PN-ABN-222
62
80131

DRAFT REPORT

LEGAL CONSTRAINTS AND ENHANCEMENTS TO WOMEN'S PARTICIPATION IN HORTICULTURAL EXPORT ENTERPRISES IN GHANA AND THE GAMBIA

by

Dr. Jacqueline Moncrief
Labat-Anderson, Inc.

Prepared for the study, "Credit Programs for Women's Specialty Crops," funded by the Office of Market Development and Investment, the African Bureau, and the Women in Development Office, U.S. Agency for International Development, Washington, D.C.

1

I. EXECUTIVE SUMMARY

Critical to the success of USAID's proposed project to establishing women's horticultural export enterprises in Ghana and The Gambia is to ensure small-scale women farmers equal rights in monetized and non-monetized sectors. This includes their equal rights to land, services, credits and markets. It is the intention of this study, therefore, to analyze the legal status of women in these countries, particularly as it pertains to rural women, in realizing these rights.

A review of laws and an examination of the impact of different systems of law on women's current status reveal the following:

1. Protection of Women's Fundamental Rights

   - The ascent to power of the military government in Ghana in 1981 resulted in the abrogation of the constitution and the elimination of constitutional law to protect the fundamental rights of women as well as all of its citizens.

   - Unlike Ghana, the constitution of The Gambia establishes equality of men and women before the law as a fundamental right.

   - The principle of equality cannot be fully implemented without enactment of specific laws that eliminate gender-based discrimination.

   - Constitutional law alone does not determine the protection of fundamental rights, but also depends on current judicial interpretation of laws.

2. Outcome of Legal Reform in Ghana and The Gambia

   - Despite reform of laws to eradicate sex discrimination, the subordinate status of most women with respect to men remains generally unchanged, creating disadvantages for women, particularly the poor and illiterate, to participate fully in the development process.

   - Since most women live in rural areas under customary laws, they are least likely to benefit from reform of statutory provisions to eliminate gender-based discrimination.

3. Effects of Coexistence of Different Systems of Law on the Status of Women

   - The coexistence of different systems of law in Ghana and

The Gambia makes it difficult to advance the status of women through legal reform.

- The superimposition of English law, as a result of colonial rule, on African judicial institutions and indigenous law gives rise to internal conflicts of law.

- The multiplicity and overlap of different judicial institutions often camouflage women's legal status as it truly exists.

a) Received Law of England

- Ghana and The Gambia received a Western view of a woman's place in society through the imported English law, the result of colonial rule in both countries.

- Statutes have been enacted by Ghana and The Gambia to supersede the received law in some, or all, aspects of family law, but in some statutes the provisions only refer to the appropriate received law as a source of application.

- Because there was no need for the introduction of sophisticated business practices, obsolete and inequitable laws which had been abolished in England remained in Ghana and The Gambia after independence.

b) African Customary Law

- Customary law system is the basic source of law for the majority of Africans in matters of personal law (marriage and the family) and property law (including land and succession).

- The existence of various bodies of customary law, substantially different, or even with only minor variations, makes ascertainment of women's rights difficult.

- Customary law has proven to be flexible and adaptable in response to changes in economic conditions and new attitudes of its people.

- Integrating customary laws with received laws or reforming laws to accommodate indigenous practices generally deprives women of their equal rights.

c) Islamic Law of The Gambia

- Because most women in The Gambia have a Muslim marriage, the majority of women are governed by Islamic law as it pertains to the family, excluding rights to land, which is the jurisdiction of customary law.

- The place of women and their role in society must comply with Islamic law; therefore, women's status cannot be altered in accordance with cultural changes.

4. Laws Affecting Women's Access to and Control of Resources

- The continued viability and expansion of women's horticultural export enterprises beyond the initial stages of development will depend greatly on the degree to which access to and control of resources will be available to small-scale women farmers/entrepreneurs.

a) Access to Credit

- Because rural women do not have equal rights to land, their access to financial capital is severely limited. Without a title deed to land (or a regular income) to serve as a surety for a loan small scale women farmers have little, or no, access to credit.

- Moneylenders, who are regulated by statutory law, provide alternative means for women farmers to acquire capital. However, because moneylenders provide small loans at a high interest rate, women farmers and rural entrepreneurs cannot rely on this source of capital to help substantially raise agricultural productivity and rural incomes.

b) Effects of Marriage on Women's Rights to Land, Inheritance and Income

- The legal system that validates a marriage also assumes jurisdiction over all, or most, laws relating to the family. This has serious legal implications for women's property and inheritance rights, since most rural women who have married under customary law do not receive equal entitlements.

- Because a woman has social and economic obligations to her extended family, clan and/or tribe under customary law, her legal rights are sometimes subjugated to the needs of the group.

- As upheld by both customary and statutory laws, a married woman retains control of her property, real or personal, and her income as a feme sole.

c) Women's Rights to Land

- There are no legal barriers to individual ownership of land for women. However, the Western tenure form of privitization of land is difficult, if not impossible for most rural women to purchase large plots of land. As a result, women farmers who own their own land generally have small farms with less potential for sizeable profits, in contrast to more profitable large farms owned by men.

- The transition from communal to individual ownership of land generally benefits men more than women since it is the men, as heads of families, who are seeking title deeds to land that they oversee. In Ghana, "strangers" who are purchasing rural land in the North for rice production are also male, principally military men.

- Tribal chiefs in both Ghana and The Gambia have legal jurisdiction over rural land and may upon request allocate uncleared or unused land to women growers for cultivation.

- Under customary law, rural women generally have user's rights to land of their husband and natal family.

- There are varying forms of land tenurial arrangements depending on the locality. Women farmers can exercise their rights in using different systems of land tenure for agricultural purposes.

- Uncertainty regarding land tenure rights is an impediment to long-term sustainability of women's horticultural export schemes.

d. Inheritance Rights

- By law in The Gambia the husband rather than the children is generally the beneficiary of his wife's estate. Because most poor women are in polygamous marriages, this has serious implications for motivating individual women farmers to establish their own business if they perceive that the results of their labor will eventually be passed on to another wife vis-a-vis the husband.

- As a result of legal reform, women in Ghana can write a will. The Wills Act in The Gambia is currently being considered for revision.

- Under the revised Wills Act, 1971, in Ghana, a man can no longer dispose of all his property without leaving anything to his widow.

- Under customary law a woman generally inherits only a portion of her deceased husband's land. In matriarchal tribes customary law generally does not allow a woman to be the beneficiary of her deceased husband's property because she is not considered to be a member of his family.

- A recent law in Ghana stipulates that if a customary marriage is registered, statutory law can be applied to inheritance and succession of property. Otherwise, customary law prevails. At present, the majority of women who are married under customary law have not registered their marriages, and therefore, are deprived of receiving benefits under provisions of the new inheritance law.

- Even under statutory law a woman cannot be the sole beneficiary of her deceased husband's property.

e. Rights Pertaining to Contractual Agreements

- There are no statutory provisions in either Ghana or The Gambia which restrict the contractual rights of women.

- Statutory law protects the rights of illiterate persons, which includes the majority of women in Ghana and The Gambia, to enter into contractual agreements.

- An oral contract is legal in both Ghana and The Gambia. However, an argument can be made to the appropriateness and equity of an oral contract between individuals and a corporation.

- Illiteracy as a justification for exporters in The Gambia to enter into oral, rather than written, contracts with women growers is a violation of their fundamental rights under constitutional law.

- Both Ghana and The Gambia have illiteracy protection laws to ensure the contractual capacity of illiterate persons.

- An oral contract may not be in the best interest of women farmers since it is not consonant with modern business practices.

- As contract farming in other African countries indicates, most exporters and many small-scale farmers do not wish to enter into written agreements because they do not want to get "locked in" to future transactions.

- On the other hand, women producers could benefit from contractual assurance and the ability to use modern contractual concepts on which modern commercial relations are based.

f. Right to Form Cooperatives

- Statutory laws allow women to form cooperatives as is commonly done among women gardens in The Gambia.

- Because the military government in Ghana has seized assets of cooperatives in the past which it considered to be mismanaged, it is uncertain whether government intervention will happen again, though cooperatives are still legal.

5. Recommendations

Recommendations are provided for guiding USAID project planners in designing and implementing legal rights strategies that will enable women greater participation in horticultural export activities.

The five areas which are covered by the recommendations are:

a) Fostering Rights Awareness and Action

b) Encouraging Legal Reform

c) Protecting Women's Fundamental Rights

e) Enhancing Women's Access to and Control of Resources

f) Anticipating Barriers to Successful Implementation

II. PURPOSE OF LEGAL ANALYSIS

The proposal to assist women in Ghana and The Gambia establish sustainable horticultural export enterprises cannot be implemented as conceptualized without ensuring women equal rights to all forms of monetized and non-monetized sectors. This includes their equal rights to land, credits, earnings, services and markets. It is the intention of this paper, therefore, to analyze the legal status of women, particularly as it pertains to rural women, in realizing these rights.

To accomplish this end, this paper will compare the legal rights of women in Ghana and The Gambia and examine the impact of its common judicial legacy on women's current status. A review of laws which affect the full and continued participation of small-scale women farmers in horticultural export schemes will be the focus of the analysis. Specific objectives include the following:

- examine the protection of women's equal rights under constitutional law
- assess the impact of the coexistence of different systems of law in Ghana and The Gambia on the status of women
- survey statutory laws, along with salient customary and Islamic laws, relevant to the participation of small-scale women farmers in horticultural export programs, with particular emphasis on:
    - women's legal entitlements to monetized and non-monetized sectors; and,
- determine implications of women's legal status with regard to:
    - obtaining inputs, e.g., short-term and long-term loans, cash or in-kind, for commercial purposes
    - retaining earnings from sale of crops
    - receiving income for labor on irrigated schemes leased by husbands
    - forming cooperatives
    - entering into contractual agreements with exporters

o Contribution of Legal Analysis to USAID Planners

There are no simple answers to overcoming gender-based discrimination, but an understanding of the laws and legal institutions that reinforce inequality of women can lead to more effective solutions. It is hoped, therefore, that this legal analysis will be invaluable to USAID planners in formulating private-sector strategies to enable women farmers to engage in horticultural export activities without discrimination and to surmount legal impediments which restrict their access to financial and development assistance.

III. ORGANIZATION OF PAPER

The study is organized as follows:

Section four presents the research methodology used to conduct the legal analysis and includes a brief discussion on the limitations of the study.

Constitutional protection of women's rights as it exists under the military regime of Ghana and, in contrast, under the emerging democracy of The Gambia is examined in the succeeding section. The significance of constitutional law and judicial review in protecting human rights is also discussed.

This is followed by a description and analysis of the different systems of law and corresponding legal traditions as affecting the status of women. Included in this section is an overview of the received English law and the legal systems of both customary and Islamic law.

A review of statutory laws and salient features of customary laws are included in section seven. The focus of this section is to examine the impact of laws on women's access to and control of resources. This includes an investigation of the progress and constraints experienced by women under laws pertaining to marriage, credit, inheritance, land tenure, contracts and cooperatives.

The concluding section presents recommendations for guiding project planners in designing and implementing legal rights strategies that will enable women greater participation in horticultural export activities.

IV. RESEARCH METHODOLOGY OF LEGAL STUDY

The study was designed to assess the legal status of small-scale women farmers in Ghana and The Gambia as it pertains to the participation of women in horticultural export programs. To this end principal elements of laws and the rights granted to women under the statutes were surveyed.

Due to the many variations in customary laws of tribes throughout Ghana and The Gambia as well as continual changes in court interpretations of the laws, a case study approach was not selected for this paper. Although it is recognized that trends in case law provide an insight into women's current legal status, an analysis of this scope was unnecessary to meet the specific objectives of this study. Instead, only salient features of customary and Islamic laws, as appropriate to the analysis, were examined.

Continual discussions were held with Charles Mwalimu, a distinguished scholar in African law and senior legal specialist in the Near Eastern and African Law Division at the Library of Congress. His insights into human rights issues and African law in general proved invaluable. As a visiting scholar myself in the Near Eastern and African Law Division, I had access to all legal documents pertaining to Ghana and The Gambia.

Further information for the paper was gathered during visits to Ghana and The Gambia. Open-ended interviews were conducted with legal scholars, mainly with members of the faculty of law at the University of Ghana in Legon, and with experts and resource people in agricultural development. Discussions focused on issues affecting small-scale women farmers and entrepreneurs in horticultural export activities. On-site interviews were also conducted with small-scale women farmers with particular emphasis on their personal experiences in exercising their rights. The information obtained from these discussions was used to verify legal research and provide insight into the application of laws within each country.

The result by no means attains the dignity of exact measurement of women's overall legal status but supplies a rough tracing of legal impediments and enhancements to women's access to and control of resources for their greater participation in horticultural export activities. It is hoped, therefore, that this analysis will be sufficiently clear to set forth some of the main situations arising in the process of women's contributing to and participating in horticultural export schemes and to raise challenging questions regarding the implementation and sustainability of these programs.

V. CONSTITUTIONAL LAW

If fundamental rights of women are inadequately protected by the Constitution, or are encroached upon by unlimited power of government, then women have no recourse in the courts for challenging social injustices or the constitutionality of any law. Beginning with Ghana, the question of whether women's fundamental rights are protected becomes suspect under military rule.

1) Constitutional Aspects of the Military Take-Over in Ghana

- Military government invested with full legislative and executive powers of government

In 1981, a military coup overthrew the People's National Party Government after two years of civilian rule.[1] The ascent to power of the military government resulted in the suspension of the 1979 Constitution and establishment of the Provisional National Defence (sic) Council.[2] As stipulated by Proclamation, the Council is invested with full legislative and executive powers of government, sanctioning its right to enact any law that meets it political aims. A subsequent Proclamation, better known as Law 42, formally abrogated the 1979 Constitution and further enhanced the supremacy of the military regime.[3] Thus Law 42, along with the 1981 Proclamation, superseded the 1979 Constitution as the new foundation of government under military rule.

- Protection of women's rights depend on aims of military government

Under the provisions of Law 42, the protection of fundamental rights of individuals is contingent on the benevolence of the Council, inasmuch as the powers of Government shall be guided by such principles as "respect of fundamental human rights,"[4] as distinguished from enumerated provisions. Certain basic rights which may be termed "constitutional" such as the right to free speech and personal liberty are not expressly safeguarded. Neither does the Law establish the equality of citizens before the law without distinction, as in the case of gender. Protection of human rights is further jeopardized by the absence of a provision in Law 42 to declare null and void any law inconsistent with the provisions of fundamental rights. Therefore, the Council is all powerful to do anything by a simple Act in accordance with its "national aspirations,"[5] even if these aspirations are inconsistent with, and laws thereof deprive, the rights of citizens.

The interpretation and enforcement of laws still remain the function of the courts established by the displaced civilian administration. Thus in theory the courts are still the

guardians of constitutional and other legal rights of individuals. Yet while the present government continues there is no constitutional limitation of its powers, and no question of the validity of any law is to be entertained by any court in Ghana. Furthermore, as authorized by the Proclamation, Public Tribunals, independent of the regular courts, are created to try specified offenses, and whose decisions are not subject to appeal or the supervisory jurisdiction of the regular courts.[6] Thus individual rights have no meaning so long as infringements upon them are authorized by laws enacted by the Provisional National Defence Council.

2) Constitutional Guarantees of Equal Rights for Women in The Gambia

A nearly successful coup attempt in 1980 became the impetus for The Gambia to integrate security and military forces with Senegal and form the Senegambia Confederation. Since the establishment of the Confederation, The Gambia has remained autonomous and its Constitution of 1970 has continued to be the basis for government.[7]

o Constitutional law protects equal rights of women

Under its provisions the 1970 Constitution preserves the equal social standing of all citizens without distinctions of "race, place of origin, political opinion, colour (sic), creed or sex."[8] A separate provision defines "discriminatory" as "affording different treatment to different persons attributable wholly or mainly to their respective descriptions,"[9] and thereby establishes a basis for court decisions in rendering a law discriminatory. It is unclear, however, with the omission of "gender" in this provision if laws that discriminate against women can be declared unconstitutional, though the equal rights of women seem to be guaranteed under the aforementioned provision.

On the whole, women are provided a greater degree of security under The Gambia's Constitution than Ghana's 1981 Proclamation and Law 42. More specifically, The Gambia's Constitution limits the powers of government and establishes equality of men and women before the law as a fundamental right. In contrast, the Proclamations in Ghana have given the government unlimited power, whereupon the protection of fundamental rights must depend. In both countries, though, the principle of equality cannot be fully implemented without enactment of specific laws that eliminate gender-based discrimination.

- Judicial review important for protection of fundamental rights

Most importantly, constitutional law alone does not determine the protection of fundamental rights, but also depends on current judicial interpretation of laws. Otherwise, the principles of fundamental rights and due process become, as Charles Mwalimu puts it, "empty shells of constitutional dogma."[10] Mwalimu concludes that "it is not the principles of the Constitution which maintain and propel their significance, but their interpretation by the courts."[11] It is not the intention of this legal analysis to undertake a fully analytical exposition of the subject of judicial review, but merely to point out that the equal rights of women must not only be guaranteed by constitutional law but also be defended in the courts.

VI. LEGAL TRADITIONS AND SYSTEMS OF LAW IN GHANA AND THE GAMBIA: BARRIERS TO EQUALITY

- Coexistence of different systems of law makes the advancement of women through legal reform difficult

It would seem that legal impediments to equality could be eliminated by reforming laws which sanction discrimination. However, in Ghana and The Gambia, as in most Third World countries of Sub-Saharan Africa, the coexistence of several different systems of law makes the advancement of women through legal reform difficult. In these countries, the superimposition of British law, which is a result of colonial rule, on long established African judicial institutions and indigenous law, in addition to Islamic law in The Gambia, gives rise to conflicting problems.

- Conflicts of law hinder advancement of women

These problems which may be termed "internal conflicts of law" rarely arose in the past since the different communities and tribes lived, for the most part, separately and also because the different laws were applied by different courts.[12] Now, however, with the gradual integration of people, both on inter-tribal and inter-communal basis, perpetrated by such factors as urbanization and inter-marriage,[13] conflicts between different systems of law arise more frequently. As attempts are made to integrate more women into development, conflicts also occur between newly reformed statutory laws, which advance women's status, and customary laws, which in contrast, reinforce the traditional view of women's subordinate status with respect to men.

- Legal reform benefits women who are educated and live in cities more than those who are illiterate and live in rural areas

What then is perceived as promoting the advancement of women and facilitating social change through legal reform benefit mainly a small percentage of women who are educated and live in cities more than the majority of women who are usually illiterate and live in rural areas under customary and/or Islamic laws. Reforming laws alone, therefore, is not sufficient to eradicate inequality between the sexes as long as the changes in laws serve a minority of women.

- Legal inequities create conditions that perpetrate women's inequality and marginality

Even situations wherein customary or Islamic courts do not have jurisdiction over a legal issue, most women, particularly in rural areas, are unable to use statutory laws as a source of application. Although many reasons can be cited for the failure of the formal legal system to work for rural women, a major obstacle to the application of statutory laws for these women is their inability to overcome the adverse economic, social and psychological difficulties created by inequalities under customary and Islamic systems of law.[14] Along with these barriers is the governments' reluctance to enforce, or their difficulty in implementing, laws which conflict with traditional attitudes and practices. Thus, despite considerable progress in enacting laws to overcome gender-based discrimination, legal reform has not been successful in helping grassroots women overcome their marginality and inequalities experienced under other systems of law.

The co-existence of these different legal systems also make it difficult for women to understand the laws and to know how to exercise their legal rights. There is not a sense of ownership of the law among most women whose lives do not seem to be touched by the formal law, particularly since it has little, or nothing, to do with their rights pertaining to the family and tribal community.

- Overlapping legal systems camouflage women's legal status

The multiplicity and overlap of these judicial institutions often camouflage women's legal status as it truly exists. What is ascertained in one circumstance may be entirely different in another, depending upon what law - customary, statutory, received or religious - is applicable to an individual's case. And even then, as pointed out in the above discussion, it is deceptive to conclude that a law improves the status of women until all legal barriers are taken into consideration.

- Overview of systems of law and legal traditions: Understanding the basis for women's unequal status under the law

Beginning with the received English law, an examination of these different systems of law and related legal traditions, i.e., concepts of law,[15] will help in understanding the legal basis for sex discrimination and the complexity of women's legal status. This overview also provides insight into the causes and conditions of inequality as furthered by women's unequal status under the law.

A. RECEIVED LAW OF ENGLAND

- Application of English laws in The Gambia and Ghana

As a former British colony, Ghana and The Gambia received the English common law, the doctrines of equity and applicable English statutes. The received law coexists with other systems of law, such as customary law and Islamic law, as well as effects certain areas of African customary law, such as family law, land tenure, criminal law, and succession and inheritance. Since their independence, Ghana and The Gambia have enacted their own laws, but by far the received law, modifications notwithstanding, remains the primary source of legal application in the formal sector. On the other hand, customary law continues to be used by most Africans, so long as it is not repugnant to justice, in matters pertaining to the family.

In The Gambia, Section 2 of the Law of England (Application) Law of 1953, as amended,[16] requires the application of "the common law, the doctrines of equity, and the statutes of general application in force in England on 1st November, 1888," subject to modifications. Section 5 of this law mandates the courts of The Gambia apply the customary law that is "not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any law of the time being in force."[17] The Courts Act of 1964, as amended, reinforces the provisions of this law on the application of common law,[18] while the District Tribunals Act of 1933, as amended,[19] contains provisions for administering the customary law and the Mohammendan law.

In similar legal terms, Ghana's Courts Act of 1971, as amended,[20] contains the law in section 111 regarding the application of the common law and statutes of general application. Section 50 also stipulates rules for application of customary law in Ghanaian courts.

- Women's role defined in received law

Ghana and The Gambia received a Western view of woman's place in society through the imported English law. The received law upheld the propriety of a man to be head of his household. This bestowed upon him certain obligations, the maintenance of his wife and family being paramount. Legal emphasis was placed on the nuclear family and monogamous marriages, rather than on the extended family and polygamous marriages as was the case in African law. The wife was regarded as responsible agent for the rearing of children, with the husband providing for them both. Although this received law of marriage was at variance with indigenous customs, it, nevertheless, corresponded to the African view of a woman's position as a mainly domestic one and unequal to a man's place in matters pertaining to family and public affairs.

The wife's primary dependence on her husband in English society placed her in a subordinate position to the male. Through continual legal reform, however, she gradually received more liberal rights. Although not all her legal rights were equal to that of a man's, the Western devotion to the principle of achievement and equality of opportunity offset total subjugation. However, because Ghana and The Gambia received English laws before laws pertaining to women's rights were reformed, women were not treated as equally under law as men. In addition, unlike her English counterpart, the African woman was not as dependent on her husband for the support of her family. Her dependence was much more linked to her extended family than to her husband. Thus the received law had even less chance of being reformed in the interest of women's rights since there were different social and cultural circumstances to accommodate unlike those in England.

As the formal laws now exist in Ghana and The Gambia, some of these same legal elements remain. Statutes have been enacted by Ghana and The Gambia to supersede the received law in some, or all, aspects of family law, but in some statutes the provisions only refer to the appropriate received English law as a source of application.

- Lack of industrial class caused inequitable laws to linger on

The application of English law is significant in determining how laws enhance or impede the participation of women farmers in horticultural export enterprises, particularly as it relates to contracting with exporters. Since both Ghana and The Gambia both received the commercial laws of England, it would appear that women farmers and entrepreneurs could benefit from the protection of these laws. However, as Samuel K. B. Asante points out in his article on the national legal system of Ghana:

> Obsolete and inequitable laws which had been abolished in England lingered on in Ghana . . . . The failure to reform the English rules may well have been due to judicial or legislative inertia in Ghana, but it is equally explicable on the ground that reform was not considered necessary or critical because, to the vast majority of Ghanaians, the common law legacy was an esoteric irrelevance. It did not matter too much whether the Statute of Frauds was in force if the settled tradition of the bulk of Ghanaians was to engage in, and enforce, oral transactions anyway . . . . In short, there was no articulate commercial or industrial class calling for the introduction of sophisticated business practices as was the case in England.[21]

In some cases where the received law of England has been more aligned with modern business practices, Ghana and The Gambia have enacted new laws in response to traditional practices and attitudes of the people, such as in the case of oral transactions. As attempts are made to transform these countries' economies vis-a-vis privitization, modern business practices are necessary to promote the progress of the private sector and protect the legal rights of Ghanaians and Gambians in conducting business in a global society. This has implications for small-scale women farmers in their own transformation from selling their crops locally to exporting their produce to world markets.

In comparison with customary law and Islamic law, the received law is more liberal toward extending legal rights to women. However, under what conditions or to what extent the received law can enhance the participation of small-scale women farmers depends on the individual laws, as received or modified, and the economic, political and social factors which affect their application.

B. CUSTOMARY LAW

The customary legal system has jurisdiction primarily over laws pertaining to the family. Although legal scholars differ in their analysis of customary law in determining its origin,[22] certain aspects of customary laws can be agreed upon. First, customary law is predominantly oral rather than written. Secondly, whether the concept and legal form of customary law can be traced back to the customs and practices of the people or to specific historical circumstances, customary laws differ widely from one tribal community to another, though some would argue, mainly in detail rather than principle. Finally, customary law, as it existed during colonial rule, "embodied and masked an essentially political conclusion that it was subordinate to the colonial law of European origin."[23]

- Existence of various bodies of customary law make ascertainment of women's legal rights difficult

With the existence of multifarious tribal customs, customary laws vary not only from tribe to tribe and place to place but sometimes even from family to family. These various bodies of customary law, with many variations despite how minor, make ascertainment of the law and women's legal rights difficult. The ascertainment of women's rights under customary law is further complicated by the divergence between practiced customary law and judicial customary law.[24] Overall, however, customary law generally favors men over women, though its responsiveness to changes in new conditions and attitudes sometimes benefits both.

- In some cases customary law retains its communal nature thereby making it difficult for women to derive equal benefits

Irrespective of these variations, all customary laws have similar principles indicative of African customs. For example, African law as it existed in the past was essentially a law of groups and communities rather than of individuals, and unlike the Western conceptualization of law, it was committed to the idea of duty and one's relationships to others within the group.[25] As A. J. Sanders puts it, "process-wise and rule-wise, today's customary law may not always correspond to that of the pre-colonial past, but value-wise it has retained its communal/socialist nature, as distinguished from the individualistic/capitalist character of the superimposed European law."[26]

This is manifested, for example, in the use of lineage, as traced through each family line, to determine individual legal rights in matters pertaining to inheritance and succession of land. In Ghana and The Gambia, as in other African countries, the family is closely connected with modes of political organization, economic arrangements, and religious belief. Customary laws, therefore, assist in maintaining these economic, social, and religious structures and in reestablishing the individual's relationship with the family so that the family, and the tribe itself, may continue to function harmoniously. As a result of achieving this desired outcome, an individual, does not necessarily benefit as much as the family or tribe in general. Under this arrangement, therefore, it makes it especially difficult for a married woman, particuarly if she is from a tribe who does not regard her as a member of her husband's immediate or extended family, to acquire equal entitlements.

The term "family" does not lend itself to a simple and precise definition. The family may be defined so as to include all persons with a common ancestor. Under this connotation, the family may embrace a large body of persons related by blood to a common ancestor. The relationship may be traced through the lineage, such as through males, as in patrilineal societies, or

through females, as in matrilineal societies, though changes in kinship arrangements in Ghana have tended to benefit males more than women in the latter.

- Customary law prevails if not repugnant to justice

In Ghana and The Gambia, as in other former British colonial powers, England's policy of "indirect rule" exempted most Africans from the jurisdiction of the official legal system. As a result, customary law continued - as it still does - as the basic source of law for the majority of African societies in matters of personal law (marriage and the family) and property law (including land and succession). Thus customary law, rather than statutory law, is the source of application in most cases pertaining to the family so long as it is not repugnant to the principles of natural justice, equity and good conscience or inconsistent with any valid written enactment. The final decision is left to the discretion of the court.

- Inequalities in Customary Law Inherently Based on Political, Economic and Social Expediency

Family law itself refers to a body of legal principles governing the relationship between husband and wife, parent and child, and, in African law, also between family member and extended family, clan and/or tribe. This system of law strongly reinforces the social and economic obligations a person - whether female or male - has to one's own family and ethnic group. In view of this exposition as it pertains to the legal constraints toward women, it is not forfetched to advance a thesis that customary laws have been - and still are - influenced by social, economic, religious and political dimensions of African society, and that inherent within these various aspects of society is its unequal treatment of women. Customary law, therefore, both reflects and contributes to the continuation of these injusticies, although reinterpretation of laws - supported generally by social consensus - has helped to advance women's position from time to time.

Customary law must be seen within the context of its social milieu and against the backdrop of its historical origins to understand the continuation of women's inequality. Not to be overlooked is the impact of English colonial law, "an instrument of the power of an alien state and part of the process of coercion," and British policies on indigenous African customary law, resulting "in a new way of conceptualizing relationships" within African communities.[27] Although as Martin Chanock points out in his treatise Law, Custom and Social Order, "there was nothing essentially incompatible between the British conception of the male dominated monogamous family and the kind of morality African men were demanding."[28] As this example serves to illustrate, reinterpreting customary laws to eliminate

gender-based discrimination has not been - and still is not - adequate on its own to override inequality between men and women.[29] What is required for change to occur is a social, economic, religious and/or political impetus, such as existed in Ghana's economy during the rise in cocoa production during the first half of this century, to alter relationships and create new conditions and attitudes to which the law will respond. Law is afterall, as the Latin word means, "binding or bringing together" all aspects of society under one "roof", as inferred in the Somalie word "heer" for law, which originally meant, "the rope which fastened down the roof of the hut."[30]

o Flexibility of customary laws

Through the years there has been considerable discussion and debate among African legal scholars on whether customary laws should be codified. As scholars have learned more about Africa's indigenous laws, most now agree that "codification has its inherent dangers. . . . Codified customary law will certainly lose its essential characteristics of flexibility and adaptability. Traditional rules and attitudes change rapidly and codification of customary law in the twentieth century will be unrealistic and unworkable."[31] As exemplified in Ghana, when cocoa farming transformed family relations, especially in matrilineage and family structures, customary laws, particularly in regards to inheritance and succession of land, adjusted to resolve conflicting interests within the kinship system.[32] Although some of these changes did not benefit rural women, the responsiveness of customary laws to changes in new economic conditions allowed women, who were subsistence farmers with small agricultural plots, to become involved in cocoa production as a cash crop.

However, unlike the reform of statutory laws to advance women's rights, changes in customary laws are not necessarily beneficial to women. As Gwendolyn Mikell notes in her book Cocoa and Chaos in Ghana:

> Whereas traditional law clearly recognized matrilineal abusua property, and the obligation to transfer these to matrilineal relatives, some persons (primarily male) were now beginning to own private cocoa farms to which the economic claims of lineage members might be precluded. The problem of traditional courts . . . was whether to uphold the principle of abusua inheritance of cocoa farms in cases where spouses had participated in making farms owned by husbands. Here, the interests of wives and children on one hand, and lineage members of both male and female farm owners on the other hand, often came into conflict. . . . Thus while cocoa production permitted males to become more autonomous economic actors (as contrasted to females), it speeded up the jural fragmentation of rural communities and eroded the

traditional lineage base of local representation. These changes conspired against the economic interests of rural women . . . thereby making matrilineal families more vulnerable under contemporary economic conditions.[33]

In some instances women as well as men have reacted negatively to changes in customary laws which they perceive as undermining their social and economic structures. As more recently in Ghana, local reaction of communities in the north to the sale of their tribal land to "strangers" (i.e., outsiders), who live and work in the south, for rice production has created internal dissent and a backlash to private ownership of property outside of one's tribal area.[34] Local chiefs, who have jurisdiction over the tribal land, have used the official law of upholding rights to private ownership to profit from the sales. As a result, though, small-scale women and men farmers in the north have lost their indigenous rights to inherit or use land that is now owned by "strangers."

- Integration of customary laws with received law can deprive women of their equal rights

Kenya and Nigeria are among the leading African nations which have attempted to enact laws to integrate customary laws with the received law. Although Ghana and The Gambia have not undertaken the same effort, the governments have tried to ameliorate differences between some of the statutory and customary laws by enacting new provisions that would integrate the two. The results, however, have not always been in the best interest of women. In Kenya, for example, members of the Commission on the Law of Succession, in pointing out defects in customary laws, acknowledged that although women are deprived of equal rights in succession of property, they were not willing to recommend reforming the law to rectify this situation. They justified their decision on the grounds that "it would be futile to recommend a law which is apt to be hated, ignored or even not understood by any large percentage of the population."[35]

C. ISLAMIC LAW

The presumption that a woman is unequal to man is most apparent when we turn to Islamic law. The legal rights of women are governed by religious principles found in the Koran or the Sunna, the dogma of the Muslim religion, and thus in accordance with Islamic tradition, the law cannot be created to fit the circumstance; it can only be interpreted from its religious sources.[36] Thus women's status cannot be altered in accordance with cultural changes, for the place of women and their role in society must comply with Islamic law.

Women's position in society is ascribed to them at birth, and therefore, reasoning cannot change what has been ordered by

God. Regardless of personal aspirations, women belong in a domestic setting where they may engage in their primary function -- to safeguard the peace and piety of the home and develop the moral character of their children. For women to strive for a higher status or a change in the traditions would disrupt the stability of society.[37]

o Predominance of Islamic Law in The Gambia

The influence of Islamic law is ostensible in The Gambia since the vast majority of the population profess to be Muslim. The Muslims have their own courts to apply Islamic law, and like customary law has jurisdiction over matters pertaining to the family, except for rights to land, which is under the jurisdiction of the local chief.

Women must abide by Islamic law if they have a Muslim marriage, which most do. On the other hand, many women organize their lives according to the usages of custom. Thus it depends on the local area and circumstance what law prevails, customary or Muslim. Despite what law prevails, the result is the same: Muslim women, particularly in the rural areas, are apt to be excluded from social reform through changes in statutory laws.

VII. LAWS AFFECTING WOMEN'S ACCESS TO AND CONTROL OF RESOURCES

The continued viability and expansion of women's horticultural export enterprises beyond the initial stages of development will depend greatly on the degree to which access to and control of resources will be available to small-scale women farmers/entrepreneurs. This includes all forms of monetized and non-monetized sectors, including their access to land, services, credit and markets.

Under present conditions women's subordinate legal status is a significant barrier to women's economic participation. The unequal treatment of women is most apparent in civil law, as for example, in marriage, property rights, inheritance and succession of land. Despite the appearance of equality between men and women in some civil laws, legal reform has done little to benefit rights of rural women since customary laws, which sanction women's unequal status, often taken precedence over enacted statutes. It is these inequities and internal conflicts of law that create adverse conditions for women to receive equal entitlements to financial and agricultural assistance and participate fully in the development process.

A. ACCESS TO CREDIT

- Women lack title deed to land as form of collateral - a major barrier to credit

Although the economic basis of Ghana and The Gambia is almost wholly agrarian with women contributing the most in agricultural productivity, commercial banking practices do little to accommodate small-scale women farmers/ entrepreneurs. Commercial bank practices are more accommodating to modern business practices and Western concepts of land entitlements than the African traditions of communal land and usufructuary rights. Therefore, a major obstacle for women is in providing a bank with a surety for a loan, such as, a title deed to land, of which rural women have little or no opportunity to acquire. Because they often cannot meet this and other collateral requirements instituted by banks, little formal credit is given to women farmers.[38]

- Women farmers acquire credit through institutional assistance

Development assistance through governmental and non-governmental institutions provide a variety of means to assist women farmers acquire credit, in cash or in-kind, but the lack of credit still remains problematic for small-scale women farmers. In Ghana, for example, a new banking law has introduced reforms in the banking sector. A new banking guideline restricts the percentage of a bank's net worth which may be provided to any given client or client-group, whether secured or unsecured. As a result of a new credit ceiling, institutions are limited in the amount of capital they can provide to banks as guarantee for loans to small-scale women farmers.[39]

- Moneylenders provide small amount of capital at high interest rates for women farmers

Women farmers and rural entrepreneurs often turn to the informal sector, such as relatives or moneylenders, to acquire a loan often at high interest rates, but the amount of these loans are so small that the investment is insufficient to make substantial increase in women's income. Moneylender laws in Ghana and The Gambia permit this common practice,[40] and although it is inadequate to provide financial assistance for the growth and sustainability of a commercial enterprise, such as a horticultural export scheme, it is an option for women farmers who have no other means for credit.

B. EFFECTS OF MARRIAGE ON WOMEN'S RIGHTS TO LAND, INHERITANCE AND INCOME

o System of marriage determines legal jurisdiction over property rights of women

Ghana and The Gambia have two systems of marriage. A woman has a choice in contracting either a monogamous marriage as specified by the received law or statutory law,[41] or a polygamous marriage according to customary law or Islamic law.[42] Since the majority of women in The Gambia are Muslim, most women marry under Islamic law.[43] Whereas in Ghana, many women marry under customary law, though Christian marriages, which are governed by statutory law, are not uncommon. Once the choice of marriage has been made, the legal system that validates the marriage also assumes jurisdiction over all, or most laws relating to the family.

o Women control own property and income in marriage

When a woman marries, she and her spouse are considered separate economic entities. As upheld by both customary and statutory laws, a married woman retains control of her property, real or personal, and her income as a feme sole.[44] She is also responsible for her debts.[45] Under Islamic law in The Gambia a female's control over her property is less than complete, for she may not validly dispose gratuitously of more than one-third of her property without consent of her husband.

C. WOMEN'S RIGHTS TO LAND

o No laws restricting women from owning property

There are no statutory provisions in Ghana and The Gambia restricting women from owning land. However, inequities in customary laws regarding women's property and inheritance rights invariably limit opportunities for women to acquire land through private ownership.

With the increased emphasis on private ownership, the heads of family or ancestral land, who are mainly male, are seeking title deeds to the land which they oversee, and more rural land is being sold to individuals, especially in Ghana, but mostly to men.[46] Even when women farmers purchase or obtain a title deed to land through inheritance or as a gift from a husband, their farms are usually smaller, and as a result, less profitable, than men's. The cocoa farms acquired by women between the 1920s and 1940s offers an interesting illustration of this, since a large percentage of these farms consisted of small plots of land, in contrast to larger male-owned farms. Income from female-owned farms, therefore, was quite small, due to the limited acreage.[47]

It would seem that a title deed to land would provide security of tenure for the owner. However, as shown by a recent case in Ghana over the reclaiming of ancestral land from private owners, who at one time used the land for cocoa production, there are no guarantees to the security of tenure. Although legal scholars in Ghana predict that the court will uphold the rights of the owners, it is uncertain how much weight this decision will carry in light of political and economic ramifications. If the land is not being used for cultivation, and therefore, is being left idle, there is a chance that the government or chief could by-pass the decision of the court by persuading the owners to allow local farmers access to the land or simply returning the "ancestral" land to the local people who wish to make the land productive again.

- Diversity in land tenure arrangements provides a number of ways for rural women to acquire land for farming purposes

Laws in Ghana and The Gambia support a diverse set of land tenure arrangements.[48] This diversity gives small-scale women farmers various alternatives for acquiring land for farming purposes.

Leasing land is one form of land tenure which is sometimes used by small-scale women farmers. Under this system of tenureship the landlord may receive a portion of the crops or a percentage of the income from the sale of the crops in return for land use. There are varying forms of these tenurial arrangements depending on the locality.

It is important to note that women who contribute their labor to cultivating crops on the irrigated scheme in the Greater Accra region of Ghana have no claim to the income derived from the marketing of the produce since the men, not the women, are leasing the land. Married women have an obligation to their husbands to help with the raising of crops, and in some cases husbands give their wives a small plot of land or assist with household expenses in return for their labor. A woman who receives land as a gift from her husband has the opportunity to acquire title deed to this land.

- Local chiefs have the legal authority to allocate rural land to women farmers for agricultural purposes

In Ghana rural land is regulated according to customary laws, which means that the local chief is empowered to allocate uncultivated land that is not privately owned.[49] For example, women farmers in the Upper Volta region are collectively growing vegetables on allocated plots of land.

Under the Lands (Provinces) Act of 1966[50] all land in the

Provinces in The Gambia, which are outside urban Banjul and Kombo Saint Mary, is regulated according to customary laws. Under the Lands (Bathhurst and Kombo Saint Mary) Act of 1965,[51] the Minister of Lands may grant leases of land for agricultural purposes. It is uncertain whether the women's gardens are being leased under this tenurial system or allocated by a chief, since dispute has not been settled over how much land is held under customary title outside of Banjul.

- Uncertainty regarding land tenure rights is an impediment to long-term sustainability of women's horticultural export schemes

There are no laws adequately protecting women farmers from a landlord breaking, or refusing to renew, a lease or from a local chief deciding to sell the land which they have been allocated. Oral agreements which are practiced among the indigenous people are not easily enforceable legally, and therefore, do not provide legal protection for women farmers or outgrowers who engage in horticultural export activities.

There are innumerable circumstances which can cause women producers to lose claim to land and curtail or end their participation in horticultural export activities. The uncertainty of land tenure rights, coupled with changes in market and production conditions, can affect the success and long-term sustainability of a women's horticultural export scheme.

Lack of motivation on the part of women farmers to improve land that does not provide them with guaranteed long-term land use is one of many outcomes resulting from uncertainty in land tenurial arrangements. For example, as revealed in interviews with women farmers in Ghana who were growing cash crops on leased land, it was apparent that they lacked incentives to improve the land even if it meant greater productivity. Some of the women pointed out that they did not want to put a well on the land because the owner would be more inclined not to renew the lease if he could get more income from his land as a reuslt of the improvements. Others said that they did not want to invest in land that did not belong to them. Although they had a lease, they felt uncertain about how long they could stay.

D. INHERITANCE RIGHTS

- Access of women to land and property under inheritance rights

A woman's rights to inherit property from the estate of her deceased husband are minimal in The Gambia and Ghana. If a man dies intestate among the patrilineal communities in Ghana, his children are the beneficiary of his property. Among the

matrilineal communities, the deceased man's family through the lineage of his mother are his heirs. The sons and/or brothers of the deceased man are usually the beneficiaries of his land.

- Women in customary marriages entitled to more benefits under provisions of new inheritance laws of Ghana

Because a widow is not a member of her husband's family, she has limited inheritance rights under both customary and statutory laws. To rectify the unequal treatment of women, Ghana recently revised and broadened legislation pertaining to women's inheritance rights. Under the Intestate Succession Law, 1985,[52] better known as Law 111, the surviving spouse and children are "entitled absolutely to the household chattels of the intestate."[53] After the selection of houses, the residue is divided among his surviving children, parents and widow, of which she receives one-sixteenth. If there is no surviving children or parent, the widow receives one-half of the residue.[54]

Women who are married under customary law can claim their inheritance rights under Law 111, but only if they have complied with the Customary Marriage and Divorce (Registration) Law, 1985,[55] better known as Law 112. Law 112 requires registration of all customary marriages within three months of contracting the marriage. It is not clear, however, if Muslim marriages are to be assimilated within customary marriage under Law 112 for registration purposes.

At present, the majority of people who are married under customary law have not registered their marriages. Some legal scholars cite lack of understanding of the law and lack of time and transportation as reasons for the failure of rural people to comply with the new statute.[56] Therefore, in spite of these legal reforms, it has not been sufficient to override customary laws that favor a deceased man's brothers, sons or extended family over the rights of his widow. As a result, the majority of women have been excluded from deriving benefits under the provisions of Law 111.

- Courts enabled to make provision out of estate of spouse for maintenance of widow and children

Under the revised Wills Act, 1971,[57] a man can no longer dispose of all his property without leaving anything to his widow. Section 13 (1) of this legislation enables the court to make provision out of the estate of a spouse (testator) for his widow and other persons, including his parents and children. Although there are limits on what a widow may be provided out of the estate, the court is obliged under the conditions of the statute to consider the hardship of the widow and her children that will be caused by such neglect of the testator. Section 8 of the Wills Act, 1971, states that "any person of or above the

age of eighteen years may in writing and in accordance with this Act make a will." Thus women can dispose of their own personal property as they wish.

Among the tribes of Ghana, notably the Akan and Ga, an oral declaration (samansiw or shamansho) regarding the devolution of property of the declarant is a recognized form of testation. In general, though, a woman cannot be named as beneficiary of more than half of the deceased spouse's property, and among the matrilineal communities the surviving widow, who is not recognized as a member of the deceased husband's family, can inherit only a portion of his property as a nonmember.

o Husband is beneficiary of his widow's property

Legal scholars who were interviewed in The Gambia could not agree if a woman can leave a will. Though there is some indication that women who are widowed can stipulate that they want to leave their property to their daughters, married women are restricted. They must leave their property, personal or business, to their husband. In speaking with many women about this matter, they all agreed that women who are in a polygamous marriage are less inclined to work hard in building a business since they know it will be inherited by their husband, not their children, and the other wives will receive the benefits of their labor. According to legal sources, the Wills Act is currently being revised, but it is uncertain if, or to what extent, changes will be made to eliminate sex discrimination.[58]

o Unequal entitlement contributes to women's marginality

The curtailment of women's inheritance rights makes it even more difficult - and often impossible - for women to gain control of property. Unequal entitlement to property is another factor perpetrating women's impoverishment and peripheral position in development. Without property women continue to be at a disadvantage in meeting security requirements for commercial loans.

E. RIGHTS PERTAINING TO CONTRACTUAL AGREEMENTS

1) Contractual Capacity of Women

o Women may enter into a binding contract

There are no statutory provisions in either Ghana or The Gambia which restrict the contractual rights of women. In general, any person may enter into a binding contract. There are exceptions to the rule, of which certain classes of persons are rendered deficient in understanding or whose contractual

capacity is limited.

- o Capacity of illiterate persons to contract protected by law

Since the majority of women in both Ghana and The Gambia are illiterate, there is a great possibility that due to their illiteracy women farmers can be taken advantage of by a more experienced person and deprived of their capacity to contract. To ensure their contractual capacity, laws in these countries have been enacted to protect the rights of illiterate persons.[59] As Ghana's Illiterates' Protection Ordinance states:

> Every person writing a letter or other document for or at the request of an illiterate person, whether gratuitously or for a reward, shall
>
> (1) clearly and correctly read over and explain such letter or document or cause the same to be read over and explained to the illiterate person
>
> (2) cause the illiterate person to write his signature or make his mark at the foot of the letter or other document . . .[60]

2) Form of Contract

- o Contract may be written or oral according to Sale of Goods Act

A contract may be written or oral unless it is required by law to be in a particular form. Both Ghana and The Gambia have a Sale of Goods Act[61] which stipulates that a contract of sale may be made in writing or by word of mouth or partly in both.[62]

- o Women growers enter into oral agreements with exporter in The Gambia

Recent contractual transactions between women's gardens and Citroproducts, one of the largest commercial farms in The Gambia, have all been oral. According to sources interviewed in The Gambia, conditions of the contract are negotiated not with the women outgrowers themselves but with donors, who sponsor the different gardens and act as agents for the women, such as the European Economic Community (EEC) and The Gambia Cooperative Union (GCU).[63] It is unclear if, or to what extent, women growers are consulted in negotiating the amount of the price for the sale of their crops and other terms of the contract. Citroproducts pays the donor directly for the sale of the produce, and then the donor distributes the income proportionately to the women after deducting cost of inputs,

which women growers have acquired on credit in-kind, and other expenses accrued by the gardens. Citroproducts also deducts cost of inputs to gardens from the final sale.

- Women's illiteracy perceived as need for oral, rather than written, contract - a violation of women's constitutional rights

According to some official of donor organizations and Citroproducts, an oral contract is preferred with women outgrowers since most of the women are illiterate. It is erroneously perceived, however, that the women's deficiency in understanding and mental ability renders them incapable of entering into a written contract. Depriving women of their full capacity to contract, based on their illiteracy, is a violation of their fundamental rights. The rights of equal treatment, which is a basic constitutional principle, disallows the unequal treatment of a class of people based on an arbitrary distinction. Regardless of the worthiness of the objective, an oral contract deprives women of the equal protection of the laws.

- Oral agreements are not in consonant with modern commercial practices

An oral contract also may not be in the best interest of the women farmers since it is not consonant with modern business practices. Oral contracts have played an important role in Ghana and The Gambia, and as the Sale of Goods laws indicate, indigenous contracts, which are typically oral, are legally recognized as binding agreements between people. However, in African countries like Nigeria, which is also a recipient of English Common Law and the doctrines of equity, "the rapid economic and social development of the country have tended to relegate indigenous contracts to the background in favour (sic) of modern contractual concepts on which modern commercial relations are based."[64]

Since small-scale women farmers in Ghana are not contracting with a company to export their crops, the issue of contracting is not problematic at this time.[65]

- As contract farming in other African countries indicates, most exporters and many small-scale farmers do not wish to enter into written agreements

As Steven Jaffee points out in his report on contract farming in Kenya, despite attempts to encourage exporters and small-scale farmers to sign a written agreement stating terms of exchange as a means of improving production-marketing coordination, "neither most exporters nor many farmers wish to enter into enforceable contracts."[66] Both parties are threatened

by being "locked in" to future transactions.

Persuading exporters to enter into a binding written contract with small-scale farmers becomes difficult when there is evidence that farmers are not always reliable in abiding by terms of exchange even in oral agreements.[67] As in The Gambia, exporters complain that women farmers are sometimes unreliable in meeting their contractual agreements. Citroproducts, for example, cited incidents of women outgrowers missing crucial production deadlines because of their participating in village activities.[68]

Small-scale farmers also voice concerns about exporters locking them into a future transaction that would not be to their financial advantage.[69] As Jaffee concludes:

> If exporters were told that they must commit themselves in writing to purchasing specified quantities of produce, then they would simply specify quantities well below their actual requirements and then obtain the balance "unofficially" from noncontracted farmers. A contract-farming system cannot be imposed by government in circumstances where there is a surplus of (uncontrolled) production and where there is a multiplicity of buyers.[70]

To what extent these problems exist in The Gambia and how they can be resolved remain to be seen. However, as long as exporters deny women outgrowers the right to enter into a written contract due to their inability to read or write, the constitutional rights of women are being violated.

D. RIGHT TO FORM COOPERATIVES

There are no legal restrictions in Ghana or The Gambia prohibiting the formation of cooperatives. In The Gambia women growers whose gardens are located on the periphery of Banjul are often organized into cooperatives. At the village level, women often belong to kafoos, a social group which is being utilized by the Catholic Relief Society to grow, process and market sesame seeds.[71] The kafoo uses the income from the sale of the sesame seeds for communal needs. Although women use profits for the village, only the men who manage the processing plant and perform other managerial duties are paid a regular income.

Women leaders, who were interviewed in Ghana, adamantly defend the right of women to control the finances of their cooperatives. They point out that when women are not allowed, or do not take the initiative, to manage the finances of their cooperatives, they run a substantial risk in losing their enterprise to men, especially if the business becomes lucrative. They quickly add that they believe men should not be ostracized from participating in a women's cooperative, but it is critical that women control it.[72] There are no legal provisions

protecting women from men seizing control of their cooperatives and businesses so long as it is not done violently.

Although cooperatives are legal in Ghana, the word "association" rather than "cooperative" seems to be more palatable to farmers and entrepreneurs. The reason seems to be the result of action taken by the present military government in seizing profits of cooperatives that, according to government sources, were mismanaged. Given the government's past intervention and its self-empowerment to act according to its own aims, the future of cooperatives is unpredictable. However, some people would argue that as long as the cooperatives are well managed, there is little or no risk of another government seizure.

VIII. RECOMMENDATIONS TO ENHANCE WOMEN'S PARTICIPATION IN HORTICULTURAL EXPORT ACTIVITIES

The following are recommendations for guiding project planners in designing and implementing legal rights strategies that will enable women greater participation in horticultural export activities.

Some of these recommendations are already incorporated into resolutions which were developed by a group of African lawyers and legal scholars who attended a conference on "Networking for Empowerment in Africa" held in Harare, Zimbabwe, of this year, 1990.[73]

The five areas which are covered by the recommendations are:

1) Fostering Rights Awareness and Action:

Informing women of the laws and teaching them how to use the legal system will enable more women to understand, exercise, promote and protect their legal rights. As a means for achieving this objective for small-scale women farmers involved in horticultural export enterprises, legal literacy needs to be included in the curriculum of adult education and training programs.

2) Encouraging Legal Reform:

Although legal reform does not presently benefit all women, it is hoped that in the future more women will be able to use statutory laws as their source of application.

3) Protecting Women's Fundamental Rights:

In supporting American businesses which are entering into contracts with small-scale women farmers or through commercial farms in Ghana and The Gambia to export their horticulture to foreign markets, attention should be given to assuring that these businesses will not become involved in the exploitation of women farmers, resulting in the violation of their fundamental rights. An investigation should be made regarding evidence of the pre-emption of women's rights to achieve private-sector objectives, and action immediately taken to remove government support from any business which continues to engage in such activity.

4) Enhancing Women's Access to and Control of Resources:

Small-scale women farmers will not fully contribute to or benefit from development until they are given equal entitlements, including rights to land, inheritance, credit, services and markets.

5) Anticipating Barriers to Successful Implementation

Uncertainty regarding land tenure rights; the lack of contract assurance between women growers and exporters; limited access to credit; women's lack of knowledge of their rights; lack of constitutional protection of fundamental rights; and, the continuation of the causes and conditions of inequality between men and women as a result of legal inequities under religious and customary laws are some of the major obstacles that must be addressed in planning and developing long-term sustainable horticultural export programs for rural women in Ghana and The Gambia.

The recommendations are listed under each category, as follows:

A. FOSTERING RIGHTS AWARENESS AND ACTION

- Provide women access to basic education and information about statutory laws and legal reforms, such as the registration of marriage and divorce in Ghana.
- Encourage women farmers and entrepreneurs involved in horticultural export activities to identify and discuss their own problems and then work together to find legal and other solutions to the problems.
- Identify local leadership among women growers and community structures, such as kafoos in The Gambia, to assist in initiating and carrying out legal education efforts.
- Develop a legal literacy curriculum that is built upon a clear assessment of women's legal problems taking into account cultural, political, social and economic factors, which may contribute to these problems. Root causes of legal problems must be considered and incorporated into any legal education program.
- It is not enough to simply provide legal information, but rather, legal literacy efforts must strengthen women's ability to exercise their rights.

B. ENCOURAGING LEGAL REFORM

- Encourage governments to continue legal reform to enhance women's equal rights.
- Utilize agricultural extension programs as channels for disseminating information about the need for legal reform and the enactment of new provisions affecting women's rights in the family and in business.

C. PROTECTING WOMEN'S HUMAN RIGHTS

- Illiteracy as a justification for exporters in The Gambia to enter into oral, rather than written, contracts with women growers is a violation of their fundamental rights under constitutional law.

- Encourage exporters to use written, rather than oral, contracts with small-scale women farmers. Study means by which this can be accomplished over a reasonable period of time.

- Pressure governments to enact specific laws to implement fully the principle of equality. Also challenge national policies that contribute to the subordination and economic deprivation of women.

D. ENHANCING WOMEN'S ACCESS TO AND CONTROL OF RESOURCES

- Support removal of barriers to women's access to and control of economic resources. Practices which are discriminatory toward women concerning access to credit must be eradicated.

- Encourage review and reform of land tenure laws that will benefit women.

- Caution against supporting male-leased agricultural schemes which use the labor of women, including wives, children, and sisters, without financial compensation. Support reform of laws that would allow women who work the land to profit from it and have control over their earnings.

- Support the establishment of alternative credit schemes such as women's banks, cooperatives and economic associations.

E. ANTICIPATING BARRIERS TO SUCCESSFUL IMPLEMENTATION

- USAID planners and practitioners should be informed of the implications of laws and women's legal status before planning horticultural export programs for women in Ghana and The Gambia.

- Impact of laws on achieving private-sector and gender-oriented goals in development should be included in the overall planning process in each USAID mission.

- USAID planners should be kept informed of legal reforms and trends in case law in each country affecting the rights of women.

- Agribusinesses should be briefed about contract-farming practices and contract laws in each country. Efforts should be made to assist women farmers and agribusinesses in using written agreements.

- Dialogue between USAID, non-governmental organizations and USAID businesses on gender-based issues in Africa must be increased to foster cooperation and understanding and to promulgate the principle of equity in private-sector development.

ENDNOTES

1. *See generally* THE STATEMAN'S YEAR-BOOK: STATISTICAL AND HISTORICAL ANNUAL OF THE STATES OF THE WORLD FOR THE YEAR 1989-1990, at 563 (J. Paxton 126th ed. 1989); GHANA: A COUNTRY STUDY (I. Kaplan ed. 1979).

2. *See* the Provisional National Defence Council (Establishment Proclamation, 1981, 1 LAWS OF THE PROVISIONAL NATIONAL DEFENCE COUNCIL 5 (1981) [*hereinafter* P.N.D.C. Laws].

3. *See* Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) Law, 1982, 3 P.N.D.C. LAWS 42 § 66(2) (1982) [*hereinafter* Law 42], abrogating 1979 Ghana Constitution. Law 42, read with (Establishment) Proclamation, 1981; P.N.D.C. (Supplementary and Consequential Provisions) (Amendment), 1983; P.N.D.C. (Amendment) 145, 1986, constitutes the legal basis for the exercise of powers of government under the military regime.

4. *Id.* Law 42 § 1(1)(b).

5. *See id.* § 61:
All laws in existence before the coming into force of the Proclamation (on December 31, 1981), especially where they are derived from foreign sources, shall only be in operation to the extent that they are compatible with national aspirations.

6. The Public Tribunals, first established by Law 24, 2 P.N.D.C. LAWS 26 (1982), pursuant to § 10 of the 1981 Proclamation, were retained as a parallel system of the courts whose decisions were not subject to appeal or the supervisory jurisdiction of the regular courts.

7. *See generally* THE STATEMAN'S YEAR-BOOK, *supra*. note 1, at 523.

8. THE GAMBIA CONSTITUTION, 1970, art. 13.

9. *Id.* art. 25(3).

10. Mwalimu, The Influence of Constitutions on the Development of a Nation's Law and Legal System: The Case of Zambia and Nigeria, ST. LOUIS U. PUB. L. REV. 157, 162 (1989).

11. *Id.*

12. McClain, *Recent Changes in African Local Courts and Customary Laws,* 10 HOW. L. J. 187 (1964), writes: "The internal conflicts of law may arise between indigenous law and the received law, between one body of customary law and another, or between customary law and a personal religious law such as Islamic law."

13. *See* R. LAUER, PERSPECTIVES ON SOCIAL CHANGE, (1977).

14. On the results of inequality in a society, Spitz, *A Grammar of Equality*, 21 DISSENT 63, 68 (1974), writes: "What is fatal to any justification of inequality . . . is the fact that inequalities are cumulative and self-reinforcing. Inequality, in wealth, for example, leads to inequalities in education, housing, medical care, . . . and most important, to inequalities of power".

15. *See* M'Baye, *The African Conception of Law,* in 2 INT'L ENCY. COMP. L. 138 (1975) who maintains: "Each human group has its own inherent philosophy. This philosophy changes and develops, but, apart from accidental changes caused by socio-political crises, such modifications take place so slowly as to appear negligible. And if it is true, as is the prevailing opinion, that the philosophy of law, and consequently the law itself, are but a part of philosophy of law in general, then it is easy to understand that every population necessarily has its own system of law".

16. 5 THE LAWS OF THE GAMBIA ch. 104 § 2 at 2860 (rev. ed. 1967).

17. *Id.* § 5 at 2861.

18. 2 *id.* ch. 36 at 935 (1967).

19. 3. *id.* ch. 52 at 1823 (1967). *See also* the Mohammedan Law Recognition Act of 1905, as amended, in 6 LAWS OF THE GAMBIA ch. 124 at 3417 (1967).

20. 9 ACTS OF GHANA (1971). *See also* the index to STATUTES IN FORCE (1985).

21. Asante, Over a Hundred Years of a National Legal System in Ghana, 31 J. AFR. L. 73, 71-72 (1987).

22. On recent analyses of "customary law" and the different schools of thought on its historical origin, *see* Snyder, *Colonialism and Legal Reform: The Creation of "Customary Law" in Senegal*, J. LEGAL PLURALISM 49 (1981).

23. *Id.* at 76.

24. Kludze, *A Century of Changes in the Law of Succession*, in ESSAYS IN GHANIAN LAW 233, at 264 (W. Daniels & G. Woodman eds. 1976).

25. *See* M'Baye, *supra* note 15, at 138-153; Cotran, *African Law*, in 2 INT'L. ENCY. COMP. L. at 157-268 (1975).

26. Sanders, *Towards a People's Philosophy of Law*, 31 AFR. L. 37, 41 (1987).

27. M. CHANOCK, LAW, CUSTOM AND SOCIAL ORDER: THE COLONIAL EXPERIENCE IN MALAWI AND ZAMBIA, (1985), quoted in A Bibliographic Essay of Selected Secondary Sources on the Common Law and Customary Law of English-Speaking Sub-Saharan Africa, 80 L. LIBR. J. 241, 257 n. 50 (1988).

28. *Id.* at 268 n. 92.

29. *See generally* Mwalimu, *A Bibliographic Essay of Selected Secondary Sources on the Common Law and Customary Law of English-Speaking Sub-Saharan Africa,"* 80 L. LIBR. J. 241 (1988). *Also see* Allott, *The People as Law-Makers: Custom, Practice, and Public Opinion as Sources of Law in Africa and England*, 21 J. AFR. L. 1 (1977) cited in *id.* at 267-68 n. 90:

"Allott observes that although the procedural mechanisms of law differ in Africa and England, due to the inherent differences between England's industrialized society and most African societies' substinence economies, the function of law making is the same."

30. Sanders, *Towards a People's Philosophy of Law!*, 31 J. AFR. L. 37, 39 (1988).

31. Akanki, *Proof of Customary Law in Nigerian Courts*, 4 NIGERIAN L. J. 21, 35 (1970). On the earliest recording of customary law, *see* Read, Tony Allott: *A Colleague's Tribute*, 31 J. AFR. L. 3 (1988).

32. *See* G. MIKELL, COCOA AND CHAOS IN GHANA 107-139 (1989).

33. *See id.* at 108.

34. On serious tensions and conflicts about land and land allocation in Ghana, *see* Konings, *Capitalists Rice Farming and Land Allocation in Northern Ghana*, 22 J. LEGAL PLURALISM 89 (1984).

35. REPORT OF THE COMMISSION ON THE LAW OF SUCCESSION, at 12-13, paper presented to the Conference on Intergration of Customary and Modern Legal Systems in Africa, in Ibadan, Nigeria (Aug., 1964).

36. There are various schools of Muslim judicial science, but due to the limitation of this legal study, no comparison of the judicial schools as they affect women's legal status is given in this paper. *See* Afchar, *The Muslim Conception of Law*, in 2 INT'L. ENCY. COMP. L. at 84-105 (1975).

37. *See* Hinchcliffe, *The Status of Women in Islamic Law*, app. at 455 in CONFLICT AND HARMONY IN AFRICAN EDUCATION (G. Brown & M. Hiskett 1975), for further discussion on this subject.

38. *See* Plange, *Analyses of Rural Credit Policies in Ghana: Case Study Seko Odumase Area*, FED. INST. OF AGR'L. ECO. (Austria,

1989); Lycette, *Improving Women's Access to Credit in the Third World: Policy and Project Recommendations,* USAID (1984).

39. Interview with Esther Ocloo, Director of the Ghanaian Professional and Business Women's Association and a founder of the Women's World Bank, in Legon, Ghana (March 7, 1990), confirms effects of new banking law on securing loans for women's groups in Ghana.

40. *See* the Moneylenders Act of 1955, in 6 THE LAWS OF THE GAMBIA ch. 126, at 3439 (1966) rev. ed.). *See also* the Money Lenders Ordinance in THE LAWS OF THE GOLD COAST.

41. *See* the Marriage Ordinance of 1884, in LAWS OF THE GOLD COAST ch. 129 (1951 rev. ed.). *Also see* the *Civil Marriage Act of 1938*, in 1 LAWS OF THE GAMBIA ch. 27, at 463 (1966 rev. ed.).

42. *See* the Marriage of Mohammedans Ordinance, in LAWS OF THE GOLD COAST ch. 129 (1951 rev. ed.).

43. *See* the Mohammedan Marriage and Divorce Act of 1941, in 6 LAWS OF THE GAMBIA ch. 125, at 3425 (1966 rev. ed.).

44. *See* the Married Women's Property Act of 1885, as amended, in 5 LAWS OF THE GAMBIA ch. 115, § 2 at 3116, §§ 6-7 at 3117 (1966). *See also* the Married Women's Property Ordinance of 1890, in 2 LAWS OF THE GOLD COAST ch. 109, §§ 2-3 at 1427 (1936).

45. *See id.* THE LAWS OF THE GAMBIA § 11 at 3118-19, § 12 at 3119. *See also id.* LAWS OF THE GOLD COAST § 4 at 1427.

46. On gender and social composition of rice farmers in Ghana, *see* Konings, *supra* note 34, at 100.

47. *See* MIKKELL, *supra* note 32, at 103-105.

48. *See* Riddell, *Country Profiles of Land Tenure: Africa 1986*, 1986 USAID at vii-xii, 60-70. *See generally* Bloch, Phillips, Riddell, Stenning & Park, *Land Tenure Issues in River Basin Development in Sub-Saharan Africa,* USAID (1986); Green, *Evaluating the Impact of Consolidation of Holdings, Individualization of Tenure, and Registration of Title: Lessons from Kenya*, USAID (1987); J. HABERSON, *Land Tenure Conversion in Africa: Bringing Reformation to Reform,* in A COLLOQUIUM ON ISSUES IN AFRICAN LAND TENURE 29 (1982). C. OBBO, *The Effects of Land Tenure Change Upon Women in East African Smallholder Agriculture*, *id.* at 59.

49. On the allocation of land, T.O. ELIAS, GHANA AND SIERRA LEONE: THE DEVELOPMENT OF THEIR LAWS AND CONSTITUTIONS, at 153 (1962) writes: "The land of a community is held by the stool the occupant of which makes and is presumed to have made the original grants or allotments or portions of it to the constituent local families. The family heads in their turn allot parcels of the

family land among their own members. But not all the land belonging to the community is parcelled out in this way among the local families. There is usually a large residue of land after all the possible allotments, and this is held by the chiefs of stool land of which fresh may be made as the numbers increase. Until such further allocations, however, the surplus land is held by the local chief as stool land. The theory is that there is no land without an owner. . . . The chiefs are only caretakers or trustees of stool land on behalf of the people."

50. 5 THE LAWS OF THE GAMBIA ch. 103, § 2 at 2843 (rev. ed. 1967). This section states: "Every Head Chief, Sub-Chief and headman acting with the consent of the Authority, shall, unless the Minister appoints some other person for that purpose, have the care and supervision of all lands within the district, sub-district, town or village under his charge."

51. 5 THE LAWS OF THE GAMBIA, ch. 102, at 2797 (1967 rev. ed.).

52. P.N.D.C. LAWS OF GHANA (1985) [*hereinafter* Law 111].

53. *Id.* § 3.

54. *Id.* §§ 5-6.

55. P.N.D.C. LAWS OF GHANA (1985) [*hereinafter* Law 112].

56. *See* Dankwa, *Property Rights of Widows in Their Deceased Husbands' Estates,* 16 U. GHANA L.J. 1 (1982-85).

57. 8 ACTS OF GHANA Act 360 (1971).

58. Interviews with Ida Drameh, attorney, in Banjul, The Gambia (March 13, 1990); Clare Ruffin, Legal Officer, Women's Bureau, The President's Office, in Banjul, The Gambia (March 15, 1990).

59. *See* the Illiterates Protection Act, in 4 THE LAWS OF THE GAMBIA ch. 93, at 2525 (1902). *See also* the Illiterates' Protection Ordinance, in 2 LAWS OF THE GOLD COAST ch. 212, at 2324 (1937).

60. *Id.* LAWS OF THE GOLD COAST § 4(1)(2) AT 2324-325.

61. *See*, the Sale of Goods Act, in 7 THE LAWS OF THE GAMBIA, ch. 170 at 4388 (1966). *See also* the Sale of Goods Act, 1962, in 3 ACTS OF GHANA Act 137 (1962).

62. *Id.* THE LAWS OF THE GAMBIA § 5 at 4393; *id.* ACT OF GHANA § 3.

63. Interviews with Momodou Ceesay, General Manager, Citroproducts Limited, in Bakau, The Gambia (March 16, 1990); Richard Vits and Rose Clarkson, members of European Economic Community, in Banjul, The Gambia (March 15, 1990).

64. J. OROJO, NIGERIAN COMMERCIAL LAW AND PRACTICE, at 6 (1983).

65. On contract farming schemes in Sub-Saharan Africa involving women smallholders/outgrowers and the impact of household politices on contract farming productivity and labor process, *see* Jarosz, *The Traffic in Women: Buying and Selling Labor Power in African Contract Farming*, USAID (1987). Jarosz's findings indicate that women smallholders/outgrowers generally resist contract enforcement by using different strategies of individual and collective resistence, among these being refusal to sign contracts with exporters.

66. Jaffee, *Case Studies of Contract Farming in the Horticultural Sector of Kenya*, USAID 110 (1987).

67. *See generally id. See also* Carney, *Contract Farming in Irrigated Rice Production: Jahaly Pacharr Project, The Gambia*, USAID (1987); Daddieh, *Contract Farming in the Oil Palm Industry: A Comparative Study of The Cote D'Ivoire and Ghana*, USAID (1987).

68. Ceesay, *supra* note 63.

69. *Id.*

70. Jaffee, *supra*. note 66.

71. Interview with Glen Knapp, Agricultural Advisor, Catholic Relief Service, in Bakau, The Gambia (March 20, 1990).

72. Interview with Kate Abbam, Executive Director, International Association for the Advancement of Women in Africa (ASAWA), in Accra, *Ghana* (March 8, 1990). On the establishment of the ASAWA fish smoking project, *see* 2 IDEAL WOMAN (1987-88). Interview also with Esther Ocloo, *see supra*. note 39.

73. Interview with Akua Kuenyehia, Faculty of Law, University of Ghana, in Legon, Ghana (March 9, 1990).

BIBLIOGRAPHY

Books

Allott, A. N. Judicial and Legal Systems in Africa. London, 1970.

Afchar, Hassan. "The Muslim Conception of Law." Vol. II, Chap. 1 in International Encyclopedia of Comparative Law. Edited by J.C.B. Mohr, 84-105. Paris: Siebeck-Tubigen, 1975.

Bleek, Wolf. "Marriage in Kwahu, Ghana." In Law and the Family in Africa, edited by Simon Roberts. The Hague: The African Studies Center, 1977.

Brown, Godfrey N. and M. Hiskett, eds. Conflict and Harmony in African Education. London: George Allen Ltd., 1975.

Chanock, M. Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia. 1985.

Cotran, Eugene. "African Law." Vol. II, Chap. 2 in International Encyclopedia of Comparative Law. Edited by J.C.B. Mohr, 157-168. Paris: Siebeck-Tubigen, 1975.

de Soto, Hernando. The Other Path: The Invisible Revolution in The Third World. New York: Harper & Row, 1989.

Kaplan, I., et. al., eds. Area Handbook for Ghana. Washington, D.C.: U.S. Government Printing Office (1971).

Kludze, A.K.P. "A Century of Changes in the Law of Succession." In Essays in Ghanian Law (Supreme Court Centenary Publication 1876-1076), edited by W.C. Ekow Daniels and G.R. Woodman. Legon, Ghana: The Faculty of Law, University of Ghana, 1976.

Lauer, Robert H. Prospective on Social Change. Boston: Allyn & Bacon, Inc., 1977.

Lerner, Gerda. The Creation of Patriarchy. New York: Oxford University Press, 1986.

M'Baye, Keba. "The African Conception of Law." Vol. II in International Encyclopedia of Comparative Law. Edited by J.C.B. Mohr, 138-156. Paris: Siebeck-Tubigen, 1975.

Mikell, Gwendolyn. Cocoa and Chaos in Ghana. New York: Paragon House, 1989.

Paxton, John, ed. The Stateman's Year-Book: Statistical and Historical Annual of the States of the World for the Year 1989-1990. New York: St. Martin's Press, 1989.

Orojo, J. Olakunle. Nigerian Commerical Law and Practice. Vol. I. London: Sweet & Maxwell, 1983.

Articles

Allott, A. N. " The People as Law-Makers: Custom, Practice, and Public Opinion as Sources of Law in Africa and England," Journal of African Law 21 (1977):

Akanki, E. O. "Proof of Customary Law in Nigerian Courts." Nigerian Law Journal 4 (1970): 20-36.

Asante, Samuel K.B. "Over a Hundred Years of a National Legal System in Ghana." Journal of African Law 31, nos. 1 and 2 (1987): 70-92.

Daniels, W.C. Ekow. "Recent Reforms in Ghana's Family Law." Journal of African Law 31, nos. 1 and 2 (1987): 93-106.

Dankwa, E.V.O. "Property Rights of Widows in Their Deceased Husbands' Estate." University of Ghana Law Journal 16 (1982-85): 1-24.

Konings, Piet. "Capitalist Rice Farming and Land Allocation in Northern Ghana." Journal of Legal Pluralism, no. 22 (1984): 89-119.

Mwalimu, Charles. "A Bibliographic Essay of Selected Secondary Sources on the Common Law and Customary Law of English-Speaking Sub-Saharan Africa. Law Library Journal 80, no. 2 (1988): 241-289.

Mwalimu, Charles. "The Influence of Constitutions on the Development of a Nation's Law and Legal System: The Case of Zambia and Nigeria." St. Louis University Public Law Review 8, no. 1 (1989): 157-188.

McClain, William T. "Recent Changes in African Local Courts and Customary Law." Howard Law Journal 10 (Fall 1964): 187-226.

Read, James S. "Tony Allott: A Colleague's Tribute." Journal of African Law 31, nos. 1 & 2 (1988): 3-14.

Sanders, A.J.G.M. "Towards a People's Philosophy of Law." Journal of African Law 31, nos. 1 and 2 (1987): 37-43.

Snyder, Francis G. "Colonialism and Legal Form: The Creation of Customary Law in Senegal." Journal of Legal Pluralism, no. 19 (1981): 49-77.

Spitz, David. "A Grammar of Equality." Dissent 21 (1974): 63-78.

van Nieuwaal, E.A.B. van Rouveroy. "Chiefs and African States." Journal of Legal Pluralism 25 & 26 (1987): 1-46.

Public Documents

Carney, Judith. Contract Farming in Irrigated Rice Production: Jahaly Pacharr Project, The Gambia. Report prepared for the African Bureau, U.S. Agency for International Development, 1987.

Daddieh, Cyril. Contract Farming in the Oil Palm Industry: A Comparative Study of the Cote D'Ivoire and Ghana. Report prepared for the African Bureau, U.S. Agency for International Development, 1987.

Horton, John S. Characteristics of the Horticultural Export Enterprises Utilizing Contract Farming Schemes in Senegal. Report prepared for the African Bureau, U.S. Agency for International Development, 1987.

Jaffee, Steven. Case Studies of Contract Farming in the Horticultural Sector of Kenya. Report prepared for the African Bureau, U.S. Agency for International Development, 1987.

Jarosz, Lucy. The Traffic in Women: Buying and Selling Labor Power in African Contract Farming. Report prepared for the African Bureau, U.S. Agency for International Development, 1987.

Lycette, Margaret A. Improving Women's Access to Credit in the Third World: Policy and Project Recommendations. Report prepared for the U. S. Agency for International Development, 1984.

Plange, Emanuel. Analysis of Rural Credit Policies in Ghana: Case Study Seko Odumase Area. Report prepared for the Federal Institute of Agricultural Economics, Vienna, Austria, 1989.

Reiling, Peter A. The Involvement of Small Scale Farmers in the Ghanaian Pineapple Export Market. Report prepared for The World Bank, Washington, D.C., 1989.

Riddell, James et al. Country Profiles of Land Tenure: Africa 1986. Report prepared by Land Tenure Center, Madison, Wisconsin, for the U.S. Agency for International Development, April, 1986.

Technoserve, Inc. An Overview of the Formal and Non-Formal Financial Sector of Ghana. Report prepared for the U. S. Agency for International Development, Ghana Mission, 1989.

Unpublished Material

Faal, Mariatou. "Gambia Women's Finance Company's Institutional Approach to Help Women Entrepreneur Access to Productive Resources." Paper presented at the WACACT Workshop on "Financing Small Scale Farmers and Rural Artisans in the Sub-Region and The Gambia in Particular, Banjul, The Gambia, October, 1989.

Faal, Mariatou. "Women in Agricultural Development." Paper presented at the National Women's Week Conference, Banjul, The Gambia, April, 1985.

Interviews with Author

In Ghana

Abbam, Kate. Executive Director, International Association for the Advancement of Women in Africa, Accra, Ghana, 8 March 1990.

Ashitey, Elmasoeur. Women Farmers Extension Division, Ministry of Agriculture, Accra, Ghana, 5 March 1990.

Gyimah, Daniel. Private Sector Advisor, U.S. Agency for International Development, Ghana Mission, 5 March 1990.

Kuenyehia, Akua. Faculty of Law, University of Ghana, Legon, Ghana, 9 March 1990.

Laryea, Joanna Y. Women in Development Officer, U.S. Agency for International Development, Ghana Mission, 8 March 1990.

Nutakor, Wisdom. Assistant Project Development Officer, U.S. Agency for International Development, Ghana Mission, 5 March 1990.

Ocloo, Esther. Director, Ghanian Professional and Business Women's Association, Legon, Ghana, 7 March 1990.

Ofusu-Amaah, G.K.A. Faculty of Law, University of Ghana, Legon, Ghana, 7 March 1990.

Ollennu, T. K. Executive Secretary, Ghana Association of Private Voluntary Organizations in Development, Accra, Ghana, 7 March 1990.

Tengey, Wilbert. Executive Director, The African Centre for Human Development, Accra, Ghana, 7 March 1990.

Vordzorgbe, Seth. Economic Officer, U.S. Agency for International Development, Ghana Mission, 9 March 1990.

Zakaria, Gertrude. Secretary, National Council for Women and Development, Accra, Ghana, 7 March 1990.

In The Gambia

Ceesay, Momodou A. General Manager, Citroproducts Limited, Bakau, The Gambia, 16 March 1990.

Clarkson, Rose. European Economic Community, Banjul, The Gambia, 15 March 1990.

Cooper, William. World Bank Representative, Banjul, The Gambia, 14 March 1990.

Drameh, Ida. Attorney, Banjul, The Gambia, 13 March 1990.

Drga, Don. Agricultural Officer, U.S. Agency for International Development, The Gambia Mission, 13 March 1990.

Faal, Mariatou. Director, The Gambia Women's Finance Co., Banjul, The Gambia, 14 March 1990.

Jallon, Omar. Project Officer for Gambia Agricultural Research and Diversification Project, U.S. Agency for International Development, The Gambia Mission, 13 March 1990.

Jense, Barbara. Women in Development Officer, U.S. Agency for International Development, The Gambia Mission, 15 March 1990.

Knapp, Glen. Agricultural Advisor, Catholic Relief Service, The Gambia, 20 March 1990.

Riley, Peter. Project Analyst, U.S. Agency for International Development, The Gambia Mission, 14 March 1990.

Ruffin, Clare. Legal Officer, Women's Bureau, The President's Office, Banjul, The Gambia, 15 March 1990.

Stone, J. M. U.S. Agency for International Development, The Gambia Mission, 15 March 1990.

Vits, Richard. European Economic Community, Banjul, The Gambia, 15 March 1990.