol shall be open for signature, ratification and accession by the State Parties.

Instruments of ratification or accession to this Protocol shall be deposited with the Secretary General of the OAU.

This Protocol shall come into force one month after the deposit of fifteen instruments of ratification

or accession.

For each of the States Parties that ratify or accede to this Protocol after its coming into force, the Protocol shall come into force at the date of deposit of the instrument of ratification or accession. The Secretary General of the OAU shall inform the Member States of the OAU of the coming into force of this Protocol.

***Article 23:***

This Protocol may be amended if a State Party makes a written request to that effect to the Secretary General of the OAU and the Assembly of Heads of State and Government adopts the draft amendment after all the States Parties have been duly informed of it and the Commission has given its opinion.

The amendment shall be approved by a simple majority of the State Parties.

The Commission may also, through the Secretary General of the OAU, propose amendments to this Protocol.

The amendment shall come into force for each State Party which has accepted it one month after the Secretary General of the OAU has received notice of the acceptance.

**PROJET DE PROTOCOLE A LA CHARTE AFRICAINE RELATIF AUX DROITS  
DE LA FEMME EN AFRIQUE  
(Kigali, 15 Novembre 1999)**

**LES ETATS PARTIES AU PRESENT PROTOCOLE:**

**CONSIDERANT** que l'article 66 de la Charte Africaine des Droits de l'Homme et des Peuples prévoit l'adoption de protocoles en cas de besoin, pour compléter les dispositions de la Charte et que la Conférence des Chefs d'Etat et de Gouvernement a entériné, au cours de sa session de juin 1995, la décision de la Commission Africaine des Droits de l'Homme et des Peuples d'élaborer un projet de protocole sur les droits des femmes;

**ETANT DONNE** que l'article 2 de la Charte Africaine des Droits de l'Homme et des Peuples reconnaît et garantit le principe de non discrimination et interdit toute discrimination fondée sur la race, l'ethnie, la couleur, le sexe, la langue, la religion, l'opinion politique ou toute autre opinion, l'origine nationale et sociale, la fortune, la naissance ou toute autre situation;

**CONSIDERANT** également que l'article 18 de la Charte Africaine des Droits de l'Homme et des Peuples demande aux Etats africains d'éliminer toute forme de discrimination subie par les femmes et d'assurer la protection des droits de la femme tels que stipulés dans les déclarations et conventions internationales;

**RAPPELANT** que les Droits de la femme sont reconnus et garantis par tous les instruments internationaux sur les droits de l'homme notamment la Déclaration universelle des droits de l'homme, les Pactes internationaux relatifs aux droits civils et politiques, et aux droits économiques sociaux et culturels et sont maintenant reconnus comme des droits humains universels, inaliénables, interdépendants et indivisibles;

**AYANT A L'ESPRIT** que les divers plans d'action des Conférences internationales sur l'environnement et le développement de 1992, sur les droits de l'homme de 1993, sur la population et le développement de 1994, et du sommet pour le développement social de 1995 ont tous réaffirmé les droits des femmes et leur rôle fondamental dans le développement;

**CONSIDERANT** que les Plans d'action de Dakar (novembre 1994) et Beijing (septembre 1995) appellent tous les Etats membres à prendre des mesures concrètes pour accorder une plus grande attention aux droits humains des femmes afin d'éliminer toutes les formes de discrimination et de violence fondées sur le sexe exercées contre les femmes;

**CONSTATANT** que les articles 60 et 61 de la Charte Africaine des Droits de l'Homme et des Peuples considèrent les instruments régionaux et internationaux des droits humains ainsi que les pratiques africaines qui sont en conformité avec les normes internationales relatives aux droits de l'homme et des peuples comme les principales références pour l'application et l'interprétation de la Charte;

**CONSCIENTS** que la majorité des populations africaines continuent de percevoir les droits de l'homme et des peuples comme des droits exclusivement réservés aux hommes malgré le rôle fondamental joué par les femmes en faveur de la paix et du développement en Afrique;

**PREOCCUPES** par le fait qu'en dépit de la ratification de la Charte Africaine des Droits de l'Homme et des Peuples et de tous les autres instruments internationaux pertinents relatifs aux droits de l'homme par la majorité des Etats africains et leur engagement solennel à éliminer toutes les formes de discrimination à l'égard des femmes, les femmes continuent d'être en Afrique l'objet de nombreuses discriminations;

**SONT CONVENUS** de ce qui suit:

**Article 1:**

Aux fins du présent Protocole et conformément aux articles 2 et 18 de la Charte Africaine des Droits de l'Homme et des Peuples (ci-après dénommée la Charte Africaine), la discrimination à l'égard des femmes vise toute distinction, exclusion ou restriction fondée sur le sexe qui a pour effet de compromettre ou de détruire la reconnaissance, la jouissance ou l'exercice par les femmes, quelle que soit leur situation matrimoniale, à égalité avec les hommes, des droits humains et des libertés fondamentales dans tous les domaines de la vie.

**Article 2: Du Respect de la Dignité**

Les femmes jouissent des droits et de la dignité inhérents à la personne humaine.

Les femmes ont le devoir de contribuer à la préservation des valeurs africaines fondées sur les principes d'égalité, de dignité, de justice et de démocratie.

**Article 3: De l'Intégration de la Dimension Femme dans les Politiques de développement**

Aux fins d'éliminer effectivement toutes les formes de discrimination à l'égard des femmes, les Etats parties au présent Protocole s'engagent à prendre toutes les mesures nécessaires pour intégrer la dimension femme dans leurs décisions politiques, leur législation et plans de développement et dans tous les domaines de la vie.

**Article 4: De la Discrimination à l'Égard des Femmes**

Les Etats parties au présent Protocole s'engagent à:

- adopter des actions spécifiques positives dans les domaines où des discriminations de fait et de droit à l'égard des femmes sont encore maintenues;
- modifier, par des mesures spéciales telle que l'éducation civique, les schémas et modèles de comportement socioculturels de l'homme et de la femme en vue de parvenir à l'élimination des préjugés et des pratiques coutumières, ou de tout autre type, qui sont fondées sur l'idée d'infériorité ou de supériorité de l'un ou l'autre sexe ou d'un rôle stéréotypé de l'homme et de la femme.

**Article 5: Du Droit à la Sécurité Physique**

Conformément aux articles 4 et 5 de la Charte Africaine des Droits de l'Homme et des Peuples, les Etats parties au présent Protocole s'engagent à:

- a) ne pas prononcer ou exécuter une sentence de mort contre une femme enceinte;
- b) interdire l'exploitation de toutes les femmes;
- c) interdire les expériences médicales ou scientifiques sur les femmes sans leur consentement;
- d) éliminer par tous les moyens les pratiques culturelles et/ou traditionnelles qui portent atteintes à l'intégrité physique et/ou morale des femmes et des filles et qui sont contraires aux normes internationales reconnues, comme le gavage et les mutilations génitales;
- e) protéger les filles et les femmes contre les viols et toutes autres violences sexuelles;
- f) à veiller à ce qu'en période de conflits et/ou de guerre, les viols et toutes autres violences sexuelles contre les filles et les femmes, commis dans l'intention de réaliser un génocide soient considérés comme des crimes de guerre et réprimés comme tels.

**Article 6:** De la Protection Spécifique des Femmes du Troisième Age et des Femmes Ayant un Handicap

Conformément à l'article 18 de la Charte Africaine, les femmes du troisième âge et les femmes ayant un handicap ont droit à des mesures spécifiques de protection en rapport avec leurs besoins physiques et moraux.

**Article 7:** Du Mariage

Aucun mariage ne peut être conclu sans le libre + consentement de la femme.

L'âge minimum de mariage pour la fille et le garçon est de 18 ans.

La polygamie est interdite.

Les femmes et les hommes sont des partenaires égaux dans le mariage.

Tout mariage, pour être reconnu légalement, doit être conclu par écrit là où cela est possible et enregistré conformément à la législation nationale.

Les deux époux choisissent d'un commun accord leur lieu de résidence.

La femme mariée a le droit de conserver son nom, de l'utiliser à sa guise, séparément ou conjointement avec celui de son mari. Par accord mutuel, elle peut aussi donner son nom à ses enfants.

La femme mariée a le droit de conserver sa nationalité.

L'homme et la femme ont des droits égaux et des responsabilités vis-à-vis de leurs enfants.

Pendant la durée du mariage, la femme a le droit d'acquérir des biens propres, de les administrer et de les gérer librement; en cas de communauté de biens, l'homme et la femme ont les mêmes droits.

**Article 8:** Annulation et dissolution du mariage

Le divorce ou l'annulation du mariage ne peuvent être que judiciaires.

Les hommes et les femmes ont le même droit de demander le divorce ou l'annulation du mariage.

Après le divorce ou l'annulation du mariage, les hommes et les femmes ont les mêmes droits vis-à-vis des enfants et des biens communs issus du mariage.

En cas de séparation de corps, la femme et l'homme ont les mêmes droits vis à vis des enfants et des biens communs issus du mariage.

**Article 9:** Des Droits de la Veuve et des Successions

Il est interdit de faire subir à la veuve des traitements inhumains, humiliants et dégradants.

Après le décès du mari, la veuve devient la tutrice de ses enfants.

La veuve a le droit d'épouser l'homme de son choix.

La veuve et le veuf ont le droit d'hériter des biens l'un de l'autre. En cas de décès du mari, quel que soit le régime matrimonial, la veuve a le droit de continuer de vivre dans l'ancienne résidence conjugale.

Les femmes et les filles ont un droit égal à celui des hommes et des garçons, d'hériter des biens de leurs parents.

**Article 10:** Du Droit à l'Information et à l'Assistance Juridique et Judiciaire

Conformément aux articles 7 et 25 de la Charte Africaine, les Etats parties au présent Protocole s'engagent à :

- Prendre toutes les mesures nécessaires pour faciliter aux femmes l'accès aux services et à l'aide judiciaires;
- Mettre en place des structures adéquates y compris des programmes appropriés d'éducation pour informer les femmes et les sensibiliser sur leurs droits.

**Article 11:** Du Droit de Participation aux Activités Politiques

Conformément à l'article 13 de la Charte Africaine, les Etats parties au présent Protocole s'engagent à promouvoir par le moyen d'actions spécifiques une plus grande participation paritaire des femmes dans la vie politique de leurs pays respectifs en s'assurant notamment que:

- les femmes puissent participer à toutes les élections sans aucune discrimination;
- les femmes accèdent en parité et à tous les niveaux avec les hommes aux listes candidatures;
- les femmes soient incluses à tous les niveaux d'élaboration des politiques de l'Etat et à leur mise en œuvre.

**Article 12:** Du Droit à la Paix

Conformément à l'article 23 de la Charte Africaine, les femmes ont le droit de promouvoir et de maintenir la paix et de vivre dans la paix.

Les Etats parties au présent Protocole s'engagent à prendre toutes les mesures appropriées pour impliquer les femmes:

- a) dans les programmes d'éducation à la paix et de culture de la paix;
- b) dans les structures chargées de la prévention, de la gestion et du règlement des conflits au niveau local, national, sous-régional, régional et international et notamment au sein des mécanismes de l'Organisation de l'Unité Africaine;
- c) dans les mécanismes locaux, nationaux, sous-régionaux, régionaux et internationaux de prise de décisions pour l'installation et la gestion des camps des réfugiés et des personnes déplacées ainsi que pour la distribution de l'assistance et de l'aide humanitaires.

En outre, les Etats parties s'engagent à réduire sensiblement les dépenses militaires au profit du développement social, tout en garantissant la participation effective des femmes à l'affectation de ces ressources.

Par ailleurs, les Etats parties s'engagent à assurer:

- la protection effective des femmes et des enfants en période d'urgence et de conflit armé;
- la protection effective des femmes et des enfants déplacés à l'intérieur de leur propre territoire, ou réfugiés en provenance des pays voisins.

**Article 13: De la Violence à l'Égard des Femmes**

La violence à l'égard des femmes, dans le présent Protocole, désigne tous actes dirigés contre les femmes en tant que telles et causant ou pouvant causer aux femmes un préjudice ou des souffrances physiques, sexuelles ou psychologiques, y compris la menace de tels actes, la contrainte ou la privation arbitraire de liberté que ce soit dans la vie publique ou dans la vie privée, en temps de paix ou en situation de conflit.

Les Etats parties au présent Protocole s'engagent à prendre toutes les mesures appropriées pour:

- interdire toutes les formes de violence contre les femmes qu'elle soit physique, morale, verbale ou sexuelle, conjugale ou familiale, qu'elle ait lieu en privé, dans la société ou dans la vie publique.
- identifier les causes de violence contre les femmes et prendre des mesures pour les prévenir et les éliminer;
- réprimer les auteurs et les complices de violence contre les femmes ;
- réhabiliter les femmes victimes de tels actes et réparer le préjudice subi.

**Article 14: Du Droit à l'Éducation et à la Formation Professionnelle**

Tout Etat partie prend des mesures adéquates pour:

- éliminer toute discrimination à l'égard des filles et des femmes en matière d'éducation et de formation;
- éliminer toute référence à des stéréotypes qui perpétuent cette discrimination dans les manuels scolaires et les programmes d'enseignement

Tout Etat partie prend des mesures d'action positive pour:

- favoriser une plus grande alphabétisation des femmes;
- promouvoir la formation professionnelle des femmes et des filles;
- promouvoir le maintien de la fille à l'école en favorisant la gratuité de l'enseignement secondaire à l'aide de dons et de bourses d'études.

**Article 15: Des Droits Economiques et de la Protection Sociale**

Conformément aux dispositions de l'article 15 de la Charte Africaine, les Etats parties au présent Protocole garantissent aux femmes les chances égales de travail. A cet effet, ils s'engagent à :

- promouvoir l'égalité en matière d'accès à l'emploi;
- promouvoir le droit, pour un même emploi, à une rémunération égale entre les hommes et les femmes;
- permettre aux femmes d'exercer le travail de leur choix dans des conditions humaines et d'être protégées contre l'exploitation par leurs employeurs;
- réglementer les métiers et les activités économiques spécifiques aux femmes notamment dans le secteur informel de l'économie;
- appuyer le transfert des métiers et activités économiques du secteur informel vers le secteur formel de l'économie;
- instaurer un régime de protection et de prévoyance sociale au bénéfice des femmes exerçant des métiers dans les secteurs informels et formels de l'économie;
- instaurer un âge minimum au travail et interdire l'exploitation sexuelle et le travail des enfants et plus particulièrement des petites filles;
- valoriser et protéger le travail domestique des femmes;

- accorder aux femmes des congés de maternité prénataux et postnataux adéquats;
- assurer l'égalité dans l'imposition fiscale des femmes et des hommes;
- reconnaître le droit des femmes salariées à prendre en charge leur époux et leurs enfants;
- considérer les fonctions de maternité et d'éducation des enfants comme des fonctions sociales qui doivent être prises en charge par les deux parents, par l'Etat et les entreprises privées.

**Article 16:** Du Droit à la Santé et au Contrôle des Fonctions de Reproduction

Conformément aux dispositions de l'article 16 de la Charte Africaine, les femmes ont le droit d'accès à la santé. Ce droit comprend:

- le droit de maîtriser leur fécondité;
- le droit de décider de leur maternité;
- le droit de décider de l'espacement des naissances;
- le droit du choix de toutes les méthodes de contraception;
- le droit de se protéger contre les maladies sexuellement transmissibles;
- le droit d'être informé sur son état de santé et sur l'état de santé de son partenaire.

Tout Etat partie au présent Protocole prend des mesures adéquates pour:

- favoriser l'accès aux services de santé à des distances raisonnables et à des coûts abordables, en particulier pour les femmes en milieu rural;
- fournir des services pré et postnataux et nutritionnels pendant la grossesse et la période d'allaitement;
- protéger les droits reproductifs des femmes particulièrement en cas de viol ou d'inceste.

**Article 17:** Du Droit à la Sécurité alimentaire

Toute femme a le droit d'accès à une alimentation saine et adéquate. A cet égard, les Etats parties prennent les mesures nécessaires pour:

- assurer aux femmes l'accès à l'eau potable, aux sources d'énergie domestique, à la terre et aux moyens de production alimentaire;
- établir des systèmes d'approvisionnement et de stockage adéquats pour assurer aux femmes la sécurité alimentaire.

**Article 18:** Du Droit à un Habitat Adéquat

Toute femme a le droit de disposer d'un logement adéquat et à des conditions d'habitation acceptables dans un environnement sain. A cet effet, les Etats parties s'engagent à permettre aux femmes, quel que soit leur statut matrimonial, l'accès à un logement social adéquat.

**Article 19:** De l'Environnement Culturel

Les femmes ont droit à un environnement culturel positif et de participer à tous les niveaux à la détermination des politiques culturelles.

Les Etats parties prennent toutes les mesures appropriées pour:

- favoriser la participation des femmes à la détermination des politiques culturelles à tous les niveaux;
- protéger les femmes et la société de toutes les formes d'intolérances et de pratiques culturelles et religieuses néfastes.

**Article 20:** Du Droit à un Environnement Sain

Conformément à l'article 24 de la Charte Africaine, les femmes ont le droit de vivre dans un environnement sain et durable.

Les Etats parties s'engagent à prendre les mesures nécessaires pour:

- associer les femmes à la gestion de l'environnement à tous les niveaux de décision;
- promouvoir les recherches sur les sources d'énergies renouvelables et faciliter leur accès aux femmes;
- réglementer la gestion, la transformation et le stockage des déchets domestiques;
- assurer le respect des normes de stockage, de transport et de destruction des déchets toxiques.

### **Article 21: Du Droit au Développement**

Conformément aux articles 21, 22 et 24 de la Charte Africaine, les femmes ont le droit de jouir pleinement de leur droit au développement.

Les Etats parties au présent protocole s'engagent à prendre toutes les mesures appropriées pour:

- permettre aux femmes de pratiquer librement et à tous les niveaux de décision à la conception et à la mise en œuvre des politiques et programmes de développement;
- faciliter l'accès des femmes à la terre et garantir leur droit de propriété quel que soit leur statut matrimonial;
- faciliter l'accès des femmes au crédit et aux ressources financières, économiques et naturelles;
- prendre en compte les indicateurs de développement humain spécifiques aux femmes dans l'élaboration des politiques de développement;
- veiller à ce que les effets négatifs de la mise en œuvre des programmes et politiques commerciales, tels que la mondialisation, soient minimisés à l'égard des femmes.

### **Article 22:**

Le présent Protocole est ouvert à la signature, à la ratification ou à l'adhésion des Etats parties à la Charte Africaine des Droits de l'Homme et des Peuples.

Les instruments de ratification ou d'adhésion au présent protocole sont déposés auprès du Secrétaire Général de l'OUA.

Le présent Protocole entre en vigueur un mois après le dépôt de quinze instruments de ratification ou d'adhésion.

Pour chacun des Etats parties qui le ratifient ou y adhèrent ultérieurement, le présent Protocole prend effet à la date du dépôt de l'instrument de ratification ou d'adhésion.

Le Secrétaire Général informe les Etats membres de l'OUA de l'entrée en vigueur du présent Protocole.

### **Article 23:**

Le présent Protocole peut être amendé si un Etat partie adresse à cet effet une demande écrite au Secrétaire Général de l'OUA.

La Conférence des Chefs d'Etat et de Gouvernement peut approuver, à la majorité simple, le projet d'amendement lorsque tous les Etats parties au présent Protocole en auront été dûment avisés, après avis conforme de la Commission.

La Commission peut également, par l'intermédiaire du Secrétaire Général de l'OUA, proposer des amendements au présent Protocole.

L'amendement entre en vigueur pour chaque Etat qui l'aura accepté un mois après la notification de cette acceptation au Secrétaire Général de l'OUA.