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LESOTHO: TRAINING OF PARALEGALS IN THE LERIBE DISTRICT

WOMEN'S LEGAL RIGHTS INITIATIVE UNDER THE WOMEN IN
DEVELOPMENT IQC

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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PART A

1.0 INTRODUCTION

Federation of Women Lawyers (FIDA) is a non-governmental, non-profit making organization that was established in 1988 by a group of Basotho women lawyers who were concerned about the legal situation of women in Lesotho. They felt it necessary to carry out legal awareness programs that would inform the society about the country's legal system, human rights, especially the rights of women and children, and the problem of discriminatory laws.

The main objective of the organization, therefore, was and still is to improve the legal status of women and children and to lobby for law reform to abolish discriminatory laws, most of which came as a result of the legal dualism.

1.1.1 The Country's Legal System

Lesotho practices a dual legal system, namely, Customary Law and Common Law (**received law which is Roman-Dutch Law**). More often than not there is a conflict between these systems and the conflicts affect women and children more often than men. The effects of the conflicting systems can be clearly seen in cases of marriage, property ownership, and inheritance. Under both systems a woman is a legal minor and as a result cannot own property or enter into any binding contract without the consent of her husband or the head of the family, who is always a male person, if her husband is deceased. (**However this situation has recently been reversed by enactment of The Legal Capacity of Married Persons (LCMP) Act of 2006, which came into force only in December, 2006.**)

Notwithstanding the enactment of LCMP, there are still a number of laws that discriminate against women that need to be addressed. Protection and promotion of children's rights and welfare are also not adequately addressed which means that FIDA still has a lot of work to do in these respects.

1.1.2 How FIDA Discharges this Task

For many years FIDA has been carrying out legal education and awareness on its own. With time, people started to demand more services in terms of legal advice, legal representation in courts of law, and information provision. FIDA had to find strategies for providing these services without compromising its professionalism. It then started to provide paralegal trainings to people who already work in communities and assisting community leaders with legal basics. The paralegals make referrals and guide people to where they can get assistance when needed.

This training activity has high costs and FIDA could not afford it without the assistance of its national and international partners. USAID is one such partner and FIDA feels indebted to it for the great assistance it has always extended in the form of financial support. This report tends to account for the assistance extended during this period.

1.2 Identification Of Trainees

The training was held in Leribe district which is the second largest in the country. Leribe is situated at the north of the country and it is about 140 kilometres from the main city which is Maseru.

FIDA had to visit the district to make selection of the suitable trainees. Local institutions assisted in identifying the best qualified people for the paralegal training. The local institutions called on to help with participant selection included chiefs, government ministries, community based organisations (CBOs), civil society organisations (CSOs), and non-governmental organisations.

FIDA requested that each of the above-mentioned institutions select two members of a significant status and level of education who command a degree of authority in their communities. Most importantly, potential candidates had to be passionate about women and children's issues. Another criterion was that all candidates had to be active members in community development efforts and permanent residents in their communities.

1.3 Meeting with the Authorities

On the 12th and 20th December, 2006 the Programmes Coordinator and a FIDA Paralegal in the Leribe district met the District Administrator and Local Government District Secretary to formally brief them about FIDA's intention to implement paralegal training and resuscitate paralegals activities in the district. The exercise involved discussion of the role of the paralegal in the activities of Local government structures as well as in the roles that the community leaders such as chiefs have to play.

1.4 Selection of Trainees

The 1st selection exercise was carried out on the 14th December 2006. The attendance was unsatisfactory because of rainy weather condition. Only 10 people participated out of 30 nominees. This dictated that a second selection session be held. The second selection exercise was held on the 23rd December 2006 whereby 25 candidates were screened and 20 were selected for the program.

1.5 Final Participant List for Leribe

NAME	SEX	PLACE	OCCUPATION	REASONS FOR SELECTION
Puseletso Lebitsa	F	Ha Mosiuoa	Support Group & Caterer	Has capacity to reach most people with advice and other assistance
Molise Molise	M	Mahobong	Youth Association and Theatre Group member	Will be useful in reading out to other young men and women.
Katiso Molati	M	Qoqolosing	Youth Leader	Will be able to influence change in young people in regard to women's issues.
Mamakhooba Pholoana	F	Phahameng	Volunteer	Able to grasp issues and disseminate information to colleagues
Mamanuel Sepiriti	F	Qoqolosing	Teacher	She has leadership skills, will incorporate legal issues.
Mahapiloe Sephaphathi	F	Hlotse	Lesotho Mounted Police	Dealing with cases of Abuse of Women and Children
Maseamoha Theko	F	Butha-Buthe	Lesotho Mounted Police/Chief's wife	Dealing with cases of Abuse of Women and Children. Can play a role when issues concerning women in the chieftainship arise.
Mathato Tokeng	F	Tsikoane	Burial Society	Useful in programs aimed at alleviating hardships suffered by HIV/AIDS orphans
Phothane Leketa	M	Mahobong	Volunteer	Able to grasp issues and disseminate information to colleagues
Mapeete Makhabane	F	Ha Mosiuoa	Farmer	Able to grasp issues and disseminate information to colleagues.
Retselisitsoe Mofubelu	M	Lisemeng	Paralegal	Refresher training
Hurry Ntsekhe	M	Tsikoane	Blue Cross	Already advising on the usage of drugs, and alcohol abuse. Has capacity to reach most people with advice and other assistance
Nkoebe Mohapi	M	Ha Sekota		
Maliaho Mabitle	M	Likhutlo	Support Group and Itjareng Women's Association	Already into community service, empowerment will enhance and broaden capacity

NAME	SEX	PLACE	OCCUPATION	REASONS FOR SELECTION
Pusetso Lekhutla	M	Lentsoaneng	Youth Leader & a member of Youth Association	Empowering young male persons in issues aimed at protecting women is a strategy for dialogue with male counterparts who are pivotal to bringing about change.
Mahajane Tsepane	F	Matube	Volunteer	Able to grasp issues and disseminate information to colleagues
Tlhabeli Lebitsa	M	Ha Luti	Volunteer	Able to grasp issues and disseminate information to colleagues
'Malivi Levi	F	Lejoe Motho	Chief	Already active in community service as peace builder
Makhalane One	F	Thaba-Putsoa	Support Group	Already into community service, empowerment will enhance and broaden capacity

1.6 Findings upon Selection

As stated above, the selection process was successfully completed. Notwithstanding that the process was the initial stage; some problems were already emerging as the following were observed:

- Chiefs are not aware of legal statutes that govern family relations like marriage, inheritance and will writing.
- Councillors had no clue whatsoever of what their job entails. Separation of powers between councillors and local chief need to be clarified.
- Culture: Parents cannot encourage their children to use condoms for fear of being labelled as corrupt parents.

This assisted FIDA to map out additional areas to be addressed by the training. The full report for the trainings is given in the chapters to follow. These are referred to as sessions.

1.7 Printing of Paralegal T-Shirts

FIDA printed 20 t-shirts to raise awareness of the existence of paralegals in the communities. The t-shirts will be distributed to the committees of the paralegals in the districts of Berea, Mafeteng, Mohale's Hoek and Leribe.

Not every paralegal will get a t-shirt because they are limited.

1.8 Simplified and Translated Laws for participants

Through the support of Global Fund Lesotho and USAID, FIDA engaged 8 lawyers for the simplification and translation of new Laws and Bills into Sesotho and English version brochures. These laws were distributed as part of the training reference and learning materials for paralegals in the Leribe district to broaden their knowledge on laws that are affecting their communities.

These brochures have not only been helpful to paralegals but also to the community at large as well. To mention but few, the copies were distributed to the Local Government Councillor in the eight (8) districts, Lesotho Network for People Living with HIV/AIDS, Ministry of Education, National University of Lesotho Library, UNICEF (which in turn printed more copies), village chiefs, and individuals in the districts.

PART B

2.0 Training

This is a community based empowerment programme targeted at different sections of the community. The participants included youth group leaders, farmers, support groups, chiefs, police, Child and Gender Protection Unit, local government councillors, and village health workers.

Sixty (60) paralegals were trained in the three districts namely Berea, Mafeteng and Mohale's district. Recently, seventeen paralegals were trained in the Leribe district.

The Leribe training was divided into four sessions, each having four or more topics related to the introduction of FIDA, communication, Lesotho's legal system, and selected laws.

The programme endeavours to equip the participants with knowledge of rudiments of the law to enable them to appreciate and deal with day to day problems encountered in the course of community life.

It is important to mention from the on set that FIDA with the support of the USAID Women's Legal Rights Initiative produced a training manual that lawyers/facilitators use when conducting this training. This enables the trainers to keep the same standard and content of the course wherever the paralegal training is offered. Because of the training manual, FIDA paralegals throughout the country are compatible and competitive.

FIRST SESSION

2.1 ESTABLISHMENT OF FIDA

As indicated earlier, this report is about the training that was held in Leribe. The training is divided into four (4) sessions. The first session commenced on the 30th – 31st December 2006 to 20th – 21st January 2007. Seventeen (17) participants attended: ten (10) women and seven (7) men. This balance in gender allowed cross pollination of ideas. The participants were a mixture of young and old allowing a mixture of fresh ideas and experience.

The participants included youth group leaders, farmers, support groups, village chiefs, and members of the Lesotho Mounted Police under Child and Gender Protection Unit. *Here-below is the picture of the said participants.*



The workshop began with an introduction about FIDA, its origin, objectives, and achievements to date. Trainers explained that FIDA –Lesotho is a Local Chapter of an international organisation which was first established in Lesotho in 1988. The motivation that led to the Lesotho chapter was the obvious need to reconcile the discrepancies that exist in the laws with respect to issues relating to women and children.

To date, FIDA boast a very impressive track record in influencing the enactment of laws such as The Legal Capacity of Married Persons Act N0.60 of 2006, Sexual Offences Act N0.3 of 2003;

Pensions Act of 1992; Land (Amendment) Act of 1992; as well as the ratification of International conventions that protect the rights of women, for instance, The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to mention but few.

It is vital to state that FIDA trainings are very intensive because many important topics are covered in this training in a short period of time.

2.1 Paralegals and their Role in the Community

a) What is a paralegal?

Definition of a paralegal was given as follows:

“A paralegal is a community based person trained in practical legal advice giving, administration of community based organisations and projects, mediation, and community education skills”.

b) Roles of Paralegals

Roles of paralegals were said to be:

- Give legal advice to the people at the community level;
- Provide guidance to people who need to know where they can obtain certain services in regard to legal issues;
- Serve as the link between FIDA and its clients;
- Represent FIDA in the district if it is invited to a certain activity, if such attendance does not compromise the professionalism of the organisation.
- Advise FIDA on the areas of law that seem to be of concern to the people in their communities;
- Remain accountable leaders for the communities that they are working in; etc.

2.2 Communication Skills

Communication is most vital when working with people. Paralegals need to have good communication skills for them to be able to provide the much needed legal advice to their communities. The person disseminating the information should understand his/her target group and should further try to source out ways of making sure that the audience is interested and understands what he/she says. The communicator is to be presentable and conversant on the topic he/she is discussing.

2.3 The Legal System of Lesotho

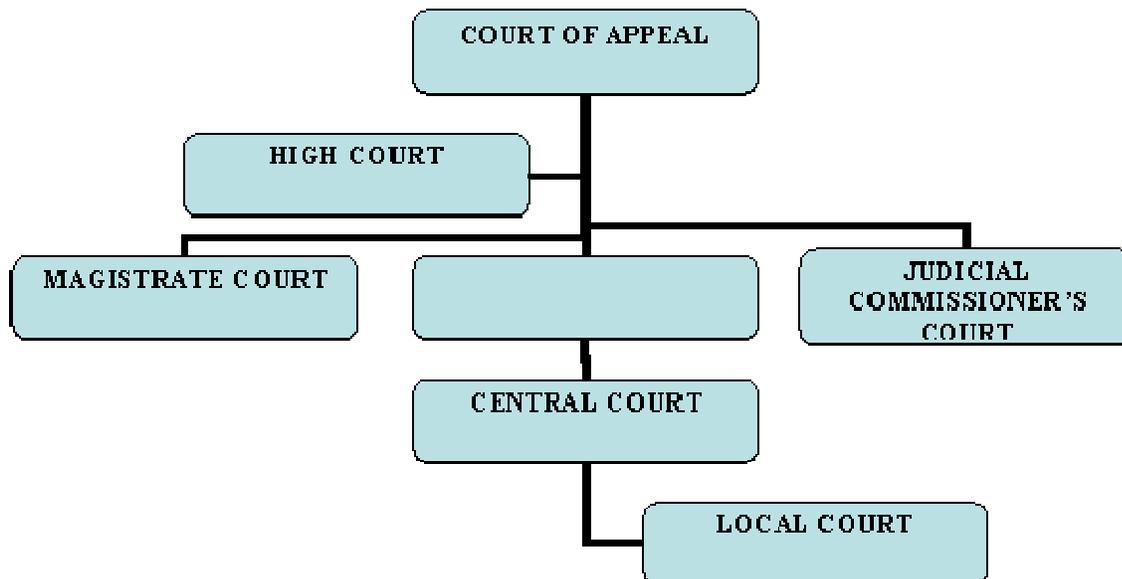
Paralegals need to be familiar with the legal system of Lesotho so they know which system applies when handling cases because Lesotho has the dual legal system.

2.4 Court Structure

In the training, the paralegals were informed of the courts structure so that they are clear about our dual court jurisdiction when handling cases and advising people in their respective communities. By making proper referrals, paralegals can easily reduce the number of cases that are normally dismissed for being instituted in the wrong forums/courts. The knowledge gained will help them to give correct advice.

The following is the structure:

COURT STRUCTURE



SECOND SESSION

3.0 MARRIAGE AND INHERITANCE LAW

The second session was tailored around marriage and inheritance laws. These two laws were twinned because there is a great interrelation between the two. One cannot be discussed adequately without reference to the other.

This session took place on the 05th – 07th January 2007. The topics for this session were Marriage law and Law of inheritance.

3.1 Marriage Law

The resource person started by asking participants whether they feel the need to know about Marriage Law, and if so, why.

They all answered in the affirmative and gave the following reasons for why they feel it is important for them to know about the Marriage Law:

- To be able to solve their problems as married people;
- To be able to know their marital rights;
- To be able to advise other people as they are paralegals;
- To be able to identify where law needs to be modified; etc.

Following these responses, participants were then introduced to Marriage law under the following topics:

3.1.1 Formation of Marriage

Participants were introduced into how marriage is formed, be it a civil or customary law marriage. Differences between the two types of marriage were discussed as well as the conflicts that exist between the two. Problems that are caused by mixing these two systems of marriage were also identified and discussed.

3.1.2 Who can marry?

It was explained that under Civil Law a person who is entitled to marry is the one with no legal impediments whatsoever, while under Customary Law a man can marry as many wives as he likes as long as he marries all of them under Customary Law. It was pointed out that most people have a tendency to marrying under Civil Law while still married to other wives under Customary Law. They do this with the understanding that both marriages can subsist side by side, which is not the case. Anybody married under Customary Law is a married person and cannot marry by civil rites.

3.1.3 Types of Marriages

Participants were made aware that there are two systems of marriage in Lesotho, namely, Customary Law system and Civil Law system.

Customary Law has only one type of marriage while Civil Law has two types of marriage, namely, marriage in Community of Property and Marriage out of Community of Property.

3.1.4 Marriage in Community of property

This is where the parties to marriage own everything in community. This means that the husband owns 50% of the Joint Estate and the wife owns the other 50%. Until recently, under the Common Law the husband was the sole administrator of the joint estate. However, with the enactment of the Legal Capacity of Married Persons Act No.60 of 2006, the situation has changed. The spouses have to agree on whatever is done with the joint estate. Failure to get consent of the other party may end with the acquisition of the equivalent property so used without consent during the dissolution of marriage.

3.1.5 Marriage out of Community of Property

This type of marriage is preceded by an ante nuptial contract. The contract is entered into before a lawyer and is submitted to the marriage officer before the parties take an oath.

Ante nuptial contract may also be used to exclude the marital power of the husband over his wife. This does not remove his responsibilities as the head of the family.

3.1.6 Dissolution of Marriage

Participants were also informed that marriage can be dissolved and that there are different grounds for dissolution of Civil marriage and Customary marriage.

Under Civil Law, marriage can be dissolved on the grounds of adultery and desertion, which can be actual or constructive.

Under Customary Law a woman cannot be divorced unless it has been proved that she is a witch. However, the courts of law have recently recognised irretrievable breakdown of marriage as a ground for divorce.

Death of one spouse is another way marriage can dissolve.

3.1.7 Consequences of Divorce

It was pointed out that consequences of dissolution of Marriage are as follows:

- Division of property (joint estate)
- Freedom to marry
- Duty to maintain the children remains with both parents

3.1.8 Maintenance under Customary Law

During the subsistence of the marriage the wife and children are entitled to maintenance by the husband as head of the family. This also includes the terms of a matrimonial home.

At divorce, since the wife will have left the matrimonial home, she would no longer be able to claim maintenance for herself. Maintenance will be provided by the wife's father or the wife's brother if he is left as head of the family. Where she was awarded the children they will also be maintained by her maiden family.

Three groups were formed to discuss and analyze the problem statements given here below:

Statement 1

Teboho and Pulane were attending school at Hlotse High School. On her return from the winter vacation, Pulane was already engaged by Thabang and nine heads of cattle were already paid.

When the schools closed for the Christmas, Teboho and Pulane got married and registered their marriage at the District Administrator.

Thabang and his parents sought to bring back Pulane who they claimed as their daughter in law. They heard that you are a Paralegal, and they have come to you for advice.

What can be your advice and on what basis?

Statement 2

Lineo and Thabo entered into the contract of marriage at Leribe Roman Catholic Church in January 2000. Until 2007, Lineo could not bore a child for Thabo so he wants to marry Mary but he says he still loves Lineo so Mary will be his second wife.

Thabo comes to you as a Paralegal for legal advice on this issue. Advise her.

All the groups appeared to understand the issues arising from the problem statements and were able to analyze them properly. *Here below are the pictures of the groups at work.*

Group 1



Group 2



3.2 Inheritance Law

3.2.1 Introduction:

Participants were requested to give their expectations from the training concerning the Law of inheritance.

Having stated their expectations, participants were asked to give their own understanding of inheritance since it is not a new phenomenon. They were further asked to share their experiences or the experiences of people they know regarding inheritance.

3.2.2 Inheritance

Inheritance was looked into under the two systems of laws applicable in Lesotho, namely; Sesotho Customary and Common Law.

3.2.3 Customary Law

Under Customary Law the heirship is provided for in the Laws of Lerotholi, Basotho practices, and customs.

Under Customary Law the heir is defined as first male child of the first married wife. Where there is no male issue in the first family, the first male issue of the second wife. In cases of polygamy, each family shall have its own heir, but the first male issue of the first married heir shall be the overall heir/principal heir.

3.2.4 Responsibilities of the heir

- To collect and distribute the property of the deceased in accordance with custom
- Bury the deceased
- Step into the shoes of the deceased

3.2.5 Customary Law

Under Customary Law the heir shall inherit both the status and property of the deceased. Certain items of the deceased shall be distributed according to the Basotho customs and practices.

3.2.6 Common Law

Under Common Law, the heirship is provided for under a number of legislations. These include the Law of Inheritance Act No. 26 of 1873, Intestate Succession Proclamation No. 2 of 1953, Administration of Estate Proclamation No. 1953, Land Amendment Act of 1992, and Deeds Registry Act of 1967.

Under Common Law anybody can be the heir/legatee.

3.2.7 Types of succession

1. Intestate Succession
2. Testate Succession

3.2.8 Intestate Succession

This is succession where the deceased died without having left any instructions regarding the distribution of his property.

3.2.9 Common Law

Under Common Law it shall be looked into two ways where the couples were married in community of property and married out of community of property.

3.2.10 In Community of Property

The surviving spouse shall be entitled to his or her half share of the joint estate, the remaining half shall be shared equally between her and the children. This means that she will also get the child's share.

3.2.11 Out of Community

She will be entitled to her property. She will also inherit the children's share if it does not exceed M1, 200. Where there are no children, she shall be the sole heir.

3.3 Testate Succession

This is succession where the deceased left a will or written instructions regarding the distribution of his property.

3.3.1 Customary Law

Under Customary Law the deceased leaves behind written instructions. The deceased through written instructions can disinherit the heir only up to 50% of the estate. Where the deceased has disinherited the heir for more than 50% of his estate, such written instructions shall be deemed to be invalid and the heir will inherit according to the custom.

3.3.2 Common Law

Under Common Law the deceased leaves behind a will. Anybody can write a will, except those who do not have the legal capacity to do so; e.g. those who are insane, underage etc.

The drawing of the will shall be examined in two separate cases: where one is married out of community of property and where a person is married in community of property.

3.3.3 In Community

One can facilitate the distribution of his or her property only to the extent of his or her share of the joint estate.

3.3.4 Out of Community

One can facilitate the distribution of all of his or her property and disregard the spouse and children.

3.3.5 Content of the Will and/or written instructions:

- Date
- Place where it was drawn
- Names of the person making it
- Names of those who shall inherit
- Exact description of the property to be inherited

- Signature or mark of the person making it
- Signature of two witnesses

3.3.6 Who qualifies to draw a Will in Lesotho?

It is only Basotho who have abandoned the Sesotho way of life in favour of the European way of life.

3.3.7 Test to determine such Mosotho

The mode of life test is used. However, the concepts of improved Mosotho and the mode of life tests seem to bring problems regarding execution of a Will. The problem has been that it is difficult to distinguish a Mosotho who has abandoned the Sesotho way of life in favour of European way of life and the improved Mosotho.

Only once the legislature clarifies relevant regulations will this current problem be resolved.

Group Work

Three groups were formed and the following problem statement was discussed.

Statement 3

Ralebitso and his wife Mpho were married in community of property in December 2000. In 2007, Mpho wants to distribute property of the joint estate but her husband is refusing. Mpho comes to you as a Paralegal for a legal advice. Advise her.

Solution to the group work

1. The issue is whether Mpho can distribute the joint property.

The principle is that in marriage in community of property, a spouse can only distribute his/her property up to the 50% which is his/her share of the joint estate.

It follows therefore that Mpho can distribute the joint property only up to 50% which is her share in a joint estate.

2. The other issue is whether Mpho has capacity to distribute the property.

The legal principle is that for a person to write a Will she must pass the mode of life test thus she must have abandoned the Sesotho way of life and adopted European way of life.

Mpho can only be said to have capacity to write a Will if she has passed the mode of life test.

THIRD SESSION

4.0 CHILDREN'S PROTECTION AND WELFARE BILL AND SEXUAL OFFENCES ACT OF 2003.

The third session took place on the 13th – 14th January 2007. The topics for this session were Children's Protection and Welfare Bill and Sexual Offences Act of 2003. Seventeen participants attended.

The training focused on selected topics in the Children and Welfare Bill which included the following: rights and responsibilities of parents and the state administration of the children's property by the office of the Master of the High Court, offences in relation to health and welfare of children, foster care and adoption, age of criminal responsibility and age determinations, children's court, parentage, custody and guardianship, maintenance of children, and employment of children.

The rationale for having the new law (Children's Protection and Welfare Bill) in place of the children's Protection Act of 1980 is to have a law that adequately protects children. The 1980 Children's Protection Act had many flaws which resulted in the new Bill being developed. One other reason for having the new law was explained as incorporating the international instruments on the protection and welfare of children into national law.

4.1 Children's Protection and Welfare Bill

The Child Protection and Welfare Bill was adopted as a bill in 2004 and once promulgated will replace the current legislation which is Children's Protection Act of 1978. This Act is outdated and leaves a lot of unattended issues.



4.1.1 Rights of the child and responsibilities of parents and the state

Rights of children were discussed. Our nation is not acquainted with the rights of children and often parents fail to guide their children because some of them strongly believe that rights of children are a new phenomenon and therefore children's rights and parental guidance cannot co-exist. This is a serious misunderstanding which still needs to be addressed in order to work towards changing attitudes.

The 1980 Law does not have adequate provisions on the general welfare of children, especially as they relate to the state. These were discussed in depth.

4.1.2 Administration of the Children's Property by the office of the Master of the High Court

Administration of estates of minor children by the office of the Master of the High Court was also discussed. Due to the scourge of HIV/AIDS, the number of orphans are escalating at an alarming rate (for instance in November 2005, orphans in Lesotho were estimated at 180, 000). After the death of parents, children are taken care of by relatives who become legal guardians. The legal guardians of these children usually use the children's inheritance for the benefit of the guardian's household, as opposed to the orphaned children's best interest. The office of the Master of the High Court is mandated by the Bill to administer estates of minors in the best interest of the children. It also has to recover such property where it has been mal-administered and to take proper action where children's property has not been reported to the Master.

This is one of the most important Chapters in this Bill as employers and financial institutions have a role to play in ensuring proper reporting and utilization of inheritances of minors.

4.1.3 Fostering and Adoption

Currently, parents and guardians often abandon, neglect, and abuse children. There are provisions meant to curb this ill-treatment of children. Foster care and adoption were among the topics which were discussed. Due to the HIV/AIDS pandemic, poverty, and a high unemployment rate, children are again neglected and are not adequately cared and provided for. The need for fosterage and adoption was emphasised since it is in the best interest of the child to grow up in a family environment where they can be cared for. However, the Bill lays down procedures and legal considerations which should apply in ruling on an adoption application.

4.1.4 Age of Criminal Responsibility and Age Determinations

Since children are faced with influences, they are also exposed to a number of hazards including crimes. However, in determining their cases, the Bill provides that the child's age, his intellect and ability to differentiate between the good and bad are of utmost importance. Where a child is unknown, procedures for determining the child's age are laid down. Age determinations start with the police, probation officer, medical officer, and the presiding Magistrate. Knowledge of a child's age is important because children below a certain age cannot be tried in a court of Law. Taking into consideration the type of crime committed by a child, the child's age, and the circumstances under which the crime was committed, assists the children's court to have a clear picture of what transpired and the type of assistance needed by the child for rehabilitation. This training session addressed age of criminal responsibility and the children's court and its proceedings.

The trainees were also enlightened on the difference between parentage, custodianship, and guardianship. Maintenance and employment of children were also discussed.

Some of the concerns raised by the participants (especially the male ones) included a belief that the Maintenance Law seems to target the male persons only. This is an unnecessary concern because both parents have responsibility to maintain their children. A number of observations around parentage, custodianship, guardianship, maintenance and employment of children were made by the participants.

4.2 Sexual Offences Act 2003

4.2.1 Overview of the Act

This Act is meant to consolidate and repeal all laws relating to sexual offences. Its main objectives are to combat sexual violence and to prescribe appropriate sentences for sexual offences.

4.2.2 Why Sexual Offences

Sexual Offences legislation is far-reaching legislation, which has brought many changes in the law as it has changed the Common Law situation. It has introduced modern ways of looking at crime and the victims of crime by having sections such as:

- Rights of the complainants;
- Duties of Prosecutors;
- Compulsory HIV test of crime perpetrators;
- Abolition of cautionary rule; and
- Cross-examination through courts, to mention but a few.

All of these are new interventions in the law and therefore necessitate dissemination so that people may know the position of the law clearly.

Another reason why it is important to teach about this Act is that sexual offences and child sexual abuse are escalating and people are not aware of the existence of the laws that protect women and children.

4.2.3 What is considered as a “Sexual Offence?”

Sexual Offence is defined as unlawful direct or indirect contact with another person, aims, breasts, penis, buttocks, thighs or vagina of a person with any other part of the body of another person.

4.2.4 Inducement to allow Sexual act

It is an offence to administer or apply substances to another when committing a sexual offence or to induce someone to have sex with another person.

4.2.5 Persistent Sexual abuse of a child

It is an offence to persistently, sexually abuse a child. It is also an offence to fail to report persistent sexual abuse of a child.

4.2.6 Commercial Sexual exploitation of children

It is an offence to engage in sex with a child for financial reward or favour or compensation.

4.2.7 Sexual offence against disabled persons

It is an offence to commit a sexual act with a disabled person or in his/her presence.

4.2.8 Problem solving

The trainees were divided into groups of 4 each and were asked to solve the following problem:

Tseliso, a man aged 54 years old went for an HIV/AIDS test last month where he was told that he was HIV positive. He heard people saying that HIV can be healed if he had sex with a child. Lisebo, his grand child aged 6 years old stays in his family after the death of both her parents. Tseliso decides to have sex with Lisebo with the hope that he will be healed. In two occasions when 'Mampho (Tseliso's neighbour) had gone to his house to ask for sugar, she found T'seliso having sex with Lisebo but she decides not to report this to anyone because she does not want to be a witness and she is a poor woman who depends on T'seliso's family for so many basic needs.

- (a) Mampho comes to you for a legal advice. Advise her.*
- (b) What will be T'seliso's penalty and why?*

The groups were able to give the correct solution to the above problem and it can be concluded that they have grasped the basics of the Sexual Offences Act and therefore they will be able to solve legal problems in their respective communities.

4.2.9 Lessons Learned

The following lessons were learned during the discussions:

The people's perception about Sexual Offences Act is associated with only rape as originally defined in law as opposed to the current situation where the Sexual Offences Act has broadened the scope of the offence. For example,

- The trainees were not aware that people who do not disclose the sexual abuse of children are also guilty of committing the same crime.
- The participants were not aware of the new changes brought about by the Sexual Offence Act such as *inter alia* the fact that for a sexual offender who commits a sexual offence knowing that he is HIV positive the prescribed penalty is the death penalty.
- They were not aware that the exposure or display of the genital organs of one person to another person is an offence which calls for a penalty.

Having been trained on the Sexual Offences Act, the paralegals were enlightened on how important the Act. The discussion dispelled some of the myths that they had heard about the Act.



The above picture is showing chief 'Malevis Levis' appreciation of the work of FIDA – radio programmes, dissemination of laws to communities, and training of Paralegals. She is especially appreciative because of the increasing incidence of sexual abuse of orphans and women in the country. She mentioned that she is very happy to be one of the trainees of FIDA. This will improve her daily work and benefit the people she helps. She further said that it is important that FIDA has taught them to report cases to the Child and Gender Protection Unit so that perpetrators are prosecuted.

SESSION FOUR

5.0 LAND LAW, STATEMENT TAKING AND LABOUR LAW

The fourth session took place on the 20th – 21st January 2007. The topics for this session were Land Law and Labour Law.

5.1 The Local Government Structure Dealing with Land

The Local Government Act of 1996 has brought changes to the 1979 Land Act as amended in relation to the authorities responsible for land allocation. Under the 1979 Land Act as amended, the authority responsible for allocation of land was the Village Development Council.

5.1.1 What is the Position under the Local Government Act

Under this Act, the Community Council creates a Standing Committee on Land whose function is to focus on land allocation. The committee is made up of three (3) to five (5) members. Applications are filed with the Standing Committee on land, which after consideration will report to the Community Council on their decisions. The Community Council will then approve or disapprove but this will be after consultation with the District Land Team. This is the case for the allocation of land in the rural areas.

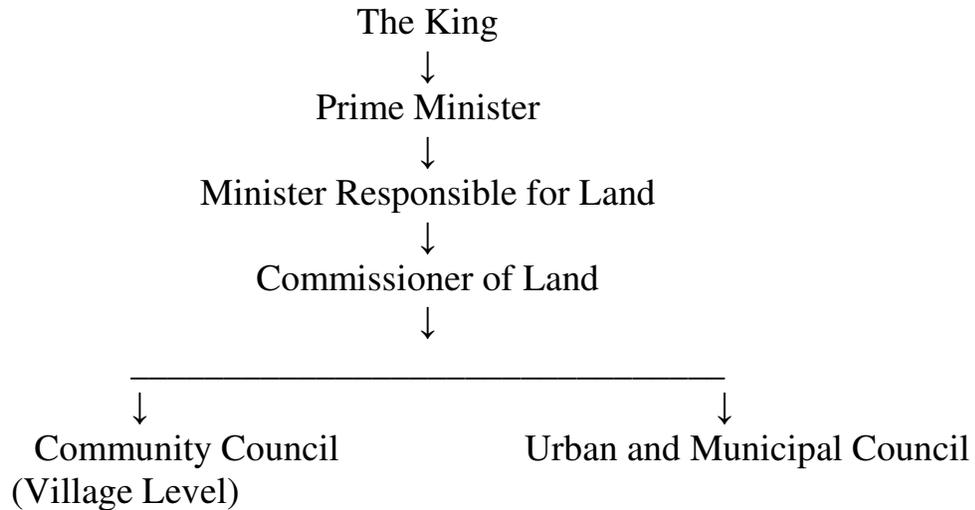
For allocation of land in the urban areas, the applicants file their applications with the Standing Committee on land, after which the District Land Team will inspect the said land, afterwards the Standing Committee on land will write to the Commissioner and send the application forms.

For resolution of disputes, there is still the Land Tribunal with the assistance of the Community Council and Standing Committee on Land.

5.1.2 The New Land Bill

The Lesotho Land Law has proven to be one area of the law that cries out for reform. Having realised this, the government of Lesotho formed a Commission in 2000 whose main task was to critically analyse the Lesotho Land Law and make recommendations. The main law still governing the administration of land in Lesotho is the 1979 Land Act as amended.

Under the Bill, land is still held by the Basotho nation in custody of His Majesty, the King. This is contained in the 1979 Land Act as amended. To be granted title to land, one has to be an adult citizen of Lesotho, either by birth or through naturalisation. The hierarchy in land administration under the Bill is as follows:-



5.1.3 Title to Land

Land under the Bill will be held through a grant of a lease or as a result of inheritance. There shall be different kinds of leases, which shall be obtained after an application is made on a prescribed form. Where there is need for disposition of one's right to land, the disposition shall have to be authorised by the authority responsible for land allocation. Consideration like the needs of women and orphans will be important in deciding whether or not to allow disposition.

5.1.4 Surrendering a lease

Where a lessee decides to surrender a lease, the surrendered lease will first be made open to the spouse of the one surrendering before it is allowed to the public.

5.1.5 Compensation

In cases where one's land is needed for public purposes, an individual will have a right to compensation.

5.1.6 Dispute Settlement

The Local Land Court will serve as the Court of first instance. The applicant, if not satisfied, will go to the District Land Court and finally to the Land Court.

There will also be a process of mediation as an alternative. The mediator will be appointed by the Judicial Service Commission.

5.2.7 Three outstanding issues in the Bill

1. Rights of Women

- Under the Bill, women can freely apply for land without the assistance of their husbands.

2. Rights of Orphans

- Where the orphans are minor, their rights in their late parents' land will be held in trustee and the trustee will use the land for the benefit of the said orphans.

3. The Right to be heard

- The Bill emphasises the need for the respect of the right to be heard. Before one is dispossessed of his rights in land, such a person will have to be given an opportunity to be heard.

After long discussions about the Land Act, three groups were formed to solve problem statements A and B. They might meet such problems in their respective communities.

Problem A

Thabiso is a male Mosotho adult residing in Lesotho. He is desirous of obtaining a site for residence in the rural areas. Kindly advise him on the authority responsible for land allocation and the procedures that will be followed until he is allocated land.

Suppose Thabiso's application for land is refused maliciously. Advise him on the body that adjudicates over land disputes.

Advise him in the light of the Local Government Act and the 1979 Land Act as Amended.

Problem B

The New Land Bill in Lesotho has taken a major step forward in the protection of women and children's rights, particularly the orphans.

Discuss.

5.3 Labour Law

The participant's level of understanding was quite impressive considering that most of them had not been in formal employment before. Participants were active and all were participating.

5.3.1 Literature

In order for the participants to understand, the following literature was referred to:

1. Wages Order 2006
2. Directorate of Disputes Prevention Resolution (DDPR) referral form
3. Formula

5.3.2 Topics Lectured

The following topics were discussed:

- Termination of Contract of employment
- Terminal benefits
- Sexual Harassment
- Freedom of Association
- Dispute Settlement Machinery
- HIV/AIDS at the workplace
- Types of Contract
- Dismissal

The participants were not conversant with the above-mentioned topics relevant to the contract of employment. All of these topics are important and the following were found to be most crucial:

Sexual Harassment in the work place, which seems to be the practice of the employers country wide.

HIV/AIDS in the workplace – we learned from the trainees that as much as there is a provision in the Labour Code 2006 that prevents discrimination, HIV positive people are still discriminated against because they are not aware of their rights. This is especially true for those working in the factories.

Terminal Benefits – Participants have learned that most employers still expel their employees without any valid ground for dismissal and/or no terminal benefits. This is commonly practised by the factory employers.

5.3.3 Topics worked in pairs

The trainees were grouped in pairs where the following topics were discussed:

- Contents of a contract
- Types of misconduct
- Prohibited reasons for dismissal
- Other reasons that bring about termination
- Calculating terminal benefits
- Filling a referral form

5.4 Statement Taking

The trainees were taught how to take statements as part of their training so that they will be able to keep records of clients' cases. It is very important for the paralegals to write down accurate and complete information from the people they help.

The trainer told the paralegals that the statement is divided into four parts:

- Personal details of the client, for example, name, address, work details and so on
- Description of the problem
- What advice you gave to the client
- What action can be taken to help the client

They were advised to write down every detail of importance and to include information even if they are not sure whether it is important or not. It might come in useful at a later stage.

5.5 Advising the Client

It is important to tell the client what his/her rights are. Then explain what steps can be taken to help him or her.

Then listen to the client to find out exactly what he or she wants you to do. These are the instructions the client gives you.

Write down details of the advice that you gave and the instructions that your client gave you.

5.6 Taking Action to solve the problem

The trainees were told to discuss with their clients what steps to take. They were instructed to make sure the client understands what he/she is going to do. They were taught to be realistic about time and report back to the client.

It is important to keep copies of all documents in connection with the client's claim.

PART C

LEARNING, CHALLENGES, AND RECOMMENDATIONS

6.0 The Remuneration and Incentives system of FIDA Paralegals

There is a general acceptance that Paralegals are volunteers and should therefore offer services without expecting any form of remuneration. Experience, however, has shown that paralegals require some form of incentive to meet livelihood demands and to motivate them. Incentives are often provided in the form of allowances to compensate for out of pocket expenditures for travel and subsistence.

FIDA paralegals are only allowed to register people who want to become members of FIDA in the districts where they operate. They retain the full percentage of the subscription fees and are encouraged to use it for transport when attending village gatherings.

6.1.1 The Effectiveness of Paralegals

Paralegals have been seen to operate more effectively in poor communities where there are no alternative means of service delivery; that is, where civil society organisations are the sole providers of services. Communities receiving services have attested to the effectiveness of paralegals, especially support groups based in the rural areas of the country

Incentives also play a major role in determining the effectiveness of the paralegals. Remunerated paralegals in South Africa have been seen to operate more effectively. They have shown more commitment and loyalty to their work as paralegals and work with more willingness.

During our visit to Leribe district at Ha Malesaoana village, we met with focus groups composed of local chief Hlasoa Nts'ala, Local Government Community Councillor Mrs Mathato Chechiri, support groups, and members of the community.



In an interview with the above-mentioned focus group of Ha Malesaoana in the Leribe district, the monitoring team learned that people from Ha Malesaoana really needed to have paralegals because of the day-to-day legal challenges they meet. The monitoring team also learned that the presence of paralegals in the community has been appreciated by community members because they believe the paralegals will help to enlighten the community on legal issues. Furthermore, the paralegals are going to be very useful to protect the rights of people infected and affected by HIV and AIDS especially because the monitoring team learned that the support groups were last given medication in February 2006 and the said medication had even expired by then.

The monitoring team also learned that due to high poverty rates, some parents ran away from their responsibilities to support their families, especially children who are HIV positive. We believe that the presence of the paralegals in the communities will reduce that situation.

Here below is the picture of a three (3) year old child who is still unable to walk but left by her parents:



6.1.1.1 The work of Paralegals

FIDA decided to identify eligible members of the community who are resident of Leribe to embark on the training of paralegals. Seventeen (17) paralegals were trained. Out of 17 trained paralegals; only nine (9) had already handled cases.

NAME OF THE DISTRICT	NUMBER OF PARALEGALS	NUMBER OF PARALEGALS WHO HAVE HADLED CASES	TYPES OF CASES	NUMBER OF CASES
LERIBE	17	9	Inheritance (property grabbing)	4
			Matrimonial cases	2
			Maintenance	2
			Rape	1
			Assault	1
			Seduction	1
Total	17	9		11

Seven paralegals had handled one case each while two paralegals had handled 2 cases each. Out of 11 cases, 4 cases were about inheritance disputes cause by property grabbing, 2 were matrimonial cases, 2 were maintenance cases, 1 case was a rape case, 1 was a seduction case, and 1 case was assault case. About eleven paralegals had introduced themselves to their chiefs and communities while six had only introduced themselves to their chiefs and not yet introduced themselves to their communities. The reasons for not having handled cases yet and not having introduced themselves to the communities yet, was said to be the short time-frame between the completion of the training and the time of monitoring which was 3 to 4 days.

6.1.2 Integration of Paralegals into development policies and programmes of government

The integration of the work of paralegals in policies and their implementation is widely accepted and popularised by Government and its partners but integration is not yet a legislative obligation on the part of Government. Government has the discretion to decide whether they implement development policy though the use of community based organisations or not. Many Government programmes are still implemented through decentralised sectors operating at the district level. The review team concluded that community based organisation (CBO) systems are not yet fully integrated in Government policy and budgetary systems. The support of CBOs is often ad hoc and limited to capacity and training operations as opposed to direct support for capital oriented programmes. Some organisations receive some form of subsidy from Government but this is often limited to operational expenditure as opposed to capital projects.

6.1.3 The Training & Capacity Building systems of Paralegals

FIDA Paralegals value training and capacity building. Training is considered very pivotal to the effectiveness of paralegals and is considered an incentive by the communities. The content of training is generally determined by the FIDA Lawyers and the Ministry of Justice and Human Rights. FIDA has on the contrary allowed the community leaders the discretion to determine the focus of training.

6.1.4 The Supervision, Monitoring and Accountability process of Paralegals

At the end of the month Paralegals submit a written report of the number of cases they have administered and the activity plans to the FIDA secretariat. FIDA undertakes routine monitoring and inspection trips depending on the availability of funds.

Paralegals are expected to be accountable to the communities they serve but this has not been legislated for and therefore depends on the willingness of the paralegals. FIDA engages in field visits during which they hold discussions with focus groups to determine the effectiveness of the paralegals in their communities.

7.0 Challenges

- a) FIDA is facing a challenge of drafting the bills replacing discriminatory laws such as Inheritance Law, Law of Succession, and Administration of Estate. This idea has been tabled before the Law Reform Commission and it is likely to be taken up during the course of this year.
- b) It is not possible to make regular follow-up to the work of the paralegals due to funding constraints.
- c) Much as FIDA has succeeded in raising legal awareness and training of the paralegals who provide “legal first aid,” the main challenge is that when people need legal representation, FIDA is unable to provide such legal representation because it does not have a full time lawyer on staff.
- d) There is a rapid change of laws and policies in the country, which need to be disseminated.
- e) There are no FIDA offices in the districts so the paralegals have to consult with clients from their homes and that is risky to their lives.

8.0 RECOMMENDATIONS

- a) There is a need to look for funding so as to make regular follow-ups to the communities of the paralegals to see if there is progress.
- b) We feel we would not have done our duty properly if we could not allocate time to look into the legal rights of people living with AIDS, orphans and vulnerable children. This is going to be one of our main programs in the coming year.

- c) There is a need to get a funding for a lawyer for at least three years where after for the purposes of sustainability the funds collected until those years can be utilized to pay the salary of the said lawyer.
- d) There is need for refresher courses for all FIDA paralegals throughout the country so as to help them catch up with the rapid changes in law.
- e) There is a dire need to establish FIDA offices in the other two regions of the country to meet our clients half way as they have to travel to Maseru to get assistance that the paralegals cannot provide. This also cannot happen without funding.