

Attorney-General and Ministry of Justice
Access to Justice Series



Republic of Ghana

No. 4

GTZ Legal Pluralism and Gender Pilot Project:
Child Maintenance in Plural Legal Systems
in Ghana

Part 1: Institution and Legal Research
Raymond A. Atuguba, Akua Britwum, et al

Part 2: Child Maintenance Cases of FIDA Ghana -
an empirical analysis

March 2004



Bundesministerium für
wirtschaftliche Zusammenarbeit
und Entwicklung

gtz



Foreword

**This Access-to-Justice paper has been produced under the auspices of the
Office of the Attorney-General and Ministry of Justice
in the framework of the**

**Sector Advisory Project
of the Federal Ministry of Economic Co-operation and Development
(BMZ), implemented by German Development Cooperation (GTZ):**

**Strengthening the Position of Women in Plural Legal Systems in West
Africa**

Responsible: Dr. Mechthild Runger, GTZ

including

LEGAL PLURALISM AND GENDER PROJECT GHANA

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March, 2004

FOREWORD

Access to Justice for all is one of the most important indicators of the rule-of-law state. The Government of Ghana, in its Ghana Poverty Reduction Strategy Paper (GPRS), has acknowledged the paramount importance of rule of law as a governance issue since the inception of the GPRS in 2000. The Attorney-General and Minister for Justice has therefore the obligation to ensure that issues of access to justice as part of rule of law are widely discussed and related bottlenecks in the administration of justice in its various forms removed.

Countries with plural legal systems which are signatories to international instruments that provide for equal opportunities for women are to protect women from abuse of their legal rights. Hence the de-facto enforcement of such international obligations at the national level for the benefit of women is a matter of good governance. In this regard, gender-sensitive law reform that seeks to harmonise, integrate or unify different legal systems with differing socio-economic as well as ideological premise raises very fundamental theoretical questions in respect of social change in a society that is based on gender concepts that enshrine socio-economic and legal discrimination. Such reform should aim at safeguarding the social peace, equal opportunities and economic stability for the vulnerable and the weak, especially women in society, consequently, the way in which the issue of legal pluralism is addressed in a country is a governance question.

The co-existence of different legal and value systems and motivation for exchange and support within a formerly close community have, for instance, led to a number of undesirable phenomena. In the legal field, lack of clarity of the law applicable to a situation (internal conflict of laws); the validity of legal rules in traditional settings if such validity is derived from general acceptance; the question of the legitimacy of rule-making, which is the very question of legal adaptation, development and law reform in a rapidly changing world, are some of the sources of the problems. There are also the weaknesses and especially opportunities for abuse in the traditional enforcement systems, and it is therefore important to marry and harmonise the conflicting legal and other systems in an orderly and legitimate procedure for societal development.

There are a number of projects and programmes of the Office of Attorney-General and Ministry of Justice, initiated by the then Attorney-General and Minister for Justice, Hon. Nana Addo Dankwa Akufo-Addo, which have attempted to explore, explain and discuss the difficulties that especially rural and marginalised people, particularly women, face in claiming their rights. Among the difficulties are their lack of knowledge or means to access the formal judicial services, or

their inability to enforce their claims for want of institutional facilities, or being bogged down by social conventions when they attempt to claim their rights. Many of those problems of access to justice concern the very livelihood of citizens, e.g. in areas of land, inheritance, child maintenance, matrimonial property and the like. These topics are complicated by the co-existence of different legal systems and norms within various parts of Ghana. Procedures and remedies may be unclear and reform legislation may not have the impact intended by the legislature.

In my capacity as Attorney-General and Minister for Justice I have therefore decided to publish these documents and make them accessible for comments both in electronic form on our website as well as in hard copy as Access-to-Justice Papers. The Federal Republic of Germany, represented by the Federal Ministry of Economic Co-operation and Development (BMZ) through its implementing agency, the German Technical Co-operation (GTZ), Good Governance Programme, is co-operating with us to achieve this task.

Herewith we launch the

Access-to-Justice Paper No. 4 a “Child Maintenance in Plural Legal Systems in Ghana – Part 1: Institutional Legal Research” by Dr. Raymond A. Atuguba, Faculty of Law, University of Ghana, Legon; Professor Akua Britwum, Lecturer at the Centre for Development Studies, Cape Coast University et al.

Access to Justice Paper No. 4 b “Child Maintenance in Plural Legal Systems in Ghana – Part 2: Child Maintenance Cases with FIDA Ghana – an empirical analysis” by the International Federation of Women Lawyers (FIDA) Ghana – ISBN 9988-8291-3-2

This research is the product of the GTZ Gender and Law Pilot Project, Family Law Focal Area, co-ordinated by Mrs. Sheila Minkah-Premo. It was carried out as part of the BMZ sector advisory project on **strengthening the legal position of women in pluralistic legal systems in West Africa** and directed by Dr. Mechthild Runger, from GTZ Head Quarters in Germany. The research was undertaken in anticipation of the Land Administration Project of the Ministry of Lands and Forestry, which has been established to implement the National Land Policy of the Government of Ghana.

Overall objective of this two-part study is to ascertain what kind of impacts plural legal systems might have on enforcement rights of women (and poor women in particular) to secure additional resources from fathers for child maintenance. Based on these findings, the authors make recommendations aiming to promote changes at the local level, to advance the rights of women and to provide meaningful prospects of how to bridge the gap between the various legal systems in operation.

After having introduced the objectives of the study (chapter 1), the first part of the study starts with a general introduction of legal pluralism in Ghana, explaining the different legal concepts (customary law and statutory law, including international law) that are dealing with child maintenance and their potential conflicts with each other (chapter 2). A third chapter then analyses the issue in practice including some child maintenance case studies. A final fourth part then describes the main findings of the study and gives recommendations for the future.

Also the second part of this study commences with an overview of the legal framework of child maintenance in Ghana (including international obligations, constitutional and statutory provisions as well as customary law). In a second part, the paper describes practical problems that are associated with child maintenance, like polygyny or socio-economic factors. Chapters three, four and five analyse child maintenance cases handled by FIDA Ghana in the years 1999-2001, focusing on cases dealt with by FIDA Ghana's legal aid centre in Accra (chapter 4) and Kumasi (chapter 5). These chapters are the basis for the final sixth chapter that analyses the main findings of the study before giving recommendations, like reviewing enforcement procedures, for enhancing the enforceability of women's rights in terms of securing additional resources from fathers for the maintenance of their children.

Law reform processes and the enhancement of provision of legal services and access to law and justice seem to be overdue. Democratic Government needs to be responsive to the crisis of the legal system as a democratic deliverable to their people. It is my Ministry's hope that with this wider publication, the public will join the debate and make their views known on the campaign to ensure better protection and improvement of the position of women and the poor in our legal system.

Accra, December 2004

**HON. PAPA OWUSU-ANKOMAH, MP ATTORNEY-
GENERAL & MINISTER FOR JUSTICE**

Child Maintenance in Plural Legal Systems in Ghana

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**Child Maintenance
in Plural Legal Systems
in Ghana**

Part 1:

Institutional and Legal Research

Research by:

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Justice Minkah-Premo**

LIST OF ABBREVIATIONS

| | |
|--------|---|
| AFLA | AFRICA LEGAL AID |
| CHRAJ | COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE |
| BMZ | BUNDESMINISTERIUM FÜR WIRTSCHAFTLICHE ZUSAMMENARBEIT UND ENTWICKLUNG ([GERMAN]FEDERAL MINISTRY FOR ECONOMIC COOPERATION AND DEVELOPMENT) |
| D/A | <i>DISTRICT ASSEMBLY</i> |
| D/AS | DISTRICT ASSEMBLIES |
| DSW | DEPARTMENT OF SOCIAL WELFARE |
| FIDA | INTERNATIONAL FEDERATION OF WOMEN LAWYERS |
| FLFA | FAMILY LAW FOCAL AREA |
| FT | FAMILY TRIBUNAL |
| GNCC | GHANA NATIONAL COMMISSION ON CHILDREN |
| GTZ | DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GERMAN TECHNICAL COOPERATION) |
| IYC | INTERNATIONAL YEAR OF THE CHILD |
| LAB | LEGAL AID BOARD |
| LLFA | LAND LAW FOCAL AREA |
| LRC | LEGAL RESOURCES CENTRE |
| NGOS | NON-GOVERNMENTAL ORGANISATIONS |
| PNDCL | PROVISIONAL NATIONAL DEFENCE LAWS |
| WAJU | WOMEN AND JUVENILE UNIT |
| WILDAF | WOMEN IN LAW AND DEVELOPMENT IN AFRICA |

Executive Summary

This study on Child maintenance falls under the Family Law Focal Area of the German Development Co-operation's (GTZ) Legal Pluralism and Gender Project.

The position of the project is that plural legal systems provide unequal and inequitable participation for particularly poor rural women in the enforcement of their rights in terms of securing the additional resources from fathers for the maintenance of their children.

The project has been conceived of as an action research project designed to promote change at the local level and to advance the rights of women and in addition explore alternative approaches to bridging the gap between the various legal systems in operation.

This study as a result sought to gather the base information required to review and strengthen existing laws and institutions for the enforcement of maintenance orders. Its specific terms of reference were:

- Provide information on child maintenance practices in Ghana's plural legal system;
- Describe the various internal conflicts of laws issues that arise and how they are resolved;
- Assess the level of awareness of existing laws on child maintenance in Ghana and the level of utilization of these laws within select communities;
- Identify problems faced by child maintenance institutions in the enforcement of maintenance order;
- Make recommendations for reviewing and strengthening existing laws;
- Identify ways in which institutions that deal with child maintenance cases can be strengthened in order to enhance women's access to justice.

The research was conducted in five regions of Ghana, namely Ashanti, Greater Accra, Northern, Volta and the Western regions of Ghana. Two localities were chosen for study in each region: one within the regional capital and the other in a district outside the capital.

Primary data gathering methods were mainly qualitative involving interviews of key persons and individuals, group discussions, review document on child maintenance cases as well as an infrastructure inventory of child maintenance institutions in the study communities. The instruments for

gathering data were the individual and key person interview guides, group discussion guide, a document review guide as well as a checklist to guide the infrastructure interview. The data were grouped under themes developed out of the terms of reference and simple statistical operations in the form of frequency of occurrence, proportions of respondents involved in a particular event were utilized to analyse the data.

The study respondents were individuals who had children in their care, key persons working in the area of childcare and maintenance as well as group of persons in the various communities. In all, 1488 respondents were covered 889 were in groups, 355 individuals, and 249 key persons.

Ghana's legal system is pluralistic in the sense that three main legal systems co-exist in the same social field, subjecting individuals to a broad array of rules, which provides them with alternative causes of action and indeed institutions for seeking remedies. It creates complex legal problems such as the need to decide which particular rules apply to a particular transaction; how to determine membership of a particular group and how an individual can change the law applicable to him/her as a member of a group; what choice of law rules must exist for issues between people of different groups and the determination of whether a particular system of law applies in a certain geographical area.

One area of Ghanaian law where legal pluralism finds expression is that of child maintenance. There exist bodies of statutory law, customary law and even religious laws on child maintenance.

Child maintenance is one of the fundamental rights granted every Ghanaian child under the customary and statutory laws of the country yet Ghanaian children suffer neglect. The main cause of child neglect arises out of poverty caused by low incomes. Average household expenditures in Ghana exceed average household incomes and therefore affect parents' ability to maintain their children.

Traditional practice like the mode of reckoning descent amongst the matrilineal Akans of Ghana, for example, makes children and their fathers, members of different extended families, excludes children from any benefits derivable from membership of their father's family. Despite the provisions of the Intestate Succession Law 1985 (PNDCL 111) as amended, children only benefit from the estate of their fathers who die intestate. They are still denied the right to succession to office. This practice undermines the customary child maintenance responsibilities assigned Akan fathers by increasing the mother's stake in ensuring that their children survive into adulthood.

Most custody arrangements upon divorce or marriage separation give mothers custody of children below a certain age. Fathers in these cases generally

refuse outright to meet their responsibilities towards such children. Children born in wedlock therefore tend to have better care than those outside it.

Women's rights to inheritance and protection in marriage are two issues closely related to child maintenance because traditional arrangement in divorce and widowhood do not recognize women's contribution to property acquisition of the husband and therefore fail to make adequate provision to mothers in such situations.

The typical profile of indigent parents in cases of child neglect from the literature shows:

- An increased tendency for many fathers to be irresponsible towards children;
- Many cases of fathers' neglect involved parents who were either separated, divorce and in casual or informal relationship;
- Fathers were involved in several unions and were forced to share their scarce resources among many children, thus reducing the quality of care for their children.
- Women who have custody of children in non-marital relationships as well as those who live apart from their husbands are known to experience difficulties getting males to contribute towards the maintenance of their children. Besides, ignorance on the part of mothers leads to an under-utilisation of the statutory legal provisions that could have supported their efforts in getting the fathers of their children to live up to their paternal responsibility of maintaining their children.
- At customary law, a child belongs to his or her family as an incident of birth. The customary family consists of group of persons lineally descended his death from a common ancestor exclusively through males (in communities called patrilineal for this reason) or exclusively through females starting from the mother of such ancestor (in communities called matrilineal for this reason).
- The duty of a father to maintain his children existed simultaneously with that of the mother. The duty of the father to maintain his children transcended his death. The enforcement of the customary duty to maintain a child was traditionally done by the elders of the family and, at the village chiefs' court. There were traditional modes of enforcing awards. With increasing state interventions in this area, however, the jurisdiction of chiefs in respect of these matters is now being shared by various other formal institutions. The jurisdiction of these other institutions normally trumps that of the chiefs.

Currently, final judicial power is vested in the state judiciary. This does not however take away the power of chiefs and indeed any individual to arbitrate in those matters, although arbitration has its own limitations. In sum, the jurisdiction of chiefs and other enforcers of the customary duty to maintain a child is now restricted to an arbitral role, a role that is subsumed under, and must not infringe, any statutory laws. This notwithstanding, it is the case that many traditional rulers still wield immense powers, and especially in places where the impact of formal state structures and their laws is not that significant, what holds sway is the customary law of child maintenance as enforced by traditional and, in some cases, religious leaders.

The statutory laws that deal with the issue of maintenance of children include the following:

- The 1992 Constitution of the Republic of Ghana;
- The Children's Act, 1998 (Act 560);
- The Criminal Code, 1960 (Act 29) as amended by Act 554;
- The Matrimonial Causes Act, 1971 (Act 367);
- The Wills Act 1971, (Act 360);
- The Intestate Succession Law, 1985 (PNDCL 111) as amended by PNDCL 264; and
- The Courts Act, 1993 (Act 459).

Article 28 of the Ghanaian Constitution which is specifically devoted to the rights of children enjoins Parliament to enact laws that ensure that natural parents provide every one of their children, from conception to age 18 at least, the measure of special care, assistance and maintenance necessary for their development.

The Children's Act, 1998 (Act 560) meant to reform and consolidate the laws relating to children and to provide for the rights of the child's sets out a number of rights to ensure the well being of children. The duty of maintenance of children, which is specially dealt with in sections 47 – 60 of the Act, is a legal obligation, which is imposed on a parent and, in some instances, other persons who may be legally liable to maintain the child.

The erstwhile Family Tribunal, now the District Court, is the judicial institution given jurisdiction over child maintenance matters. To facilitate access to the court, the Act allows for application fees to be waived. Other no-judicial institutions whose activities may border on child maintenance are the Department of Social Welfare and the Child Panels. District Assemblies are enjoined to ensure that these institutions exist and function effectively.

The Criminal Code, 1960 (Act 29), the main criminal legislation in Ghana, contains a number of provisions aimed at protecting the moral and physical welfare of children. In relation to child maintenance, it provides that parents and guardians are under a duty to give access to the necessities of health and life to children actually under their control, and not being of such age and capacity as to be able to obtain by themselves these necessities.

The Matrimonial Causes Act, 1971 (Act 367) which deals with matrimonial causes such as divorce, custody, nullity, maintenance etc., makes provision for either party to a marriage to petition the court for an order for maintenance on the ground that the other party to the marriage has wilfully neglected to provide or make a proper contribution toward reasonable maintenance for any child of the household.

The Wills Act, 1971 (Act 360) regulates the making of statutory wills by restricting the testamentary freedom of the testator so as to secure a reasonable part of his/her estate for the child where no provision is made for it.

The Intestate Succession Law, 1985 (PNDCL 111), later amended by PNDCL 264, was enacted to provide a uniform system of inheritance of the self-acquired estate of an intestate irrespective of the ethnic origin of the intestate and the type of marriage contracted by the deceased. Of importance to the maintenance of children is the fact that the law gives surviving children a considerable proportion of the property of their deceased parent and makes it an offence for anyone to unlawfully deprive a beneficiary of his/her share of the estate or to eject a surviving spouse or child from the matrimonial home.

Both statutory and customary laws do not excuse a parent's duty to maintain a child on grounds of nationality. Further, customary law seems to emphasise the father's role on the assumption that seldom will a mother neglect to maintain her own child. The duty to maintain a child at customary law however transcended biological parents or their representatives and was equally imposed on the wider family.

The study revealed that most respondents had some notion that there was a range of laws covering children's rights generally and child maintenance in particular, like the Children's Act, the Constitution and the Intestate Succession Law. The degree of knowledge of the laws on child maintenance differed greatly among various levels of staff of these institutions. Senior personnel of public and other formal institutions and NGOs who were directly responsible for administering the laws on child maintenance had better knowledge of the content of the laws. Only a small proportion of all respondents had used laws on child maintenance and related issues. These include key person respondents from the justice sector and related institutions whose

jobs involve the use of these laws and the individual respondents who had accessed the courts or other formal institution for a child maintenance relief.

The major sources of information in all regions, for both individual respondents and key persons, were the media, respondents' employment, seminars/lectures, maintenance/social service institutions, friends, relatives and other members of the community.

The overall opinion of respondents was that the laws on child maintenance were adequate for dealing with problems of child maintenance because they were protective of children, comprehensive and well set out for ease of application. The effectiveness of the laws was seen as negatively impacted by the lack of public awareness of the laws and the low level of enforcement, even by the Courts.

All the formal public institutions, like the DSW, CHRAJ, LAB, and the Police, had serious problems with institutional capacity and were seriously under-resourced. Everything, from office space, through transport and communication facilities, to major and minor office equipment, was either unavailable, in short supply, or in a serious state of disrepair.

Informal institutions fared worse than the formal child maintenance institutions. NGOs were more resourced and better organized than government institutions. A good number of government institutions such as the DSW depend on the largesse of NGOs to function appropriately.

The key shortfall in human resource was in terms of the dearth of staff in certain key categories like judges and lawyers whose presence was important for the functioning of the institutions. Low salaries paid in public institutions do not attract key personnel to work in such institutions. Those who are posted into such positions simply evade service. The misuse or misallocation of resources, poor prioritization, and bureaucratic bottlenecks in the release of funds further complicates the poor financial standing of the institutions.

The main problems of child maintenance institutions revealed through the research relate to: the inability of these institutions to enforce compliance with the orders that they make; compelling the parties to appear before them; the high cost of accessing the courts; the speed with which they are able to discharge justice caused mainly by delays and adjournments due to the non-appearance of parties, judges, or panel members; and the competence of mediators; difficulty in accessing the institutions physically; attitudes of the staff; difficulties related to the service of processes which can result in confrontations and scuffles between the parties; extortion of money from complainants/parties by personnel of institutions before carrying out their duties and the insufficient number of institutions to handle child maintenance cases.

Informal institutions also faced similar problems such as inadequate funding; logistical support and lack of infrastructure to carry out their activities, the high fees paid to the chief's court, their lack of authority to ensure compliance; the lack of capacity of holders of certain offices to deal with child maintenance cases. All these problems affected factors that were used to determine the choice of institutions for the resolution of child maintenance issues in the study areas.

Problems external to the institutions that affected discharge of their duties were related to the apathetic attitude of the communities that derived from low levels of public awareness of human rights. The major problems faced by the institutions in the discharge of their services made them unattractive choices for solving child maintenance cases and further reduced the confidence that people have in the institutions to solve their problems, and therefore the likelihood that they will access that institution when they have a problem.

The gendered and class nature of child maintenance issues in Ghana was revealed in the fact that the main complainants in child maintenance cases reviewed were financially handicapped women, with no formal education and the defendants were the fathers. The children who are involved in the maintenance cases reviewed were at the background.

The main complaints in the documents reviewed were, maintenance, declaration of paternity, specific orders for the payment of school fees, medical bills, custody and applications for adoption. A summary of the main reasons provided by complainants to support their complaints were mainly that, fathers were refusing to maintain their children because they had denied paternity of their children, were in a new relationship with another woman, or had some misunderstanding with their children or mother of their children. Other reasons cited were that the fathers had refused to pay maintenance award given by some other child maintenance institutions or that there was the need to work out some maintenance arrangements because the marriage was being dissolved.

The main reliefs sought by complainants or applicants were the general maintenance orders or specific maintenance orders for the payment of school fees, medical bills etc; declaration of paternity and an order to name a child or to perform some other customary duty or obligation plus all the necessary ceremonies; custody and access; compensation for period of neglect; and adoption.

Orders made ranged from maintenance, paternity and custody orders and more specific ones related to the payment of school fees, monthly remittances to lump sum payments.

The main factors that are used to determine the quantum of awards in the sphere of the biological father and mother are:

- The nature of employment;
- The declared income (salaries and benefits);
- The ability to care for other children;
- The number of other dependants;
- Support from relatives.

The court employs several mechanisms for soliciting information about the income levels of the parents, like questioning them about the nature of their jobs and the positions they hold, their income and their occupations as well as additional responsibility that they have. Where possible their salaries or pay slips were inspected by the court.

In the sphere of the child, the factors include: the age of the child, the type of education being received and the medical requirements of the child. The study revealed that maintenance levels awards varied greatly according to the income level of the defendant, which in turn depended on the economy of the locality in which parties lived.

A review of monetary awards made in the regions shows the highest lump sum award of ₵1.2million which was recorded in Kumasi and the lowest of ₵2,000 in Tamale.

The economic situation in Ghana renders the awards made inadequate and the poor financial backgrounds of those against whom the awards are made do not make room for the award of higher sums. Despite the inadequacy of these awards, recipients were of the view that it made the fathers against whom the awards are made contribute towards the upbringing of their own children.

The predominant orders are monetary awards payable periodically, usually monthly, to the complaint, sometimes payable through the institution making the award. Where the defendant is a salaried worker and takes his/her salary through a bank or other such institution, the court may *garnishee* part of his salary and cause same to be deducted at source and paid to the complainant. These orders are the easiest to monitor. The most common form of verifying compliance that the institutions adopt is advising parties to report back to them. Officers at Agona Nkwanta and Walewale the DSW and CHRAJ go an extra mile by paying regular visits to the homes of parties to enquire about these payments.

In cases heard before the Family Tribunal, recalcitrant defendants are put before court to show cause why they should not be imprisoned for failing to

pay maintenance awards and are sometimes remanded in custody until they pay the awards.

The courts sometimes advise an amicable settlement by the families of the parties, and may appoint a mediator for the purpose. In other dispute resolution forums such as the CHRAJ, DSW and the informal institutions, the same results were obtained through negotiations and mediation. These are however not enforceable except by recourse to the courts. There are several instances of cross referrals within and between institutions, formal and informal.

Referrals are made where recommendations are not complied with or an institution is of the opinion that a case referred to it could be appropriately dealt with by another institution. Recalcitrant respondents are mostly referred by other institutions to the courts. Some complaints are referred from district offices to regional offices. In almost all cases referrals were to the Family Tribunal, the Police, and CHRAJ, a family meeting or the Chief's place.

The courts, CHRAJ, traditional authorities in the Ashanti, Northern and the Greater Accra Regions and religious bodies, like the Asogli Traditional Council at Ho, tended to attract the higher levels of compliance than the DSW for example. The fear of being imprisoned for failure to comply plays a major role in getting people to comply with the orders of the courts and CHRAJ, which has the power to enforce its orders in court. The capacity of traditional rules in exacting compliance with the orders they make is related to the amount of authority and deference they wield in particular communities. Some traditional authorities are also capable of imposing sanctions on defaulting persons.

The cost of accessing the courts range from ₵2,500 to ₵130,000 depending on the reliefs sought. A Complainant is made to pay more when the reliefs sought are many.

Applicants accessing LAB are exempted from paying filing fees. NGOs such as AFLA, LRC, WILDAF, which also offer legal aid, sometimes require complainants to pay filing fees. The LRC almost always pays the filing fees of complaints. In a few cases, complainants have on their own volition paid filing fees or made donations to NGOs to cover some costs.

Legal shortfalls as seen in the resolution of child maintenance cases, take for granted the contribution of the mother to the maintenance of child and therefore fails to take this into consideration when awards are being made. Maintenance awards are also computed on the basis of the ability of fathers to pay and not the actual needs of the child. The definition of a parent in the Children's Act is limited to the natural or adoptive parents. This needs to be reconsidered. The customary definition of a parent is broader and allows for

the ingenuous mobilization of scarce resources for the development of the child.

Other statutory laws on child maintenance have very limited scope. The Criminal Code is limited to instances where child neglect is classified within the bounds of the criminal, whilst the provisions of the Matrimonial Causes Act is relevant only to children of a married or divorced couple and do not benefit single parents. The provisions of the Intestate Succession Law only allow children a right to maintenance from their dead parent's estate, and not when they are alive.

Given the limited knowledge about child maintenance laws, most people relate more to child maintenance institutions and individual employees and staffers of these institutions. The array of institutions in the child maintenance world appears to give claimants some choice and some innovative experimentalist manoeuvres. The key conclusion here is that the functionaries of many child maintenance institutions are heavily influenced by traditional gender stereotypes that are unfavourable to women.

All traditions assign child maintenance roles to both parents on gender lines. Women, as a result, are under a heavier burden to maintain their children. Mothers who fail in the discharge of their maintenance responsibilities towards their children come under a harsher regime of community/social sanctions than fathers in the same situation.

The lineage affiliation does not affect the attitude of fathers to their children's maintenance. Fathers in both patrilineal and matrilineal communities were just as likely to reject their parental responsibility at the slightest excuse. In the same vein, mother in the two descent systems had the same attitude towards their children and took up as much of the rest of the child maintenance responsibilities as they could when their partners defaulted.

The main recommendations of the research are:

- Women's care giving role should be re-conceived and computed as an essential component in making child maintenance awards;
- Standards of living for various categories of children should be formally determined and utilised for making maintenance award and not the fathers' ability to pay;
- Methods for curbing the practice where men are with several women with whom they have children well beyond their means and those of their partners need to be developed;
- Levels of supervision over natural parents within the communities should be expanded as means of increasing the channels of pressure of father' to enhance their sense of commitment to their children;

- The definition of parent needs to be rethought with a view to incorporating the much broader customary definition of that term;
- The activities of all child maintenance institutions both formal and informal should be synchronized and the legal processes evolved to guide the activities of each institution at the various levels. Each institution should be given specific lines of authority and distinct responsibilities in child maintenance cases;
- The institutions should be conceived of as occupying various levels of operation in the resolution of child maintenance issues, with the relations between the institutions standardized, and decision taken at the lower levels informing the work of institutions at other levels.
- It is necessary to specifically deal with how best to utilize the child maintenance resources provided by traditional authorities and NGOs in the area of child maintenance;
- In particular, the capacity of traditional child maintenance institutions to ensure compliance with child maintenance awards through the use of social pressures and various methods of appealing to the conscience of members of community, thus helping to improve fathers' sense of responsibility towards their children, should be further analysed, harnessed and deployed;
- More research is needed into the various ways in which the array of child maintenance institutions complement and undermine each other;
- There is the need to work towards greater levels of decentralisation, especially financial decentralisation, in order to remove bureaucratic procedures that frustrate access to funds for carrying out the work of formal/state child maintenance institutions;
- Special education packages on child maintenance will have to be developed for specific target groups. These include workers in the various child maintenance institutions and even the entire public, to disseminate laws on child maintenance and the operations of child maintenance institutions. Such educational programmes should also target fathers and aim at sensitizing them to their responsibilities towards their children.

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND

This study on Child maintenance falls under the Family Law Focal Area of the German Development Co-operation (GTZ). The project is titled “The Legal Advisory Services for Women at the Interface between Formal Law and other Legal Structures in West Africa”. In Ghana, the project is known as the Legal Pluralism and Gender Project.

The overall goal of the Legal Pluralism and Gender Project is to enhance women’s rights in a plural legal system by initiating processes to generate better responses to the economic and social interests of women. In order to achieve this aim, the project has been conceived of as an action research project designed to promote change at the local level and to advance the rights of women. Additionally, the project is designed to explore alternative approaches to bridging the gap between the two different systems of traditional living law (customary law) and the imported or received central state legal systems through:

- a. A re-examination of the plural legal system;
- b. An identification of priority areas for intervention;
- c. The promotion of dialogue among stakeholders in aid of these interventions.

It is conceived that the interventions will be in the nature of an emphasis on the rule of law and access to justice, including the protection of identified vulnerable groups, and the promotion of mechanisms that ensure gender equity. More specifically, this research project is part of a broader design to develop and test enforcement strategies to promote shared parental responsibilities in childcare and maintenance.

1.1 CHILD MAINTENANCE RESEARCH IN GHANA

Child maintenance is one of the fundamental rights granted every Ghanaian child under the customary and statutory laws of the country. The closest available definition of child maintenance is spelt out in Section 47 of the Children’s Act 1998 (Act 560). The Act charges parents to maintain their children and supply them with necessities of health, life, basic education and reasonable shelter. The obligation to maintain a child one brings into this world is buttressed by criminal sanctions; parents may be prosecuted for failure to maintain their children. Research has shown that both parents were considered as being equally responsible for child maintenance in all communities in Ghana (Oware-Gyekye et al 1995). Child maintenance according Mensa-Bonsu (1994) is not a life-long right. The obligation on the

part of the parent to maintain a child lapses when the child turns 18 years or becomes economically independent unless that child is still in need of support. A child can be considered to be in need of support if the child is in school for example. Again both customary and statutory laws in Ghana ensure that the child whose parent is deceased and is in need of support has access to maintenance. By custom the customary successor has responsibility to maintain all surviving children of the dead person. Statutory law ensures that a reasonable provision is made out of a dead father's will for child maintenance (Mensa-Bonsu 1994).

Many child maintenance institutions exist in Ghana. They have responsibility for ensuring that the legal provisions on child maintenance are enforced. The institutions include the Department of Social Welfare (DSW), and the Commission for Human Rights and Administrative Justice (CHRAJ), which has been empowered by the 1992 Republican Constitution to protect the human rights of children. Others include the Women and Juvenile Unit (WAJU) of the Police Service, the National Council for Women and Development (NCWD), the Ministry for Women and Children's Affairs (MOWAC) and the Ghana National Commission for Children (GNCC). All these institutions have important roles to play in child maintenance. The GNCC was constituted by statute in 1979 (AFRCD 66) upon recommendation by ad hoc committee on the International Year of the Child (IYC) set up by the Ministry of Foreign Affairs to prepare Ghana for the IYC. The District Assemblies have also been granted constitutional powers to promote and protect the welfare of children they are also to enact appropriate by-laws to this effect. The Children's Act¹ requires District Assemblies to set up child panels to enforce maintenance orders and also give Family Tribunals powers to grant maintenance orders against parents or guardians who neglect to maintain their children.

These customary and statutory legal provisions notwithstanding many Ghanaian children are denied the right to maintenance. Several studies and newspaper reports lament the increase in the abuse of children's rights in Ghana, in the form of child trafficking, ritual slavery, and child labour, sexual abuse and streetism. A *Daily Graphic* article of February 13 2003 noted on page 11 that about 800,000 children lived in the streets of Accra alone. Of this number, 49% were children of the streets and 51% live with families but were forced to find solace on the streets away from harsh conditions at home. Statistics from legal institutions show progressive increase in maintenance cases each year. According to the UN Ghana Report on the Situation

¹ Section 27

of Children and Women for the year 2000 the DSW and CHRAJ were dealing with increasing cases of child neglect. In an earlier work, the Ghana Country Report 1997 on children the fact that many Ghanaian children have to work in order to maintain themselves and the rising incidence of streetism is used as evidence of the fact that the right to maintenance for many children is being denied. Several factors have been identified as being responsible for the failure on the part of parents to meet their child maintenance obligation.

The main cause of child neglect and parental inability to maintain their children in Ghana in some instances is due to inability arising out of poverty caused by low incomes. Evidence from legal aid institutions which deal with maintenance cases suggest that some parents are finding it increasingly difficult to provide the necessary care for their children. Average household expenditures in Ghana exceed average household incomes and therefore affect parents' ability to maintain their children. In situations where the parents are too young especially in instances of teenage parenting young single mothers are left to bring up their children with no support from putative (Ghana Country Report 1997, and the Situation of Women and Children in Ghana 2000).

Traditional practices have also been identified as a major factor promoting parental neglect or irresponsibility. One such practice is the mode of reckoning descent amongst the matrilineal Akans of Ghana which makes children and their fathers members of different extended families. This excludes children from any benefits derivable from membership of their father's family. The Intestate Succession Law 1985 (PNDCL 111) has ensured that such children benefit from the estate of their deceased fathers who happen to die intestate. There are however a range of other benefits that are denied them. An example is the right to succession to office. Although Akan practice assigns fathers responsibility for maintenance of their children, the mode of reckoning dissent increases the mothers' stake in ensuring that their children survive into adulthood. Some patrilineal communities like the Bongo District of Upper East Region of Ghana deny children born out of wedlock to maintenance rights from their natural fathers. Such a child is considered the responsibility of the mother's parents (Ghana Country Report 1997). Not all customary practices absolve fathers of their responsibility. The Dagombas in the Northern Region believe that children are not responsible for their birth and as such should not suffer neglect. For them the care children receive is the same which they return to their parents in their old age.

Oware-Gyekye et al (1995) place an important premium on the role of the institution of marriage in prompting a greater sense of responsibility in fathers. To them marriage can exercise the minds of men so wonderfully that they take their responsibility seriously. They noted that children born into

wedlock have better care than those outside it. Again most custody arrangements upon divorce or separation fail to give fathers' custody of children below a certain age. In such cases, fathers generally refuse outright to meet their responsibilities toward such children.

Two issues closely related to child maintenance are women's rights to inheritance and protection in marriage². Generally, divorce and widowhood are more severe on women because traditional arrangements do not recognise women's contribution to property acquisition of the husband. An examination of the profile of indigent parents in cases of child neglect outlined in the report on the Situation of Children and Women (2000) revealed that:

- a. There was an increased tendency for many fathers to be irresponsible towards children;
- b. Many cases of fathers neglect involved parents who were either separated divorced and in casual or informal relationships;
- c. Fathers were involved in several unions and were forced to share their scarce resources among many children and thereby reducing the quality of care for their children.

According to Brown (1994) studies have indicated that responsibility for the care of children is increasingly becoming a mother's alone for several reasons.³ Bukh 1979 for example notes that mothers feel themselves more closely related to their children and more directly responsible for their needs. The practice of providing "seed money" has become a convenient escape route for men from their duty to maintain their children. When husbands give their wives capital to trade ("seed money") they expect that the wives will utilise the profit from the trade to take care of their needs and those of their children forever (Ghana Country Report 1997).

Women who have custody of children in non-marital relationships as well as those who live apart from their husbands are known to experience difficulties getting males to contribute towards the maintenance of children. Ignorance on the part of the mother however leads to an under utilisation of the statutory legal provisions that could have supported their efforts in getting the fathers of their children to live up to their paternal responsibility of maintaining their children. This ignorance, according Kutsoatsi of the Department of Social Welfare (DSW) is a general problem in Ghana. Most people

² GTZ Legal Pluralism and Gender Pilot Project: Workshop on Promoting Gender Equality in Family Law in Ghana's Plural Legal System—The Case of the Volta Region Feb 2002

³See also Bleek 1975 who makes a similar observation for the matrilineal Kwahus of the Eastern Region of Ghana.

are unaware of child maintenance laws and as such provide very little encouragement for women who set out to utilise such legal systems. Newspaper reports expressed concern about the lack of awareness in Ghana about the observance of children's rights and legal provisions that protect them.

Other factors relate to the enforcement institutions. First, only formal courts of law can legally enforce maintenance orders. Other forums for the resolution of child maintenance disputes often have to resort to courts to secure compliance from recalcitrant clients. Second, child maintenance institutions, especially the courts, are over burdened by the volume of work and causing delays in the administration of justice, including the hearing of child maintenance petitions. Again, the institutions have no monitoring procedures to ensure that those against whom orders are made comply with them. Other problems relate to the attitude of justice delivery officers who are influenced by traditional gender stereotypes that are unfavourable to women.

For Mensa-Bonsu (1994), a scrutiny of the legal rules on child maintenance reveals several shortcomings that tend to place undue pressure on the parent who has kept custody of the child, usually the mother. She made these observations with regard to the repealed Maintenance of Children's Decree, but most of her observations still hold good for the statutory child maintenance laws currently in operation. The decree, she noted, fails to compute physical care as a contribution to child care and as such rids the non-custodian parent (usually the father) of any vested economic interest in the level of care the child enjoys. The Courts are generally more inclined to share responsibility of maintenance between both parents. Fathers are usually mandated to pay monthly allowances, school fees and all other educational and health costs. Mothers are usually ordered to supplement monthly allowance and to supply child's regular clothing. The custodial parent (usually the mother) is left with no choice. She has to meet all needs of the of the child or risk social ridicule.

Another shortcoming she observed was the fact that the considerations used to determine maintenance levels awarded are based on factors none of which addresses the special needs of the child. They are based rather on:

- a. Income and wealth of both parents/persons legally able to maintain child;
- b. Any impairment of earning capacity of person with duty to maintain the child;
- c. Financial responsibility of person with duty to maintain child with respect to the maintenance of other children.

Finally, the fact that maintenance orders are prospective encourage feet dragging. The incentive for wilful delays could be reduced considerably if orders could be made from the date a person ceased voluntarily to honour

financial obligation to maintain a child. In such an instance the arrears of maintenance will be reasonable (Mensa-Bonsu 1994).

Efforts have been made in Ghana to reform laws to make them more responsive to the specific needs of children and to reflect constitutional and international conventions on children. The year 1995 marked the beginning of Ghana's attempts to compile into one all child related laws. The result was the enactment in 1998 Children's Act (Act 560). Later in 2001 a Criminal Code Procedures Amendment Bill that seeks to guide the administration of juvenile justice was placed before parliament for deliberation.

Ghanaian women continue to play a dominant role in the upbringing of children. Rural women tend to have two times as many children as their urban counterparts and are also more likely to bear the burden of being active breadwinners of their household. Gender becomes a critical factor in this instance in getting Ghanaian children access to one of their fundamental rights, maintenance. Gender roles increase women's responsibility to provide care for their children despite the economic conditions in which they find themselves and absolve fathers of the same responsibility. Women's de facto limited rights in and outside marriage denies their children access to maintenance from their fathers. Child maintenance therefore becomes increasingly women's legal rights issue. The concern of this study is the type of legal structures that Ghanaian women operating in a plural legal system have access to in their quest to provide the best for their children by way of maintenance; the systems they are able to utilise to secure additional resources to maintain children in their care and how responsive these systems are to their gendered positions.

1.2 STUDY OBJECTIVES

The study in the main sought to gather the information required for forming the basis for developing proposals to review and strengthen existing laws and institutions for the enforcement of maintenance orders.

The specific objectives that guided the study were to:

- a. Assess the level of awareness and utilisation of laws on child maintenance within the various communities;
- b. Identify problems faced by institutions in the enforcement of maintenance orders;
- c. Examine how the various legal systems in operation with respect to child maintenance impact each other;
- d. Identify ways in which institutions that deal with child maintenance cases can be strengthened in order to enhance women's access to justice.

The FLFA is based on the premise that women and the rural poor have unequal and inequitable access to justice in plural legal systems and as a result have fewer opportunities for the enhancement of their legal rights. There is need for research on the impact of plural legal system on women and rural/urban poor to develop possible strategies to enhance women's access to resources to support children in their care. It is the expectation of FLFA that the research on child maintenance will gather information on childcare and maintenance practices in Ghana's pluralistic legal system. The research is also expected to provide information on child maintenance cases actually dealt with in family and other tribunals, courts and forums. Such information will lead to proposals for reviewing and strengthening existing laws and institutions for the enforcement of orders. Other outcomes envisaged are the identification of other institutions that can be used to strengthen enforcement of maintenance orders.

1.3 ISSUES EXAMINED AND STRUCTURE OF THE RESEARCH REPORT

The first chapter examined the background to the study by reviewing studies and reports on child maintenance in Ghana and highlighting concerns about the state of children in Ghana. Thus the state of children in Ghana, the reasons for increased abuse of children's rights, inadequate access to legal institutions to secure much required resources to support the development of children to full well rounded adults and gap in the laws on child maintenance are all discussed in this chapter

The second chapter describes Ghana's plural legal systems. Generally, Ghana is identified as having several legal systems that run concurrently. These systems are mainly the formal statutory legal system, the more informal customary rules and living law, and an array of religious and mixed rules that form an identifiable third system. There are as many customary laws as there are ethnic groups in Ghana, and this further complicates the picture. This state of affairs produces problems when one system conflicts with the other or where the circumstances produce difficulty in determining which system of laws should apply. In such instances, the hegemony of statutory law often takes over and resolves confusion, but not without dissent and dissatisfaction, sometimes fracas.

The various legal systems are enforced by institutions. The effectiveness of an institution in ensuring compliance with the system of laws it is supposed to uphold is determined largely by state backing and recourse to sanctions, operational resources, and deference for the system of laws. Traditional institutions for example, have varying levels of authority dependent on recognition by the community, the powers of the traditional authority and the

relevance of the institutions in the community. The efficient functioning of the formal state institutions are largely determined by effective enforcement, which is in turn largely dependent on resources provided by government to execute their duties. These issues are discussed in chapter three. That chapter also outlines the various functions of the institutions, their ranking as to usage and effectiveness and how they are generally perceived by various categories of respondents. The chapter also notes the logistical, organisational and human resource capacity problems of the various institutions.

The third chapter analyses data from research interviews conducted in 5 regions in Ghana, namely Ashanti, Greater Accra, Northern, Volta, and Western Regions. It outlines the key themes that arise from real cases that were dealt with by these institutions discussed in chapter two in the years 2000, 2001 and the first quarter of 2002. This analysis includes the types of services provided; the types of documents reviewed; the types of cases handled; and gender differentiation by status of parties. Typical reasons for seeking maintenance, factors affecting access to law enforcement mechanisms and costs as well as mechanisms for calculating incomes of child maintenance debtors are also captured in this chapter. The fourth chapter uses the outcome of discussions in the third chapter to identify gaps between the legal rights of children and the enforcement of these rights. The concluding section highlights the main, themes, issues and findings in the preceding chapters, makes conclusions based on these findings and offers recommendations for law reforms as well as further research to enrich attempts at making child maintenance legal provisions more accessible and effective. These recommendations are geared towards promoting an enhance sense of shared parental responsibility towards maintenance of the Ghanaian child.

CHAPTER TWO

GHANA'S PLURAL LEGAL SYSTEM

2.0 BACKGROUND

Ghana's legal system is pluralistic. The 1992 Constitution of Ghana, (which is the highest law of the land) provides in its article 11 (1) that "The laws of Ghana shall comprise-

- a. This constitution;
- b. Enactments made by or under the authority of the Parliament established by this Constitution;
- c. Any orders, Rules, Regulations made by any person or authority under a power conferred by this Constitution;
- d. The existing law; and
- e. The common law."

The common law is said to comprise the rules of law generally known as the common law, the rules generally known as doctrines of equity and the rules of customary law including those determined by the superior courts of Judicature. Customary law is defined to mean the rules of law which by custom are applicable to particular communities in Ghana.

Patently missing from the above categorization of the sources of Ghana law is that body of law that may be referred to as "Religious Law" for want of a better expression. It is common knowledge that the majority of Ghanaians adhere in one way or the other to a belief system which comes with various rules, customs, conventions, practices and norms that are considered binding in various decrees on adherents of that belief system. Notable among these are the Christian and Islamic or Moslem faiths. The other significant belief system, Traditional African Religion, is unjustifiably equated to customary law. The legal status of these religious laws has been debated for some time. Judicial thinking suggests that they are unenforceable rules. The case of **Acheampong v Marshall** (Unreported, Divisional Court, Accra, 11th November 1959), is illustrative of this point. In the face of the inequitable customary law rules on intestate succession especially in matrilineal communities, the Basel Mission Society of Akim Abuakwa evolved new succession rules for the benefit of its Christian community. The church did not only assist in and supervise the distribution of the estate of a deceased member, but also in some cases appointed an administrator of the estate. The church went further to assist in the settlement of disputes that arose after the apportionment of the estate. Parties generally agreed and indeed felt bound by the rules of the church on intestate succession. In the particular case under discussion, an attempt was made to apply the rules of the church to the distribution of the estate of an intestate. The court held that the rules of a religious

denomination on intestate succession were not enforceable by the court because they were not part of the laws of Ghana. This position has not changed to date. Aside the bodies of law recognized by the Constitution, the majority of Ghanaians feel themselves bound by various Religious Laws. Yet the state does not recognize these laws as binding and enforceable.

In some limited situations, state laws have specifically incorporated Religious Laws by reference. The Marriage of Mohammedans Ordinance (CAP 129) provides in its section 10 that “On the death of a Mohammedan whose marriage has been duly registered under this Ordinance, the succession to his or her property shall be regulated by Mohammedan law.” Although section 10 of CAP 129 was repealed by the Intestate Succession Law, 1985, (PNDCL 111), the particular incorporation of Religious Law by reference was operational in Ghana between the 30th day of December 1907 (when CAP 129 came into force) and 1985 when PNDCL 111 came into force.

By a more complex process of argumentation, it can be said that Religious Law is applicable as the personal law of persons in particular communities in Ghana. The Courts Act, 1993 (Act 459), as variously amended, provides that the personal law of a person shall be “the system of customary law to which he is subject or to the common law where he is not subject to any system of customary law...”. Since customary law is defined by the Constitution as “the rules of law which by custom are applicable to particular communities in Ghana”, it will follow that where in a particular community, the rules of custom applicable are Religious Law, and same will constitute the customary law of that community. In Ghana, various settler communities, comprising Muslims from Sahelian Africa and other neighbouring countries exist. These communities, popularly called “Zongo’s”, regulate their affairs according to the dictates of the Holy Qur’an. The resistance of Muslims to the operation of the Intestate Succession Law, (PNDCL 111), springing mainly from these communities was partly justified on the grounds that the Qur’an has stipulations on Intestate Succession which they consider binding on them as Muslims. It is therefore arguable that in these communities, their proper customary law, as defined by the Constitution, is Islamic Law. What makes this contention stronger still is the fact that no particular customary law, defined as the rules of law applicable to particular ethnic groups, is applicable in these communities. Again, the individual members of the community subsume their ethnic customs and norms to those prescribed by the Holy Qur’an. “In many of these communities, Muslim marriages were introduced either forcibly by rulers on an unwilling people, or by

Muslim immigrants and superimposed on the existing indigenous institutions or gradually and willingly adopted by native members as a necessary and compulsory aspect of their new religion".⁴ For all intents and purposes, Islamic law is their customary law. This is because the different ethnic groups from within and outside Ghana who conglomerate in these communities form a new culture, a new way of life, indeed a new customary law based on the Islamic faith. That new culture based on the Islamic faith must pass as their customary law. It is clear therefore that the systems of law that are simultaneously operational in Ghana today are:

- a. the formal statutory legal system, mostly inherited from colonial rule;
- b. the more informal customary rules with a veneer of constitutional and statutory endorsement and living law as well as;
- c. An array of religious and mixed rules and practices that form an identifiable third system.

2.1 LEGAL PLURALISM AND THE CONFLICT OF LAWS

2.1.1 Conflict of Laws in a Plural Legal System

From the above analysis, one can conclude that Ghana's legal system is pluralistic. Legal pluralism is generally defined as a situation in which two or more legal systems co-exist in the same social field; a state of affairs in a social field in which behaviour pursuant to more than one legal order occurs.⁵ From a purely juristic point of view, it posits a situation where the sovereign commands different bodies of laws for different groups of the population and when all these parallel legal regimes are all dependent on the state legal system⁶. The different systems of law "apply concurrently...without spatial separation within a single territorial jurisdiction".⁷ In Ghana this is reflected in the existence of customary law and statute law rules sometimes on the same subject. In the words of one Ghanaian jurist, "customary law is...the greatest adjunct to statutory law and the common

⁴ Ken Y Yeboa, "Bigamy and Islamic Marriages in the Law of Ghana: The Legislator's Dilemma or Studies Silence", VOL XIX (1993-95) RGL 69.

⁵ Sally Engle Merry, Legal Pluralism, Law and Society Review, Volume 22, Number 5 (1988) p 870.

⁶ Kwamena Bentsi-Enchill, the Colonial Heritage of Legal Pluralism, Zambia Law Journal, Vol. 1 No. 2; Ibid, p. 871.

⁷ Allott, Essays in African Law, p. 154

law”⁸ in Ghana. In a pluralistic legal system behaviour pursuant to more than one legal order may be expected in a particular social field. The individual is subjected to different, and potentially conflicting, systems of law at the same time.

The classic example of a situation of legal pluralism is the introduction of European colonial law into various African countries. This automatically created a plurality of legal orders. For a long time, the judicial set-up in British Colonies concealed the internal conflict of laws in the colonies. The dual system of courts meant that a party seeking a remedy under the native law invariably went to the native court whilst a party seeking a remedy under English Law went to the “English Courts”. Although the “English Courts” were empowered to apply native law in certain cases, an analysis of the cases of that time tends to show that the choice of court carried with it the choice of law, thus obviating any internal conflict of law issues.⁹

An imperceptible casualty of the hype associated with “classic legal pluralism” was the fact that legal pluralism goes deeper than the imposition of European law upon traditional law. The colonized societies were legally pluralistic before the advent of European adventurers. In Ghana for example, pre-eighteenth century Islamic missionaries had imposed Islamic law upon various parts of northern Ghana well before those territories were declared British Protectorates in the early twentieth century.

Legal pluralism of the nature described above is bound to present its own challenges. It envisages a situation of interaction and co-existence between different legal orders. This raises the issue of the relationship that should exist between the various legal orders. Whilst in some cases the various legal orders are allowed to co-exist in a parallel and independent fashion as described above, in other cases there is the subjugation of one system to the other.

Ghana appears to have adopted the later approach especially as regard the relationship between statute law and customary law. Under colonial rule, customary rules and practices were applied by the courts if they were not

⁸ Per Archer J (as he then was), in *Re Antubam (Decd); Quaico v. Fosu* [1965] GLR 138, at 144.

⁹ Oluwole Agbede, “Conflict between Customary and Non-Customary Systems of Law: Preliminary Observations”, *VerfassungUnd Recht in Ubersee* Vol. 5 No. 4. p. 415.

“repugnant to natural justice, equity and good conscience”.¹⁰ Since Ghana attained Republican status, the customary laws of various communities have been treated as part of the laws of the country and the only test for their validity is whether they fulfil those conditions which come under the general law of Ghana must be satisfied by all customary laws. They must not be inconsistent with the general law of the land (including the Constitution) and not contrary to national aspirations or public policy. Article 26(1) of the 1992 Constitution, for example, provides that “Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution”. In some instances laws are passed to do away with long standing customary practices.¹¹ In many instances, however, the modelling of laws along an English pattern has led to a situation where rules of local statutes exist side by side with the rules of customary (and sometimes religious) law.¹² The approach adopted above has often resulted in a dichotomy between the living law and the law on the statute books or that applied by the courts. The idea that there exists a relationship between the social infrastructure of a given society and the workings of the legal systems which presides over it is true of the various communities in Ghana. Custom is the outcome of generations of experience under conditions which can hardly be fully appreciated and one must always be cautious in making judgments about customs.

Legal pluralism also creates a complex of legal problems such as the need to decide which particular rules apply to a particular transaction; or determining the particular group an individual belongs to and how one becomes a member of such group and thus subject to its laws; how an individual can change the law applicable to him/her as a member of a group; what choice of law rules must exist for issues between people of different groups and the determination of whether a particular system of law applies in a certain geographical area.

In Ghana, the relationship between common law (narrowly defined to include equity but excluding customary law) and the customary law properly so called has not been clearly stated. Indeed, the Constitution defines common law to include customary law and one is at a loss as to what happens

¹⁰ Section 87 of Courts Ordinance Cap 4 (1951 Rev)

¹¹ Article 26(2) of the 1992 Constitution provides that “All customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited”.

¹² Oluwole Agbede, *Supra*, p. 416.

when these two, otherwise distinct, bodies of law conflict. Again, the relationship between the various customary law rules and as between customary law and Religious Law that has attained the status of customary law, in the event of a conflict has not been precisely defined. In such a situation the court may apply such rules as will enable it achieve a result that conforms to natural justice, equity and good conscience¹³.

One area in Ghana where conflicting customary law rules produced injustice was the law relating to membership of family by children, which membership determines their right to succeed to property. The rule was that the child belonged to his mother's and father's family in matrilineal and patrilineal communities respectively. Thus, in the case of a mixed marriage between a woman from a patrilineal community and a man from a matrilineal community, the strict application of the above rule of each family system would lead to the conclusion that the child belonged to neither family. To avoid such a result, such a child was considered to be a member of either the mother's or father's family depending on which family the child more closely identifies with.

2.1.2 Classical Conflict of Laws in the Ghanaian Courts

As noted in the previous section, the relationship between the common law and the customary law has not been clearly stated. The same is the case in the relationship between the various customary law rules, and as between customary law and Religious Law that has attained the status of customary law. As in the case of the determination of a person's membership of a family in the face of conflicting customary law rules (noted above), the court may apply such rules as will enable it achieve a result that conforms to natural justice, equity and good conscience. This section discusses a number of conflict of law issues in this area and their resolution in court.

In **King v Elliot** [1972] 1 GLR 54 the issue arose as to whether a foreigner who had acquired a Ghanaian domicile of choice had by reason of that become subject to customary law such that same should govern the devolution of his property. The court held that such a person does not become subject to a particular customary law unless he could be shown by positive evidence regarding his manner of life to have embraced that system of customary law. There must in such a case be definite and unmistakable signs on his part

¹³ Rule 5 of S. 54 of the Courts Act 1993 (Act 459).

evidencing his adoption of the customs of the community in question. In **Savage v Mcfoy** (1909) 2 Ren. 504, the issue arose as to whether a non-native can contract a customary law marriage. It was held that a non-native can not marry under the customary law on the assumption that unions involving polygamy are prohibited by English law. In **Davis v Randell** [1963] 1 GLR 382, however, the marriage of a Sierra Leonean under Fanti customary law was recognized by the Ghanaian courts as valid.

The cases also suggest that although a foreigner may not enjoy the benefits of customary law without positive exertions on his part, he may be bound by customary law liabilities nonetheless. In **Adjei v Ripley** 1WALR 62 the plaintiff, an African woman, was the mother of a child fathered by the defendant, a European. The parties were not married. The plaintiff sued the defendant for maintenance of the illegitimate child. It was held that where a man not normally subject to native custom enters into concubinal relations with an African woman and had a child with her, his liabilities (and rights if any) should be determined by the same rules as would apply in similar circumstances to a man who is subject to native custom. In **Whittaker v Choiteram** [1971] 2 GLR 267, Azu Crabbe JSC attempted to explain the above case thus: "Ripley's liability to maintain the child was not because he had agreed or was taken to have agreed to be governed by customary law. By his act of having an issue with Madam Dua, he had committed a wrongful act (call it a tort) by the law of the place of commission. It is a principle of the common law that when a tortuous act has been entirely committed in England, no foreign element in the case such as the nationality of the parties is relevant to liability and the issue does not concern the conflict of laws....That principle will hold good in a tort committed in Ghana. So in imposing the liability or maintenance on Ripley it was irrelevant that he was a European. Consequently the question of having subjected himself to customary law did not in my opinion arise".

Legal pluralism subjects the individuals to a broad array of rules which provides them with alternative causes of action and indeed institutions for seeking remedies. This allows for flexibility, provides the individual with choice but is at the same time apt to confuse. The individual may also be painfully unaware of the existence of some of these rules and cannot avail him/herself of same. The case of **Acheampong v Acheampong** (1967) CC 59, illustrates the advantage of alternative causes of action. In that case the defendant had married the plaintiff under customary law but had refused to convert the marriage into a marriage under the marriage Ordinance as he promised. A marriage under the Marriage Ordinance, CAP 127 has different incidents from a customary marriage. For example, the latter type of marriage does not permit of polygamy whilst the former type of marriage generally does.

The wife instituted action for damages for breach of promise to marry. The husband contended that a customary wife cannot sue her husband in tort whilst the marriage subsists. In rejecting this submission it was held that the common law legal fiction that husband and wife are one in law was not part of the customary law. Consequently, a customary wife is capable of suing her husband in the same way as she can sue any other person.

Sometimes, the remedies provided by one system are better than those provided by another. This was the position in Ghana under the Maintenance of Children Act 1965, (Act 297) as regards remedies available for neglect of duty to maintain one's child. Under section 9 of the Act the amount of maintenance payable was not to exceed N¢ 10.00 a month. At this same time under customary law, the amount which a father or successor was to spend on maintenance of a child was a reasonable sum, the quantum of which was limited only, in the case of the father, by consideration of his means and in the case of a successor by the amount of money he had inherited. It is therefore not surprising that in **Owusu v Agyapong** [1971] 1 GLR 56, it was held that the customary right of a child to be maintained by the father, which right subsisted against the successor, to the extent of the estate coming into her hand, was not the same as the statutory right for a maintenance order under Act 297. To the court the customary right of a child to be maintained remained unaffected by Act 297, for the latter merely provided a new additional remedy to existing customary law remedies, eligible at the district court. This holding, which is still good law today, is of paramount importance and will be set against the empirical findings of this research project in the following chapters.

As is apparent from the above discussion, the co-existence of these various legal orders produce choice of law problems of a nature quite different from those for which rules of private international law have been formulated. For, while the latter is concerned with choosing between territorially based systems of law, "internal conflicts of laws" is concerned about choosing systems of law that apply concurrently without spatial separation within a single territorial jurisdiction.¹⁴ Section 54 of the Courts Act, 1993 (Act 459) attempts to provide some guidance for resolving issues arising out of transactions involving internal conflict of laws. According to the provision, such issues shall be determined according to the system of law intended by the parties to the transaction to govern the issue or the system of law which the parties may from the nature of the transaction be taken to have intended to

¹⁴ Oluwole Agbede, *Supra*, p. 415.

govern the issue. Thus, for example, in the absence of statutory rules to the contrary, the rights and liabilities of parties to a customary marriage and issues arising therefrom must, *prima facie*, be governed by customary law.

2.1.3 Neo-Classical Conflict of Laws and the Ghanaian Courts

In the light of the above challenges of legal pluralism some have suggested the evolution or creation of a unified legal system often drawing on models of European law. Such endeavours to adopt uniform state law however is often met with pockets of intense resistance from those groups whose laws have been preserved in some fashion and are threatened by such attempts at unification.¹⁵ A classic illustration of this in relation to Ghana is the Intestate Succession Law, 1985 (PNDCL 111). One of the major aims of the law was to establish a uniform intestate succession law which would be applicable throughout Ghana irrespective of the type of marriage contracted by the intestate or the kind of community to which they belonged. Research however indicates that various communities still adhere to the customary rules on intestate succession in blatant disregard of the law.¹⁶

Others have suggested that the various legal orders, especially customary law, should be left to evolve and grow separately and independently of each other. Such an approach it is suggested, would lead to the production of a legal model similar to those that are found in former British Colonies in Asia, namely a legal mosaic. A legal mosaic results out of the co-existence of a number of legal systems almost side by side with each other. India and Sri Lanka provide a classic example of such a formation. India recognizes the existence of three legal systems functioning independently of each other. These are Hindu Law, Moslem law and the Common Law.

On this point a special case has often been made for customary law. The customary law it is suggested is a progressive system. Its basic principles are so elastic in their application as to make them capable of application to any stage in the cultural, social and economic progress of the nation. In **Eshum v Johnfia** [1982-83] GLR 441 at 452, Twumasi J admonished:

¹⁵ Sally Engle Merry, *Supra*, p. 874; Oluwole Agbede, *Supra*, p. 416.

¹⁶ E.V.O. Dankwa, *Comparative studies of customary and modern legislation in the area of the family, inheritance, marriage and fertility rights*, December 2001

“since customary law consist of the customs and usages of the people it is the people themselves who can change or modify it. The duty of a court is to endeavour always to ascertain and apply the customary rules and usages in force at any particular time in the community. Since customary law is elastic and progressive... our people who live in the modern world should be credited with the capability to adapt their customs and usages to modern situations without coercion from an external authority. Once external coercion, judicial or legislative, is brought to bear on the customs and usages of the people, there is bound to be the polarization of what is actually practiced by the people in their day to day lives on the one hand and the judicial decisions or legislative enactments on the other. There should always be a judicious parallelism between the law making process and the advancement of the practices, customs and usages of the people to avoid frustration”

This opinion runs completely contrary to that of the proponents for a unified legal system. The debate will continue for a long time to come.

2.2 LEGAL PLURALISM, CONFLICT OF LAWS AND CHILD MAINTENANCE IN GHANA

One area of Ghanaian law where legal pluralism finds expression is that of child maintenance. There exist bodies of statutory law, customary law and even religious laws on child maintenance. Ghanaian society places great premium on children. Indeed inability to have children is considered a great misfortune. The protection and care for children is thus of concern to all. No precise definition of what constitutes child maintenance has however been found both at customary law and in statute law. To some, child maintenance involves giving to the child such maintenance training and education as should make him/her a useful member of society and the community in which he/she lives. To others it transcends the mere provision of the necessities of health and life to encompass the satisfaction of the emotional and spiritual needs of the child. Whatever position one takes, child maintenance entails acts aimed at improving the child's condition such as the care and proper training of the child on the lines required by social and economical exigencies. We examine closely child maintenance laws in Ghana in the sections below.

2.2.1 The Customary Law on Child Maintenance

In customary law, a child belongs to his or her family as an incident of birth. The customary family consists of groups of persons lineally descended from a common ancestor exclusively through males (in communities called patrilineal for this reason) or exclusively through females starting from the mother of such ancestor (in communities called matrilineal for this reason). Faryosey, in her work, identifies four major descent systems in Ghana: the patrilineal, matrilineal, double lineal or dual system and the bilateral system. The patrilineal descent group is made up of all females and males who are descended through the male line only from a common ancestor. Succession and rights to inheritance pass through the male line. The Ewe, Ga-Dangme, Talensi, Bulsa and the Kusal are examples of ethnic groups that have patrilineal descent. Women have no right to inherit property amongst the Gbi of the Volta Region of Ghana widows have to return to their patrilineage from marital homes after the death of their husbands. The two kinds of family systems, which are generally recognized under Ghanaian customary law, are the matrilineal and patrilineal systems and every individual is deemed to belong to either of these for the purpose of succession to property and office.

In the matrilineal system the descent group is made up of all female and males who trace descent through a female line form a common ancestress. Within the double or dual system the individual belongs simultaneously to two descent systems the mother's matrilineal and the father's patrilineal descent group. The Lolagaba and Mo of the Upper West Regions of Ghana practice the dual system. Even though the right to inheritance is transmitted through both lineages, moveable properties like houses farms are passed through the patrilineage only. This makes the patrilineage still an important group for the transfer of socially valuable resources.

In the bilateral system, individuals are not born into a predetermined group but have several possibilities of kinship ties, which can be utilised for purposes of kin alignment (Dagomba). Succession and inheritance though are passed through the partilineage and women's right to inheritance are limited to positions as sisters and mothers and not wives. Women only have usufructory rights and cannot take decisions regarding lineage property. Wives' rights to the use of their husbands' properties is the prerogative of the male members of the lineage (Fayorsey 2003).

Kin groups differ in rules of descent and affiliation to lineages. The basic qualification for lineage affiliation is one's relationship to female or the male ancestor which in turn determines qualification for succession or inheritance. All have varying degrees of segregation in conjugal roles in respect to domestic labour as well as ownership and management and inheritance of ma-

terial resources. Irrespective of the community to which one belongs, the fundamental principle of the customary law has been that a father is under a legal duty to maintain his child however begotten. Ollennu, noted:

*“While young, the children are entitled to maintenance. It is the duty of the father or the father’s family to maintain the children, to exercise disciplinary authority over them, to find work for them such as put them to a trade or profession, to marry for them and find them a place in society e.g. in the army groups. The father does this because they as his children carry his spirit”*¹⁷.

Thus in **Adjei v Ripley** (1956) 1 WALR 62, it was held that a father was bound by customary law to maintain his child at customary law however begotten. The duty of a father to maintain his child is an absolute legal duty at customary law. A father is not excused from liability by reason that he is no more married to the mother. In **Amartey v Sarah** [1976] 1 GLR 279, the plaintiff and defendant had been customarily married. The defendant stopped maintaining their two children when the plaintiff was pregnant for the third time. The two children were in secondary school and were sent home for non-payment of fees. In this action for maintenance by the mother, the father contended that it was not his will that the children should receive secondary school education and also that he had another wife and seven more children to support. The High Court rejected these contentions holding that it was a father’s liability to maintain his children however begotten. Neither is this duty on the father relieved by virtue of the fact that some other person has assumed responsibility.

Another case illustrative of this state of the customary law is **Commissioner of Police v. Ewiah** [1956] 1 WALR 69. By section 72 of the Courts Ordinance 1950, any police officer having reasonable ground to believe that a juvenile has a parent or guardian who does not exercise proper guardianship was empowered to bring such juvenile before any court. The court if satisfied that such a juvenile needed care and protection could commit this juvenile to the care of any fit person willing to undertake that responsibility. In 1955, two children of Alex Tawiah (an Akan) were brought before the juvenile court at Sekondi, as having a parent or guardian who did not exercise proper guardianship. Before the proceedings in the Juvenile court, the children’s aunt had removed them from their father’s house on the ground that the father had failed to observe his parental responsibilities. Later on, the

¹⁷ Ollennu, the Law of Succession in Ghana, 1960, p 19.

juvenile court made a fit person order in favour of the aunt and ordered the father to pay £G 2 per month in respect of each child. It was against this payment order that the father appealed. It was argued on his behalf that according to customary law the custody of the children of a marriage belongs to the father and not to the mother but if the mother chose to remove them from the father, his responsibility towards them thereupon ceased. The Supreme Court, affirming the decision of the juvenile court, held that a parent could not be relieved of his/her parental responsibility merely because a relative is good-natured enough to shoulder them.

The duty of a father to maintain his children existed simultaneously with a similar duty on the mother. The rule was that when the children are young, they normally remain under the influence, custody and protection of the mother. The woman does her share in providing food and clothing and seeing to it that they go to school regularly. Children were also under a duty to assist the father in his trade or business. By customary law, however, where a son or a ward works with his father or guardian and out of the proceeds of that joint labour the father or guardian acquired property, the son or ward does not thereby become joint owner of the property with the father or guardian.

The duty of the father to maintain his children transcended his death. In **Rule v Rule** [1973] 1 GLR 41, it was held that a customary successor is bound in law to utilize the money in the estate toward the maintenance and education of the children of the deceased even to the last pesewa. A similar view was taken in **Kyei v Afriyie** [1992] 1 GLR 257. In this case, A died intestate leaving behind a widow and four children. The first plaintiff, the widow of A, brought an action for herself and on behalf of the four children who were then all minors. The plaintiff's case inter alia was that during his life time, A acquired personal properties including a house, but that the defendant, A's sister, who had subsequently been appointed his customary successor and in that capacity had taken possession of the properties, had refused or neglected to take care of, educate and maintain, the four children of A. It was held that it was a well-established principle of customary law that a child was entitled to be maintained out of his/her father's estate. This was because the successor stood in loco parentis of his predecessor and assumed liability for his legal responsibility within the means of his estate. The legal duty imposed on the customary successor to maintain the children of the deceased was clearly distinct and separate from the right of the children to inherit the estate of the deceased person. In **Manu v Kuma** [1963] 1 GLR 464 the law was stated thus: we consider that the responsibility of a predecessor is a legal one and though rights enuring therefrom to the child is different in its nature from a right to succeed or have a share in the estate of his

deceased father, the right to succeed to property was determined by the family system to which the child belonged. In patrilineal communities, children could inherit their father's estate. This rule applied to both male and female children. Thus in **Golo III V Doh** [1966] GLR 447, it was held that in the Kpeve area in the Volta Region inheritance was patrilineal and children both male and female inherit their father's estates but the daughter had only a life interest in the property descending to them from their father. On the death of a daughter such property would revert to her father's family. Her children would have no right to inherit such property.

Children from matrilineal communities were somewhat placed at a disadvantage. The rule was that neither they nor their mothers were entitled to inherit the deceased father's estate. The widow and children of an intestate however had a possessory life interest, which was nothing more than a right to reside or occupy any house self acquired by the intestate on land that was not family property. They however had no right to a specific portion of any property of the deceased intestate because a mere possessory life interest did not make the owner of such a right a part owner of the house.

The propriety of these rules has been challenged in many quarters, but Twumasi J suggested in **Eshun v Johnfia** [1982-83] GLR 441 at 452 that,

“What many people overlook in evaluating the merits of the customary law among the Akans is that it allows a member of the family an unfettered discretion to alienate his self-acquired property to any person whether his wife or child, or even to charity in his life time and the family will not quarrel with the disposition. But if a member, for reasons known to him/her, does not exercise his customary rights, then the family is entitled to assume that he intended that the property devolve upon them. Even so, the customary law, in its wisdom and fairness, makes provision for the widow and children of the deceased e.g. maintenance. The fact that in certain cases the custom is violated is a regrettable human shortcoming but it is no argument against the system.”

Notwithstanding this defence the intestate succession law has abolished these customary rules on succession to property of an intestate and replaced it with a unified system of succession.

The enforcement of the customary duty to maintain a child was traditionally done by the elders of the family and at the village or town level, by the chiefs' court. There were traditional modes of enforcing awards. With increasing state interventions in this area, however, the jurisdiction of chiefs in respect of these matters is now being shared by various other formal institu-

tions. The jurisdiction of these other institutions normally trumps that of the chiefs. Indeed, since 1958 the statutory jurisdiction of traditional rulers has been confined to determining causes or matters affecting chieftaincy.¹⁸ Currently, final judicial power is vested in the state judiciary. This does not however take away the power of chiefs and indeed any individual to arbitrate in those matters, although arbitration has its own limitations. In sum, the jurisdiction of chiefs and other enforcers of the customary duty to maintain a child is now restricted to an arbitral role, a role that is subsumed under and must not infringe any statutory laws. This notwithstanding, it is the case that many traditional rulers still wield immense powers, and especially in places where the impact of formal state structures and their laws is not that great, what holds sway is the customary law of child maintenance as enforced by traditional and in some cases religious leaders.

It is evident from the above that newly independent states in Africa began to modernize and to adopt laws modelled upon those of their colonial masters, they required a unified legal system that was not complex, messy and equivocal. This required a constriction of the legal effect of customary laws to that, which is not inconsistent with statutory laws. It is also clear that in this, they encountered resistance from various adherents to various systems of laws in the plural legal system. In time, this conflict coalesced into a contest between the modern/governmental/state/formal/official on the one hand and the traditional/non-governmental/non-state/informal/unofficial forms of ordering on the other hand. It is within these multiplex sets of dichotomies that the examination of child maintenance practices in Ghana will precede in the next chapters. In the interim, it will be worth our while to examine the various statutory laws on child maintenance currently in force in Ghana.

2.2.2 Statutory Laws on Child Maintenance in Ghana

The statutory laws that deal with the issue of maintenance of children include the following:

- a. The 1992 Constitution of the Republic of Ghana;
- b. The Children's Act, 1998 (Act 560);
- c. The Criminal Code, 1960 (Act 29) as amended by Act 554;
- d. The Matrimonial Causes Act, 1971 (Act 367);
- e. The Wills Act 1971, (Act 360);
- f. The Intestate Succession Law, 1985 (PNDCL 111) as amended PNDCL 264;and

¹⁸ Local courts Act, 1958

g. The Court Act 1993, (Act 459).

2.2.2.1 The Constitution, 1992 Articles 27 and 28

The constitution is the supreme law of Ghana and children are beneficiaries of the general body of fundamental human rights provided therein. Article 28 is specifically devoted to the rights of children. A child under the constitution is a person under the age of eighteen years. On maintenance, the constitution enjoins Parliament to enact laws necessary to ensure that every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parent. The responsibility for this lies on parents and “such institutions as Parliament may, by law, prescribe...” Mindful of the fact that the proper care and maintenance of children can only be situated within a sound and stable family set up, it is provided that such laws must also cater for the protection and advancement of the family as a unit of society so as to promote the interest of children. To ensure that the interest of the child is protected even after the death of the parents, it is also provided that a child shall be entitled to a reasonable provision out of the estate of its parents. The article further provides that laws shall be passed to protect children from exposure to physical and moral hazards; work that constitutes a threat to their health, education or development; and deprivation from medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

The need to protect the child begins right from conception and during this stage and thereafter is inextricably linked to the welfare of the mother. It is accordingly provided in article 27 of the Constitution that special care should be accorded to mothers during a reasonable period before and after childbirth. Additionally, facilities must be provided for the care of children below school going age to enable women who have the traditional care of children realize their full potential.

The above provisions no doubt reflect two traditional notions about children in the Ghanaian society. First, children are valuable assets and must be well protected and nurtured and second that traditionally it is the woman who is responsible for the care of the child. These notions are increasingly coming under attack in the light of current socio-economic realities.

2.2.2.2 The Children’s Act, 1998 (ACT 560)

This Act was meant to reform and consolidate the laws relating to children and to provide for the rights of the child, maintenance and adoption, regulates child labour and apprenticeship and other ancillary matters relating to children. It replaces the erstwhile Maintenance of Children Decree 1977 (SMCD 133) which dealt with issues relating to the maintenance of children. Under the Act, a child is a person under the age of eighteen.

The Act sets out a number of rights to ensure the well being of children. These include the right to a name and to nationality, the right to grow up with parents, the right to parental property, to education, leisure etc. Under the Act, the best interest of the child must be paramount in any matter concerning a child and same must be the primary consideration by any court, person, institution or other body in a matter concerning a child.

The issue of maintenance of children is specifically dealt with in sections 47-60 of the Act. Although the Act does not purport to define what constitutes maintenance, it can be described as encompassing the provision of the necessities of health, life, education, reasonable shelter and all that is necessary for the welfare of the child. The duty to maintain is a legal obligation, which is imposed on a parent. In some instances, however, other persons may be made legally liable to maintain the child.

The Act allows the following people and institutions to apply for a maintenance order:

- a. A parent of the child;
- b. The guardian of the child;
- c. The child by his next friend;
- d. A probation or social welfare officer;
- e. The Commission on Human Rights and Administrative Justice (CHRAJ);
- f. Any other person.

This last omnibus provision allows interested individuals as well as artificial persons like NGO's to intervene to protect the interest of the child. The scope of a maintenance order is wide and may take the form of a lump sum or periodic payment. One factor, which is taken into account in making such orders, is the economic circumstances of the person legally liable to maintain the child. Consequently the welfare of the child is made subject to the economic circumstances of the parents, for example. Criminal sanctions also exist for failing to maintain a child.

The erstwhile Family Tribunal, now the District Court, is the judicial institution given jurisdiction over child maintenance matters. To facilitate access to the court, the Act allows for application fees to be waived. Other non-judicial institutions whose activities may border on child maintenance are the Department of Social Welfare and the Child Panels.¹⁹ District Assem-

¹⁹ Sections 27-32 of the Children's Act 1998(Act 560).

blies are enjoined to ensure that these institutions exist and function effectively.

2.2.2.3 The Criminal Code, 1960 (ACT 29)

The Criminal Code, 1960 (Act 29) is the main criminal legislation in Ghana. It contains a number of provisions aimed at protecting the moral and physical welfare of children. Offences like defilement, rape, forced marriages; female circumcision, procuration and abduction are all intended to protect children. Specifically it is provided that a parent is under a duty to give access to the necessities of health and life to his child actually under his control and not being of such age and capacity as to be able to obtain these necessities. A similar duty is imposed on guardians. Necessaries of health and life is defined to include proper food, clothing, shelter, warmth, medical and surgical treatment and any other matters which are reasonably necessary for the preservation of the health and life of a person.²⁰ It must be noted that whilst this definition is positively broad, the restriction of the duty to children actually under one's control narrows the scope of the duty.

Provision is also made for the protection of children immediately after childbirth. It is accordingly provided that a woman, upon being delivered of a child is under a duty to summon assistance and do all such other acts as are necessary and reasonable for the preservation of the child from harm.²¹ She is also under a duty to support and take reasonable care of the child until it can be weaned safely. This provision is significant not only as a reflection of the premium society puts on children but also reflects the traditional view that the duty of care for children is primarily that of the woman.

2.2.2.4 The Matrimonial Causes Act 1971 ACT 367

This Act is the basic law in Ghana dealing with matrimonial causes such as divorce, custody, nullity, maintenance etc. Although basically designed for parties to a monogamous marriage, the Act allows a party to a polygamous marriage to take advantage of its provisions. The Act contains some provisions relating to child maintenance. It is provided that either party to a marriage may petition the court for an order for maintenance on the ground that the other party to the marriage has wilfully neglected to provide or make a proper contribution toward reasonable maintenance for any child of the household. A child of the household is defined to mean any child whether natural or adopted of both or either of the parties or any other child who is

²⁰Section 79 of the Criminal Code 1960 (Act 29).

²¹Section 79 of the Criminal Code 1960 (Act 29).

treated by both parties as a permanent member of their household. Although this definition appears very broad the Act provides that a respondent shall not be deemed to have wilfully neglected a child of the household where that child is not the natural or adopted child of the respondent unless the court is satisfied in all the circumstances that it is reasonable to expect the respondent to provide or contribute toward the maintenance of that child.

Under the Act, "court" refers to the Circuit Court or High Court. These two fora are provided for the presentation of such petitions for maintenance. It has, however, been observed that very few Ghanaian mothers or fathers would rush to court for a maintenance order the minute the person who is duty bound to maintain the child defaults. They first explore other avenues such as employing or soliciting their family members to arouse the defaulter's conscience. It must be noted that in any proceedings under the Act, it is the court's obligation to inquire whether there are any children of the household and the court may, *suo moto*, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child. Such an order may provide for the education and maintenance of the child.

It needs to be emphasized that the procedure for maintenance under this Act (Act 367) and the Children's Act (Act 560), are mutually exclusive. They cannot be resorted to together. No action under Act 560 may be brought for a maintenance order if any application for maintenance is pending in matrimonial proceedings. Indeed such a conduct is a criminal offence.²² One notable disadvantage of the procedure under Act 367 is that it is only parties to a marriage (either under the Ordinance or customary) who can resort to it. In Ghana today, where the phenomenon of single parents is on the increase, this is a disadvantage.

2.2.2.5 The Wills Act, 1971 (ACT 360)

This Act regulates the making of statutory wills. Different rules exist at customary law for the making of oral wills. As already stated, Ghanaian law takes the view that the interest of the child should be protected beyond the lives of its parents. Hence the Act attempts to restrict the testamentary freedom of the testator so as to secure a reasonable part of his estate for the child where no provision is made for it. A child is defined to include adopted children and any person recognized by the testator to be his child or to whom he stands in *loco parentis* or any person recognized by customary law to be the

²² Section 58 of the Children's Act 1998 (Act 560)

child of the testator. The law is that, if upon an application made to the High Court, the Court is of the opinion that a testator has not made reasonable provision whether during his life time or by his will for the maintenance of any child of the testator under 18 years of age, and that hardship will thereby be caused, the Court may, taking into account all relevant circumstances and notwithstanding the provisions of the will, make reasonable provision for the needs of such child out of the estate. Such provision may take the form of a lump sum or periodic payment or the grant of an estate or interest in immovable property for life or for a lesser period. The application must be brought within three (3) years of the grant of probate. These provisions predated similar provisions in the 1992 Constitution and the Children's Act and all these laws can be seen as complementing each other.

2.2.2.6 The Intestate Succession Law 1985 PNDCL 111

This law was enacted in June 1985 and was later amended by PNDCL 264. Prior to the enactment of the law, customary law governed intestate succession in Ghana. The only exception related to Ghanaians who had married under the Marriage Ordinance or the Marriage of Mohammedan Ordinance. In other words, the customary practices that prevailed in one's place of origin determined who inherited one's self-acquired property on one's death intestate. In matrilineal communities, for example, children of a deceased man were not allowed to inherit his property. The right to maintenance and the right to inherit were clearly separated. Indeed and as previously discussed, the judicial thinking was that the legal obligation of an Akan father to maintain his child is a personal liability and not one, which binds the estate. Consequently the responsibility of a successor to maintain and train the child or his predecessor was seen as a legal one, which was different in its nature from a right to succeed to or have a share in the estate of his deceased father. Different rules of succession applied in the various patrilineal societies.

It was to remove these anomalies in the existing law and to provide a uniform system of inheritance of the self-acquired estate of an intestate that PNDCL law 111 was enacted. The law operates throughout the country irrespective of the ethnic origin of the intestate and the type of marriage contracted by the deceased. Of importance to the maintenance of children is the fact that the law gives surviving children a considerable proportion of the property of their deceased parent and makes it an offence for anyone to unlawfully deprive a beneficiary of his share of the estate or to eject a surviving spouse or child from the matrimonial home.

2.2.2.7 The Courts Act 1993, (ACT 459)

This Act gives the High Court jurisdiction in respect of children. It empowers the High Court to appoint guardians for infants, make orders concerning the custody of infants, the right of access to infants and periodic payments towards the maintenance of infants. An infant here is defined as a person under the Age of 21. This jurisdiction of the High Court is seen as complementary to the jurisdiction of the Family Tribunals (now District Courts) on issues of maintenance.

2.2.2.8 International Law

Under article 73 of the Constitution, the Government of Ghana is enjoined to conduct its international relations in consonance with the accepted principles of public international law and diplomacy in a manner consistent with the national interest of Ghana. Under article 75, the President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana. Such treaty, agreement or convention is subject to ratification by Act of Parliament or a resolution of Parliament. Ghana was the first country to ratify the International Convention on the Rights of the Child²³. Thus, she is bound by the convention. Article 18 of the convention is of particular significance and should be quoted in full:

State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and the development of the child. The best interest of the child will be their basic concern.

Similarly, Ghana has obligations under the African Charter on the Rights of the Child adopted by the Organisation of African Unity (OAU). Article 18 of the Charter provides:

- a. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the state for its establishment and development;
- b. State Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses. In case of dissolution, provision shall be made for the necessary protection of the child;

²³ GA Res. 44/25, 44 UN GAOR, Supp. (No. 49), UN Doc. A/44/49, at 166 (1989), printed in 28 ILM 1448 (1989).

- c. No child shall be deprived of maintenance by reference to the parents' marital status.

2.3 CONCLUSION

Both statutory and customary laws do not excuse a parent's duty to maintain a child on grounds of nationality. The fact of being a parent is enough to incur liability. Indeed as the Editorial Note to *Adjei v Ripley* [1956] 1 WALR 62 suggests, the logical result of the decision is to equate closely the responsibilities of an African father towards his children with the responsibilities of an English father under English law towards his children. This position was affirmed in *Whittaker v Choiteram* [1971] 2 GLR 267 where it was held that when a man who is not subject to customary law, enters into a concubinary relationship with a woman subject to customary law, and has children with her, the man has a personal obligation to maintain the children.

An examination of the customary rules on the right of the child to maintenance will reveal that in substance not much difference exists between the matrilineal and patrilineal communities aside from the question of inheritance. As Daniels²⁴ puts it, "it can be seen that in actual practice it is misleading to consider the rights and duties of parents in respect of their children differently according to whether they belong to a matrilineal society or a patrilineal society". A similar position could be taken as regards the substance of parents' duties towards the child under statute law and at customary law. It appears however that customary law seemed to emphasise the father's role on the assumption that seldom will a mother neglect to maintain her own child.

The duty to maintain a child at customary law however transcended biological parents or their representatives and was equally imposed on the wider family. In traditional societies it was not uncommon for a relative to take it upon him/herself to look after a child of another relative. Indeed, among the matrilineal communities, an uncle was expected to look after his nephews and nieces. Modern Statutes on child maintenance seem to have adopted a narrower approach and imposed the duty to maintain primarily on the parents. Thus section 47 of the Children's Act talks of "a parent or any other

²⁴ W.C. Ekow Daniels, *Towards the Integration of the Laws Relating to Husband and Wife in Ghana*, (1969) UGLJ 20 at page 42

person legally liable” and section 79 of the Criminal Code enjoins the parent to provide the child with necessities of health and life.

Legal pluralism as noted already offers individuals a multiplicity of institutions to which they may go to seek redress for a wrong. This, whilst offering choice, is also apt to confuse the individual, and sometimes the institutions. Here a distinction could be made between formal and informal institutions for the enforcement of maintenance duties. In the informal category can be found the regular courts, which are the only institutions with enforcement powers, CHRAJ (which may enforce its orders through the courts), and DSW. On the informal side are the chiefs, elders, and NGOs. Others, such as child panels²⁵ established under the children’s Act, straddle the formal and informal categories because they are formally set-up by statute but are expected to function informally. Generally, the informal institutions have a larger clientele because of their relative flexibility, accessibility and cost effectiveness. Because they often cannot directly enforce their awards, many clients end up in the formal institutions seeking enforcement of awards in informal institutions. In the next chapter, we discuss the formal/informal dichotomy as it relates to child maintenance institutions and the implications for child maintenance.

²⁵ The Children’s Act 1998(Act 560) sections 27-32

CHAPTER THREE

ANALYSIS OF FINDINGS FROM THE FIELD

3.0 BACKGROUND

This study on Child maintenance under the Legal Pluralism and Gender Project of the Family Law Focal Area (FLFA) is based on the position that plural legal systems provide unequal and inequitable participation for particularly poor rural women in the enforcement of their rights in terms of securing the additional resources from fathers for the maintenance of their children. The study as a result sought to gather the base information required to review and strengthen existing laws and institutions for the enforcement of maintenance orders.

The specific terms of reference of the research were:

- a. Provide information on child maintenance practices in Ghana's plural legal system
- b. Describe the various internal conflict of laws issues that arise and how they are resolved.
- c. Assess the level of awareness of existing laws on child maintenance in Ghana and the level of utilisation of these laws within select communities
- d. Identify problems faced by child maintenance institutions in the enforcement of maintenance orders
- e. Make recommendations for reviewing and strengthening existing laws
- f. Identify ways in which institutions that deal with child maintenance cases can be strengthened in order to enhance women's access to justice.

3.1 THE RESEARCH PROCESS

The research was conducted in five regions of Ghana namely the Ashanti, Greater Accra, Northern, Volta, and the Western Regions of Ghana. Two localities were chosen for study in each region: one within the regional capital and the other in a district outside the capital. The specific localities were:

- a. Ashanti—Kumasi in the Kumasi Metropolitan Assembly and Konongo in the Asante Akyem North District
- b. Greater Accra—Accra Metropolitan Assembly and Ada Foah in the Danbge East District
- c. Northern—Tamale in the Tamale Municipality and Walewale in the West Mamprusi District
- d. Volta—Ho in the Ho District and Hohoe in the Hohoe District

- e. Western—Sekondi/Takoradi in the Shama-Ahanta East Metropolitan Assembly and Agona Nkwanta in the Ahanta West District

In Accra and Kumasi, it was found necessary to select focal indigenous communities because of the large population sizes and the influence of diverse cultures other than what is indigenous to the locality in large cities. James Town in Accra and Tafo in Kumasi were accordingly selected. Two other peculiar communities were studied in Greater Accra: Tunga a Moslem community and Abokobi which is exclusively Christian. Contact with the local authorities and public institutions was made through introductory letters, public servants, Traditional Councils and NGOs who helped to arrange best times for meetings and explained culturally acceptable ways of obtaining information without causing offence.

The methods adopted in collecting data were mainly qualitative in nature involving interviews of key persons and individuals, group discussions, document review as well as an inventory of infrastructure of institutions dealing with issues of childcare and maintenance. Five instruments were used to collect information. They were the individual and key person interview guides, group discussion guide, a document review guide as well as a checklist to guide the infrastructure review. The data collection instruments were tested in a pilot survey conducted at Tema and Ashiaman. The fieldwork was carried out simultaneously in all regions by a team of five researchers each assisted by a group of research assistants.

Data collection brought up some challenges in terms of the levels of cooperation from respondents. There were complaints from respondents on the time the data collection demanded of them. Many public officials in Accra claimed that they were too busy for interviews and some Police and Court personnel were quite hostile to the research assistants. Access to files was denied in some instances and with the exception WAJU, many records were either in disarray or said to be missing altogether in almost all public institutions. Most interviews had to be painstakingly conducted through interpreters in the Northern Region and in Ada-Foah in the greater Accra Region. In the Northern Region, a regional crisis had heightened suspicion of people who went around asking questions. This was because a state of emergency and a curfew was imposed on the Tamale municipality, among other areas, the day after the arrival of the research team in Tamale due to civil unrest in the area. This made respondents less cooperative and created a sense of suspicion that made access to persons, officials and documents more difficult than usual. In addition working hours were reduced because of a dusk to dawn curfew. These problems notwithstanding the final information col-

lected from the field provide a useful background for examining the plural legal system that governs child maintenance in the study communities.

Data analysis was qualitative in nature and utilised the terms of reference of the research to guide the development of themes. The data was grouped under these themes and simple statistical operations in the form of frequency of occurrence, proportions of respondents involved in a particular event were utilised to analyse the data. As an exploratory study this report presents information that provides some useful insights into the nature of interaction of child maintenance institutions in the study communities.

The types of respondents covered were individuals who had children in their care, key persons working in the area of childcare and maintenance as well as group of persons in the various communities. In all 1488 respondents were covered 889 were in groups, 355 individuals, and 249 key persons. Of this number 797 were in the districts and 691 in the regional capitals. Group interviews attempted to cover a cross section of the population in order to gain a balanced view of the perceptions of the communities. In this regard the choice of group members cut across age and sex categories. The groups chose included children and youth respondents in their late teens and early twenties. Such groups were mixed sex groups. Adult groups were composed of members of the same sex and a mixed group of both sexes.

Attempts were made to cover key persons in all the institutions with responsibility for child maintenance. Prominent personalities outside formal institutions with child maintenance responsibilities such as market queens, chiefs and religious leaders within the communities were covered as key persons. Most Key Person respondents were not indigenous and had lived in the community for periods ranging from 7 months to 15 years.

In selecting respondents for the individual interviews priority was given to all adults who were parents and had children in their care. The selection of respondents also ensured that at least two thirds were females. The field study realised 71.7% female coverage for the individual interviews (fig 1.1a). Individual female respondents were 241 out of a total of 336. The individual respondents covered in the districts were 157. Those covered in the regions were 179.

3.2 PROFILE OF THE STUDY COMMUNITIES

The description of the study communities below gives the context within which the research was carried out by tracing the historical background as well as the specific location of these communities in the country. In addition the population characteristics in terms of size and occupational activities are covered. The background of the study communities provides useful insights

for appreciating the norms and values as well as the specific situation of child maintenance practices and what opportunities women have to exercise any rights for additional support from male partners for the children in their care.

3.2.1 Historical Background

Accra has been the capital of Ghana since 1876. It is believed that the Ga ethnic group migrated from Israel through Nigeria to the Gold Coast. **James Town** is a coastal Ga settlement dating from 1642. It is so densely populated and deprived that sleeping places and times are regulated by shifts in the ancient compound houses. The people of **Ada Foah** and neighbouring communities share a common background with the Ga people, the Ningos and the Krobos. The Ashanti belong to the Akan ethnic group and speak Twi. **Kumasi** is the traditional seat of the Ashanti kingdom and **Tafo** is an old suburb. **Konongo** and **Nyaboo** in the **Asante-Akim District** have names derived from “oil” and “abundance” respectively.

Originally a Dagomba settlement, **Tamale** is now a cosmopolitan town with pronounced traces of a rural settlement especially at its fringes. **Walewale** is an old community in the **West Mamprusi District**. The people of **Ho** migrated from other Ewe groups. The Gbi State, **Hohoe**, was formed by migrants from the Republic of Togo and other Ewe people. The inhabitants of **Sekondi** and **Takoradi** are migrants from several West African countries and other regions of Ghana. The Achantas own the land but the predominant language is Fanti.

3.2.2 Major Economic Activities

The major economic activities in the urban communities were trading, public and private sector and industrial work, farming and fishing. Most district inhabitants were either crop, livestock farmers or fisher folk. The major economic activities were dominated by men except in the Western and Ashanti regions where both sexes engaged equally in farming, public service employment, teaching and artisanry.

Trading activities have increased in Accra, Northern, Ashanti and Volta Regions. In the Western Region however, the timber industry and Takoradi’s harbour business have declined. Farming was improving in the Northern region but had decreased in the Ashanti and Dangbe East districts. Kumasi Group respondents thought gold mining had declined. The people in the Volta Region were traditionally farmers but the change in the political status of Ho to administrative regional capital has increased white-collar jobs.

Respondents identified **successful** people as landlords/ladies and house owners; people in big business; large scale farmers; fishermen who owned boats and nets; the self-employed or salaried employees with regular incomes; chiefs, educated and professional people and those who are able to maintain their children, live well and generously assist others in the community. For respondents in Kumasi, people who received money from relatives abroad are considered rich. **Poor people** were primarily the unemployed, those who cannot feed themselves regularly or send their children to school. In Ashanti Akyem North District, poor people are those who have to borrow a cloth to attend a funeral. Some James Town respondents stated that, irrespective of actual income, a person was not considered successful so long as (s) he used public bathhouses and water taps.

3.2.3 The Legal Infrastructure

The Accra metropolis houses the full set-up of the formal legal system and its infrastructure: Parliament, the Judicial Service and the supporting State and government agencies. All the other regional capitals have varying numbers of courts as well as regional offices of the supporting agencies found in Accra such as DSW, WAJU, CHRAJ, LAB, and the District Assembly. There are several NGOs like FIDA, WILDAF etc operating in the other regions.

The various communities have well-developed customary arbitration courts that apply local customary or religious rules for the resolution of disputes. Led by chiefs, clan/family heads or religious leaders, the institutions are generally respected. In James Town and Ashanti Region, there is a strong adherence to traditional beliefs and practices operated through these courts. In the Volta Region and the Dangbe East District however, the people appeared to give more recognition to the formal institutions. In Western region, customary/informal institutions do not handle child maintenance issues and even at the family and church levels child maintenance comes up as ancillary to divorce cases.

Christians were in a large majority all regions except the Northern Region. In Accra, it was however observed that quite a number of declared Christians were actually practising adherents of the traditional religion, in fact some were its very custodians and leaders, e.g. the Ga Chief Priest and members of his council. In the Northern region, about 90% of respondents were Moslems. Christians accounted for only 9% and the remaining 1% belonged to the Traditional religion.

3.2.4 Youth and Children

It was estimated that about 50% of children were born outside marriage. Such children face many problems such as questions of paternity, lack of maintenance and basic education. These children were denied rights of inheritance in the Northern region.

The greatest challenges faced by both urban and rural youth were lack of education and employment opportunities. Between 30% and 60% of the youth sought employment outside their communities. Alcohol and drug abuse, truancy, and teenage pregnancies were prevalent in all communities. Respondents in the Dangbe East district claimed that currently, only 1% of children of school going age were not attending school but in all the other communities, between 15% and 40% of children were estimated to be out of school. Respondents reasoned that poverty was the main reason for this phenomenon.

3.2.5 The peculiar case of Walewale

Walewale is a “child maintenance town”. It occupies a central position in relation to its various outstations and villages to which it serves as district capital. Most people from the surrounding villages ordinarily access a broad range of administrative and commercial services from Walewale. Again, persons travelling from the hinterland of the district to other districts invariably transit in Walewale where they can find buses to convey them to their various destinations, mainly Tamale and Bolgatanga, the capital of the Upper East Region. Young persons from the surrounding villages who decide to migrate to bigger cities in the southern part of Ghana ordinarily spend some time in Walewale preparing for the trip. Walewale, like most district administrative capital in the northern parts of Ghana is also a “hardship” post, and most government and other employees tend to see their assignments to the district as temporary, and indeed strive to make it temporary. One effect of these three characteristic of social life in Walewale is the creation of temporary sexual unions and relations that often result in children. A male married civil servant is transferred to Walewale; he does not move there with his family because he expects to work there for no more than 2 years. He hooks up with a young lady during his 2-year sojourn in that town. They are not formally married, but have a child together. He is transferred to another town and leaves his new partner and child behind. Most of such women are either unemployed or underemployed. Child maintenance issues invariably arise. This same scenario applies to young men and women who temporarily sojourn in Walewale as they prepare to seek greener pastures in southern Ghana; and to persons who come into the Walewale Township very often to transact administrative or commercial

business. To take one striking example, a bus driver we interviewed in Walewale could not tell us exactly how many children he had. We and other persons who sat in on the interview, helped him count slowly and painfully the number of women he had been with in the town and which ones of them he has children with, and then eventually made an intelligent estimate of how many children per woman and the total number of children. The number of children, we conservatively estimated, was between 9 and 11. Low incomes in the district result in a situation where any man with a secure income, such as a commercial bus driver or civil servant, takes advantage of several young ladies and exploit them sexually.

3.3 BACKGROUND OF RESPONDENTS

Most of the respondents covered (about 70%) in the study fell within the ages of 31-50 years. The selection of individual respondents, which was directed at parents, contributed to this situation. Key person respondents were in most cases quite senior in the institutions in which they worked. Being in this age group meant that most of them had the opportunity of being parents for a while and therefore in a good position to offer a reliable perspective on childcare and maintenance.

There are 3 types of marriages in Ghana: customary marriage; marriage under the Marriage of Mohammedans Ordinance, Cap 129; marriage under The Marriage Ordinance, (Cap 127) popularly called "Court wedding". Christian marriages celebrated in church sometimes fall under the Cap 127. Customary and Moslem marriages are potentially polygamous; marriages under Cap 127 and Christian marriages celebrated in church are monogamous though all monogamous relationships may not be Christian and not all Christians are in monogamous marriages. On the whole it was observed that a greater proportion of respondents were married 62.0% with more men married than women. When information on respondents' marital status is categorised in terms of their sexual background and the number in unions and those not in marital unions it was observed that a higher proportion of males tended to be in marital unions than females. There were quite a number of people in co-habitation or consensual relationships. Cohabitation is considered a marital union because the persons involved do live together and render services to each other as they would in marriage. There were consensual/cohabitation relationships in all the communities, but while hardly any were recorded in the Northern region, the Western region recorded consensual relationships as the dominant type of "marriage". Respondents in James Town, Ashanti and Northern Regions ranked polygamous marriages as the most prevalent. Yet in the rest of Accra, its districts and the Volta region, the majority of marriages were monogamous. In all except the Northern region,

the predominant form of celebration of marriage was the customary type; Christian rites came next and Moslem marriages ranked as a diminutive third. It was only in the Northern region that Moslem rites were predominant; next were customary rites and Christian rites were the least used.

The number of females who were not in any marital unions was higher than males (33.6% females as against 14.8% males). More females were divorced, separated, widowed or had never been married at all. The extent to which this situation reflects the national situation is an issue worth investigating. The trend in marital background does have implications for the earlier concerns raised in this report that women outside marriage lose the right to insist that the fathers of the children live up to their obligation to provide regular maintenance.

The educational background of male respondents, both individual and key person respondents, tended to be higher than that for female respondents. The proportion of males with no educational attainment was 4.35% whilst that for females was 17%. The proportion of females who have either had no education or have up to elementary or JSS level of education was 60 % whilst 33% of males fell in the same category (fig 1.4a). More males than females have been to the polytechnic have a professional diploma or a university degree. Higher educational attainment was recorded for key respondents than for individual respondents. Even though the educational level of respondents is consistent with the national situation where men hold higher educational background than females the selection of respondents was carried out in such a way as to cover women in with lower educational background. In the selection of respondents individual women with low-income background were targeted. In Ghana educational background forms an important vehicle into high-income jobs.

3.4 OPERATIONS OF CHILD MAINTENANCE LAWS IN THE STUDY COMMUNITIES

The effectiveness of child maintenance laws is realised when those for whose benefit they have been designed have adequate knowledge of and utilise them. The study tried to ascertain the levels of awareness of the laws in the selected communities. For individual respondents as earlier explained, the sampling deliberately targeted a larger number of women, especially low-income earners. The key persons could not be so weighted to access specific groups of women because most of such respondents were male, a reflection of the national levels of gender imbalance in employment. Most of the key persons were men and fall within the high or middle-income group.

This fact hampered attempts at carrying out any meaningful comparison of knowledge of laws along gender lines.

Knowledge of Child Maintenance Laws

The study revealed that most respondents generally had some notion that there were a range of laws covering children's rights generally and child maintenance in particular. Respondents' response to questions requiring them to state these laws yielded a wide range of laws on every issue ever passed in Ghana relevant and irrelevant to child maintenance. There was a greater knowledge of child maintenance laws in the Greater Accra Region. However, knowledge of the law on maintenance of children was quite limited in all regions especially knowledge of specific laws and their contents. Many respondents referred to the statutory legal system as "the law". Some respondents even gave the names of public institutions like CHRAJ as the title of the law on maintenance of children. Other times, a respondent would claim knowledge of a law only because (s) he had used a state institution like a court, the Police or CHRAJ to obtain a maintenance relief. However, such a respondent would be unable to state or refer to any specific legislation or its content.

Key persons in formal institutions that were specifically targeted by this study, such as the courts, CHRAJ, FIDA etc, were people who were likely to have knowledge of the laws because of their exposure through their training and or their work. In reality, however, even staff of the courts such as registrars, clerks and bailiffs, were not all very knowledgeable on the laws relating to child maintenance. Knowledge about the specific laws and legal provision varied as the discussion below shows.

The **Constitution of the Republic of Ghana**, 1992 was a piece of legislation that was referred to as being relevant to child maintenance. However, only a few court personnel mentioned the Constitution in Accra and Tamale (12.5% and 45% of court officials respectively), one of them citing the most pertinent provision (article 28) on the rights of the child. Unlike the courts, there were fewer people from the other public institutions who identified the Constitution as relevant to child maintenance. There was an average 11.5% of key persons in 5 out of 10 communities with some awareness of the constitutional provisions on child maintenance. This shows that the level of knowledge was very limited generally. The percentage of individual respondents who had heard of the Constitution was the same as that for key person respondents who worked in informal institutions (11.5%). Though respondents are aware of the existence of the constitution very few had knowledge of the existence of constitutional provisions on child maintenance.

The Children's Act, 1998, (Act 560) is currently the most important legislation on the welfare of children, including child maintenance issues. In all regions and districts there were some personnel from public and other formal institutions who readily mentioned Act 560. However, in spite of the wide spread knowledge of its existence, comprehensive knowledge of the contents of this Act as it related to child maintenance was found to be generally limited to judges, lawyers and senior personnel of institutions whose work involved issues on child maintenance. There was a low level of awareness of child maintenance laws among the junior or support staff of such institutions and among other respondents, especially the individual respondents.

The Children's Act continued to be the law that was most commonly known by key persons in informal institutions. Sixty-two (62%) of persons in this category identified it in Accra, 45% in Kumasi and 40% in Asante Akyem. In some communities like the Northern, Western and Volta regions there was hardly any respondent who had knowledge of Act 560 in the informal institutions. Only an average of 24% of respondents in the study communities showed any awareness of Act 560. Thus, there was obviously not much knowledge of this basic law on child maintenance among ordinary individual respondents in the communities. Some of the figures are 23% in Accra, 16.6% in Ada district, 10% in Tamale 66.6% in Takoradi 3.3% in Agona-Nkwanta and 33% in the Volta region. Act 560 was also identified by some respondent's in-group interviews in all regions except Takoradi.

The **Criminal Code**, (Act 29) was another piece of legislation that was mentioned in all communities except Ada and Agona-Nkwanta districts. This law was mentioned by key persons in formal child maintenance institutions these were, two court personnel in Accra, (where one official cited the specific provision on child maintenance i.e. Section 79) some police officers in Tamale, Asante-Akyem District. Ho, Takoradi and in Kumasi mentioned the Criminal Code. One third of individual respondents in the Volta Region and 2 Church Elders in Takoradi also identified the Criminal Code as relevant to child maintenance.

Criminal Procedure Code, (Act 30) was cited by three persons who were: a court official in Kumasi; a senior police officer in Asante Akim District and the Metropolitan Officer in Sekondi/Takoradi. These key persons did not refer to any specific provisions on child maintenance in that code. The **Wills Act** on the other hand was mentioned by 2 key person respondents in Accra. **The UN Convention on the Rights of the Child** was mentioned in 3 communities: the CHRAJ District Director in Ada Foah, three court personnel in Tamale, a Christian Minister and two individual respondents in Ho and Hohoe respectively.

The Maintenance of Children Decree, 1977 (SMCD 133) was cited by quite a few respondents even though it had been repealed since 1998 by the Children's Act came. Those who referred to the repealed law were a court official in Accra, an officer at the DSW in Asante Akim district, a bailiff in Walewale and an official of the NGO WILDAF in Sekondi/Takoradi. The *Matrimonial Causes Act 1971, (Act 367)* was referred to by three public officials in Accra, Kumasi and Takoradi and the *Marriage Ordinance 1844 (Cap. 127)* was mentioned only in the Ashanti Region in some of the groups discussions. *Customary/Traditional Laws* were cited by 3 individual respondents in Accra and Takoradi.

One Imam each in Accra, Tamale and Takoradi and a Secretary to the Imam in Accra mentioned Islamic **Religious Laws** as laws relevant to child maintenance in Ghana. The Christian Ministers who were interviewed stated that there were religious norms guiding parental conduct on children upbringing and maintenance they could not be described as formal laws.

3.4.2 Content of Laws

Several laws were mentioned by respondents and a number of them showed some knowledge of the content of these laws. The main laws in this regard were the Children's Act, the Constitution and intestate Succession law. Some respondents were conversant with, and stressed, those provisions of the laws that related to their work. For example, the leader of the James Town market women said that there was a provision that a child under twelve (12) years should not be made to sell goods on the streets or be made a domestic worker.

On the whole, key persons in Accra tended to be more knowledgeable about the content of laws on child maintenance than key persons in the other 4 regions. However, many key persons in the 4 regions were able to state specifically the content of the Constitution or Intestate Succession Law, as they relate to child maintenance whereas the knowledge of key persons in Accra seemed to be limited to details about the Children's Act.

It was found that respondents with high knowledge of the content of the laws were key person respondents of public and other formal institutions and NGOs who were directly responsible for administering the laws on child maintenance. However, it was observed that the degree of knowledge differed greatly among various levels of staff of these institutions. Respondents like judges and senior officials were able to give specific provisions of the law and also understood how the law functions. On the other hand, support or junior staff like Registrars, clerks and bailiffs had far less knowledge about the content of the law and some of them did not find it necessary to

have any knowledge about the content of the laws. This general pattern could be found across the regions. Junior staff could not detail any content even when they claimed to have knowledge the content of the law.

The same was true for some key person respondents in informal institutions. Individual respondents in all 5 regions had even less specific understanding or knowledge of the content of the laws than the key persons. In comparison to other respondents, more individual respondents readily admitted that they did not know the content of the laws; this is obvious because most of them did not ordinarily have much to do with legal matters.

The few individual respondents who had accessed child maintenance laws or were defendants in such cases did not show much knowledge of the content of child maintenance laws. Almost all of them said they knew that some laws had been applied in various institutions they had accessed, or were in proceedings in which they were parties, but they did not know which laws were applied. The few who had some knowledge about the content of child maintenance laws provided the following details of the laws:

- a. The duty of parents to provide their children with basic needs and education and love;
- b. Children should have protection from abuse, rape, armed robbery, child trafficking, child labour, streetism, diseases and childhood pregnancies;
- c. Children have a right to the property of their parents.

For other respondents maintenance laws contain provisions on the responsibilities of children, such as the duty to respect and honour parents and elders. A wider range of issues identified as content were provided by respondents in Accra followed by Agona-Nkwanta and the respondents in the Northern Region. No individual respondent in the Volta Region was able to provide information on the content of any law on child maintenance.

3.4.3 Laws Used By Respondents

Only a small proportion of all respondents had used laws on child maintenance and related issues. Apart from the Key person respondents from the justice sector and related institutions whose jobs involve the use of these laws, the individual respondents who had used laws had done so by accessing the courts or other formal institutions for a child maintenance relief. None of the individual respondents in the Volta region reported ever using any child maintenance law. In the other regions, the highest numbers were in the Greater Accra region: 56% and 50% of individual respondents in Accra and Ada Foah respectively. Next was Takoradi with 43%, followed by Tamale with 23%, 16% for Walewale and 7% for Agona Nkwanta. In all cases, the proportion that had used the laws to access support for child main-

tenance was higher in urban centres than in the districts. It will be interesting to investigate further, the extent to which rural conditions reduce the tendency to apply statutory laws for child maintenance. Even among those who had used these laws at various institutions, the majority did not know the specific laws or their content.

3.4.4 Sources of Information on Laws on Maintenance

Awareness of the law is highly dependent on the provision of relevant and accurate information. Thus the sources of such information are vital to accurate information on child maintenance laws. This study discovered that respondents obtained their information about child maintenance laws in different ways and from diverse sources.

The major sources of information for all regions for both individual respondents and key persons were the Media, Respondents' Employment, and Seminars/Lectures. Maintenance/social service institutions were identified as another source in all communities except the Western region. Friends, relatives and other members of the community were identified as sources in all but the Ashanti region. Publications and the Laws themselves were major sources in Accra, Asante-Akyem district and the Northern region. Those who cited this source were mainly from the formal institutions such as the courts, CHRAJ, Legal AID board and NGOs such as FIDA.

The strength of the Media for educative purposes lies in its ability to provide information not only to its own employees working on child maintenance issues but to a wide audience by disseminating information generated by several institutions and individuals. It is therefore not surprising to find that the Media, especially Radio, was cited by most respondents as providing the widest range of information on laws on children child education, child abuse, child labour, inheritance, health and child maintenance.

Other sources mentioned in addition to the media covered a relatively narrower scope of information. Institutions such as CHRAJ were identified by individuals in some districts to have covered particular maintenance related issues like child abuse, inheritance, human rights of the child in their public education function. In all, the different sources mentioned by respondents were not necessarily exclusive in the provision of information but were more likely to be complementary.

It was further observed that urban key person respondents were more likely to learn of the laws through their employment than their rural counterparts. The workplace or employment was the largest source of information for significant numbers of key persons in all regions especially. Employment ranked second only to the text of the law as a source of information on child

maintenance laws. This finding did not really change the overall picture as many of the key persons would have learned which laws were relevant to child maintenance and studied their content through their daily work. It can be safely concluded that those who directly applied the laws through their professions or particular employment invariably acquired their knowledge of specific laws from the text of the laws. Unlike the key persons, individual respondents were less likely to learn of the laws from their place of work.

Respondents also mentioned institutions like NCCE, which do not deal directly with maintenance issues but provide education on general constitutional rights of all citizens including children. These contrast with institutions that work directly on maintenance issues like the DSW, CHRAJ, and FIDA. This latter group usually educates the public more proactively by conducting advocacy and public education programmes including seminars, lectures, publications and advertisements in different modes, especially through electronic and print media. Such institutions also educate the public through personal interaction with parties involved in the resolution of child maintenance and related cases. Thus individual respondents were more likely than key persons to mention their interaction with child maintenance institutions as a source of information on child maintenance laws.

The individual and group respondents were found to be more likely than key persons to obtain information on child maintenance from sources such as friends and relatives, chiefs, and elders, and were thus more likely to obtain inaccurate information. A few individual respondents mentioned religious leaders and institutions as the source of their knowledge on child maintenance laws. They were two (2) respondents in Ada and another two (2) in Agona-Nkwanta who mentioned the church, and one person in Tamale who mentioned the Q'uran as the source of his information on child maintenance laws.

3.4.5 Adequacy of the Laws

Across the regions the overall opinion was that the laws on child maintenance were adequate for dealing with problems of child maintenance that emerge. The current laws were seen as protective of children, comprehensive and well set out for ease of application. Urban respondents in Takoradi in particular applauded the Children's Act as being better than the repealed decree because it provided for the payment of arrears of maintenance expenses and for schoolgirl children who had babies, to go back to school after delivery. On the other hand, they criticised the law as faulty because it only deals with physical needs and neglects the emotional needs of children.

Eleven other respondents, including 5 from the Courts, declared the laws on child maintenance as very adequate, describing them as helpful, protective, excellent, comprehensive, exhaustive, well set out and thus easily applicable. The same views prevailed in the Ashanti Region where more than half of the key persons agreed that the laws were adequate: 15 out of 26 persons. In the Asante-Akyem district, one main ground for approval was that the law made the care of children the responsibility of both parents. One person declared that, but for the Children's Act, the children would quite badly. The laws were said to be well written for ease of reference, helpful for guiding parents and very protective of the rights of children.

However, there was a general perception in all five regions that the effectiveness of the laws was negatively impacted by the lack of public awareness of the laws and the low level of enforcement even by the Courts. These were the areas that several respondents wished could be addressed to make the laws more useful in the lives of citizens. Ineffectual enforcement led to what one respondent in the Volta region described as "little or no" effect in the lives of the people in understanding and abiding by the laws on child maintenance. Only a few respondents said that the laws were inadequate and even these respondents focused on the lack of awareness and enforcement as the major defects of the laws.

There were suggestions for improvement in the effectiveness of the laws: shortcomings in specific provisions of the Intestate Succession Law should be addressed; the laws should involve members of the family other than parents in the maintenance of children; the laws should be harmonized with customs. Continuing on this theme of culture, a couple of respondents found the definition of a child in the Children's Act's as not very appropriate and even unrealistic in Ghanaian circumstances. This is because several people above the age of 18 in Ghana are still very dependent on their parents and guardians. It was also suggested that the law should deal with more than the physical needs of children and specifically address their emotional needs as well.

Others made suggestions for making the laws more effective through public education campaigns and the improvement of the enforcement processes. Still others suggested that fathers should be educated on the laws on child maintenance and same should be enforced to the letter against irresponsible fathers. Whatever stand was taken, the majority of respondents called for the strict enforcement of the laws on maintenance and a number of respondents noted forcefully that lack of awareness of the laws and inadequate enforcement were the major problems associated with the laws. Some respondents believed that the law was inadequate because women still bear the bulk of

the responsibility for the maintenance of children. Some respondents were of the opinion that processes at the Family Tribunals' were cumbersome. Others thought that the imprisonment of errant fathers was not a solution to the problem of a disproportionate burden of child maintenance responsibility placed on mothers. This is because the imprisonment of a father made the family's situation worse. Another respondent praised the provisions in U N Convention on the Rights of the Child as a positive step in the right direction but added that since "enforcement is not forthcoming, it is mere paper work."

A few individual respondents explained that the problem did not lie with the issue of adequacy of the laws but rather with parents' ability to provide for their children in these times of economic hardship. The government in this light should support parents by raising the tax bracket and also find other means of relieving needy parents from their financial problems.

3.4.6 Acceptance of Child Maintenance Laws

In general, respondents indicated an acceptance of the laws on child maintenance. As already recorded, many of the respondents had very little knowledge of the laws or their contents. However, throughout the regions, it was found that most of those who had used some laws on child maintenance were prepared to use them again. In fact the only instance of complete rejection of the laws was by an errant father in Accra against whom a family Tribunal had made orders for the maintenance of his children. A similar reaction but of lower intensity was observed among the old men's group interviewed in James Town. Their only objection was that they thought that the laws were biased in favour of women.

In order to ascertain whether the respondents genuinely accepted laws on child maintenance, the effect of the laws in their lives has to be closely examined. Acceptance cannot accurately be determined considering that the majority of the respondents had either not heard of the laws at all or had only a vague awareness of child maintenance laws and could not accurately explain their content. Additionally, respondents stressed that they had not experienced or witnessed any systematic application or enforcement of these laws.

Thus, respondents would only be in a better position to decide on their acceptance of the laws when they are well informed about them. The nature of "acceptance" may change as the degree of public awareness and enforcement of these laws increases. Further, an actual acceptance of the law on child maintenance depends also on people's evaluation of the adequacy of the laws as well as the credibility of the institutions that enforce these laws. However, respondents who evaluate the adequacy of laws may not necessar-

ily have corresponding views on acceptance of those same laws. For example, a respondent may determine that the laws are inadequate but may still abide by them.

In other words there is no way of measuring the degree to which respondents reject the laws, other than actual child neglect or abuse which may not necessarily be a function of a person's rejection of the law. For example, a parent's poverty may result in his child's truancy at school, yet such truancy is not an indication of a rejection of the Children's Act.

Sometimes, when indicating acceptance of the laws on child maintenance, respondents may not be attesting to their acceptance but merely professing their agreement with societal norms that promote proper care for children. They may also be said to reject the laws by not accessing their operative institutions. Yet such people could simply be reflecting the particular community's disapproval of anyone who used any institution other than a local traditional forum for the resolution of child maintenance issues or may be reacting to other problems like the inconvenience and cost of accessing the institutions.

At both the regional and the district levels in all five regions, many of the respondents who had utilized the laws said that they would use them again; this could indicate both an acceptance of and a satisfaction with, the laws and their operating institutions. It is important once again to note that many respondents made no distinction between the laws on child maintenance and the institutions that provided child maintenance services. As already indicated, the small number of respondents who indicated a rejection of child maintenance institutions were errant fathers who had been sanctioned by such institutions.

3.5 THE CHILD MAINTENANCE INSTITUTIONS

This section examines the operations of child maintenance institutions generally and reviews field data on the situation of some of these institutions in the study areas.

3.5.1 The Capacity of Child Maintenance Institutions

The ability of institutions to deliver to the satisfaction of people who access their services depends to a large extent on the resources available. The research examined the resource base of maintenance institutions for carrying out their responsibilities. Formal Institutions were generally better resourced in terms of equipment, financial and physical facilities for undertaking their responsibilities than the informal institutions. Within the category of formal institutions, NGOs were more resourced and better organised than govern-

ment institutions. Indeed a good number of government institutions such as the DSW depend on the largesse of NGOs to function appropriately. Most of the NGOs in the child maintenance sector are into service provision, in terms of meeting the material and psychological needs of children. Very few, such as AWLA, FIDA, WILDAF, and the LRC are into the provision of legal services for the enforcement of child maintenance laws.

None of the institutions, except the service-providing NGOs, which concentrate on the material needs of children, can be said to be adequately resourced. In terms of human resources, the key shortfall is not simply poor staffing, but a dearth of staff in certain key categories. In the courts, it is the dearth of judges and lawyers. The Family Tribunal in Walewale did not sit between 1993 and 1996, sat briefly for part of 1997 and at the time of the field study in 2002 had not sat since. This is because the Tribunal has no Chairperson. Yet the Tribunal has over this period had one registrar, (who died whilst we were conducting our field research), 3 bailiffs, one secretary, one court clerk, 2 watchmen, one cleaner, 2 panel members, and one caretaker. The Chairperson of the Community/Family Tribunal in Tamale has jurisdiction over all other districts in the region because those districts have no Family Tribunals.

Staffing problems derive mainly from low salaries paid in public institutions, key personnel are simply not attracted to work in such institutions or simply evade service. All the institutions with the exception of the class of NGOs noted above had serious problems with institutional capacity. The courts are the worst among the lot. All the courts in the five regions studied were seriously under-resourced. The offices of the DSW, CHRAJ, LAB, and the Police were no better. Everything from office space, through transport and communication facilities, to major and minor office equipment was either unavailable, in short supply, or in a serious state of disrepair.

It appears, however, that non-performance and under-performance of these institutions is less a function of unavailable and limited resources than it is a function of misuse or misallocation of resources, poor prioritisation, and bureaucratic bottlenecks in the release of funds. As noted above in the case of the Walewale Family Tribunal, some institutions keep an excess number of support staff when they have inadequate key staff whose presence was required for the operation of the institutions. Again, the bureaucratic processes that govern the release of funds for the judicial service, for example, lead to a lot of wastage. Funds, which could have been retained by the various judicial service offices in the districts and regions, are now required to be paid into centrally controlled accounts. The time and other resources, which are then expended to have these monies released, constitute a com-

plete waste. As was explained by one registrar of a Family Tribunal, the amount of money that is spent on travel costs and allowances for officers who travel to Accra to negotiate for the periodic release of funds sometimes exceed the amount eventually released.

These problems severely affect the work of these institutions. Other problems relate to the inability of these institutions to enforce compliance with the orders that they make and the speed with which they are able to discharge justice and the attendant delays and adjournments that plague the courts as well as compelling the parties to appear before them. The delays occasioned in the handling of cases due to the non-appearance of parties, judges, or panel members, the high cost of accessing the courts, the difficulties related to the service of processes, and the competence of mediators were sighted as major problems. The service of processes by complainants normally results in confrontations and scuffles between the parties. Sometimes complainants have to go with the bailiff to direct service. In Tamale, in the Northern Region, it is common for a bailiff to carry a pregnant woman on a bicycle for several kilometres to direct service of court processes. Staff in the institutions, especially bailiffs in the courts, are assaulted or battered in the normal course of serving processes on parties. In extreme cases, bench warrants are issued for the arrest of errant parents who refuse to maintain their children and or refuse to honour court summonses. The police also use their arrest powers to compel the attendance of defendants.

TABLE 3.1 Problems of Formal Child Maintenance Institutions

| INSTITUTIONS | REGION | PROBLEMS |
|--|---|--|
| Courts, Courts, CHRAJ CHRAJ, LAB, DSW Courts, CHRAJ | Ashanti Greater Accra Volta Western | Enforcement of orders / Non-compliance |
| Courts, CHRAJ, DSW Courts, LAB, DSW Courts, DSW, CHRAJ, WILDAF | Ashanti Volta Western | Inadequate means of transportation |
| Courts, DSW, FIDA, WAJU, Courts, CHRAJ, LAB, FIDA, Courts, GNCC, DSW, CHRAJ, WAJU Courts, DSW, CHRAJ | Ashanti Greater Accra Northern Volta | Financial constraints/ inadequate funding |
| Courts, FIDA, LAB, WAJU Courts, CHRAJ, DSW, LAB, FIDA Courts, CHRAJ, DSW, GNCC, WAJU, Courts, DSW, CHRAJ Courts, DSW, CHRAJ, WAJU | Ashanti Greater Accra Northern Volta Western | Poor infrastructure /inadequate logistics |
| Courts Courts, DSW | Ashanti Western | Community Apathy |
| Courts, CHRAJ, DSW, LAB, WAJU Courts, CHRAJ, DSW, FIDA Courts, GNCC, CHRAJ, DSW, LAB, Courts, CHRAJ, DSW, GNCC | Ashanti Greater Accra Northern Volta Western | Inadequate staff / personnel |
| Courts, CHRAJ, DSW, LAB, WAJU Courts, CHRAJ, DSW, | Ashanti Volta | Evasion of service |
| Courts, DSW | Ashanti | Low salaries |
| CHRAJ, LAB, DSW, Courts, DSW, CHRAJ, LAB, FIDA, WAJU Courts, DSW, CHRAJ | Ashanti Greater Accra Volta | Lack of public education on Human Rights |
| Courts, DSW | Ashanti | Location / Accessibil- ity Delays & Ad- journments |

Source: Field Data 2002

Other problems external to the institutions that affected discharge of their duties were related to the attitude of the communities that they served. Key persons identified that a lack of public awareness of human rights tend to promote community apathy. Table 3.1 above summarises the problems that key persons identified as facing the institutions in which they operate.

The range of problems facing informal institutions did not differ remarkably from that faced by formal institutions (Table3.2). Formal institutions faced problems such as inadequate funding, absence of logistical support and lack of infrastructure to carry out their activities. Low levels of public awareness of human rights also affected them in the discharge of their duties as well as their lack of authority to ensure compliance. In terms of human resources, the shortage of staff for certain institutions were heightened by the lack capacity of holders of certain officers to deal with child maintenance cases.

Table 3.2 Problems Faced by Informal Child Maintenance Institutions

| INSTITUTIONS | REGION | PROBLEMS |
|--|-------------------------------------|---|
| Africa Legal Aid, Akape, Legal Resource Centre, Media Mosque, church, Hyohani Churches, chiefs, traditional council, market women, family elders, schools, NGOs. | Greater Accra Northern Volta | Financial Constraints / Inadequate Funding |
| African Legal Aid, Naiwe, Chiefs, Akape, Mosque, Churches, Legal Resource Centre, Media | Greater Accra | Capacity building |
| Naiwe, Chiefs, Akape, Mosque, churches | Greater Accra | Public Education on Human Rights / Public sensitisation |
| Ark Foundation, African Legal Aid, Legal Resource Centre, Peace FM NGOs, Hyohani Rehab Centre, Tizaa, | Greater Accra Northern Volta | Inadequate means of transportation |
| African Legal Aid, Legal Resource Centre, Peace FM Mosque, church, NGOs, Hyohani Rehab Centre, Tizaa | Greater Accra Northern | Inadequate staff / personnel |
| Africa Legal Aid, Naiwe, Akape, Chiefs, Mosque, Legal Resource Centre, Media Family Elders, Asogli | Greater Accra Volta | Lack of enforcement power / Non compliance |
| Ark Foundation, Africa Legal Aid, Akape, Legal Resource Centre, Media Churches, Tizaa | Greater Accra Northern | Cultural/ community's attitude/lack of co operation |
| Mosque, Churches, Hyohani Rehab. Centre | Northern Volta | Poor infrastructure /inadequate logistics |
| Ark Foundation, African Legal Aid, Legal Resource Centre, Peace Fm Chiefs, Churches | Greater Accra Volta | Lack of Governmental support / Assistance |

Source: Field Data 2002

3.5.2 Factors Affecting Access to Institutions

In most areas, a number of factors contributed to the choice of institutions for the resolution of child maintenance issues. The choices were related to the barriers associated with particular institutions.

Individuals, key persons and groups shared their personal experiences and that of others in dealing with these institutions. They noted some of the problems as the high fees paid to the formal courts and to the chief's court, extortion of money from complainants/parties by personnel of institutions before carrying out their duties and the insufficient number of institutions that handle child maintenance cases. The complainants are mostly women, with no formal education and financially handicapped, who cannot afford to pay the statutory filing fees for court processes. The extortion of money by some members of staff of these institutions further aggravates the situation. In addition physical access problems such as attitudes of the staff in these institutions reduce the confidence that people have in the institutions to solve their problems, and therefore the likelihood that they will access that institution when they have a problem. In summary the preponderant reasons for reduced access cited by respondents were the delays, and the inability of institutions to enforce order and compel appearance of parties, making the institutions unattractive for solving child maintenance cases.

The study revealed that respondents did not make too many complaints about their problems in accessing the institutions to other persons. Only three respondents reported ever complaining about a problem or other that they faced in their attempt to access some children maintenance institution. At Hohoe, the female complainant was advised to ask the court to make an order for the arrest of the defaulter, and in Tamale, the female who made a complaint was asked by the court clerk to "leave it to God". Another person who made a complaint was asked to appeal the court's decision. At Ho, the 2 females indicated that they were satisfied with the response they obtained from the institutions they complained to.

Key persons interviewed in the various institutions as well as individuals gave suggestions for the resolution of these problems. They were very concerned about the institutions that do not possess the power to enforce their orders. According to them these institutions will be more effective and efficient if they are empowered to do so. The employment of competent and adequate personnel, provision of adequate office space, computers, vehicles and motor bikes, improved financial assistance from government and NGOs, in service training/ short courses and adequate remuneration for staff were some of the solutions cited by the key persons. They also advocated for a fast track approach to the disposition of child maintenance cases and the

abolition of the payment of “drinks” to traditional authorities as charges for hearing and determining child maintenance cases. Lastly, they called for the establishment of more branches of formal institutions to improve accessibility of the institutions by complainants.

3.6 CHILD MAINTENANCE CASES

Documents from the formal institutions listed earlier were reviewed in the study communities in all the five regions. Virtually none of the informal institutions kept any documents on child maintenance cases they handled. The singular exception was the chief’s courts in the Ashanti Region. The following table shows the types of institutions visited for the purposes of document review and the types of documents that were examined in each institution. The documents examined in the formal institutions covered the period between January 2000 and March 2002.

Table 3.3 List of Documents Examined by Institution

| INSTITUTION | TYPE OF DOCUMENT |
|------------------------------|---|
| COURTS | Case dockets Petitions Registrar's returns Annual report Cashier's book |
| DEPARTMENT OF SOCIAL WELFARE | Case Files, Application Forms, Case Register Quarterly Reports, Files, Case books Case Sheets, Dockets, Summary sheets |
| CHRAJ | Case book, Case files, Statistical returns Annual reports, Annual Returns Application forms, Files, Dockets |
| GHANA POLICE SERVICE | Annual Reports, Station diaries Quarterly intelligence reports |
| THE LEGAL AID BOARD | Case Files, Director's Returns, Computer Print Outs, Annual Report, Application Forms Bi-Annual Report, Dockets |
| MEDIA HOUSES | Letters Faxes |
| NGOs. | Case Files, Application Forms, Case Register Maintenance payment books, Records books Case Sheets, Personal files of children Project reports, Annual Report |

Source: Field Data 2002

3.6.1 Sample Cases on Child Maintenance

The gendered nature of child maintenance issues in Ghana is perhaps best exemplified in the gender differentiation by status of complainant. In virtu-

ally all cases, the mother of the child was the complainant and the actual, disputed, or prospective father was the defendant. Invariably, a man will put a woman in the family way and renounce paternity and hence maintenance responsibilities, or will refuse to maintain his child (ren) and their mother(s) after doing so for a while. A complaint is then lodged with some institution or other with the woman as complainant/plaintiff and the man as defendant/respondent. In very rare cases, the complainants have been female or male relatives of the mother of the child (ren). And in even more rare cases, men have been complainants in petitions for custody of children. In a few instances, the children themselves have lodged complaints against their parents. We utilise the narrations of typical cases from the regions to illustrate the situation as played out in the field. The sample cases discussed below give a better sense of, the main child maintenance complaints, the types of services provided, the processes these complaints go through; the nature of reliefs and orders granted or settlements reached; the levels of maintenance awarded; enforcement mechanisms, and how cases are concluded. Again the cost involved in using the institutions, and the range of problems encountered in accessing child maintenance services is all revealed in these cases.

3.6.1.1 Patrilineal communities Greater Accra, Northern and the Volta Regions

The indigenous inhabitants of Greater Accra Region belong to the patrilineal family system; court records did not indicate details about the background of applicants and defendants. However, it may be inferred from the names, especially of the father/defendants, that the parties belong to the patrilineal family system. The people of the Northern and Volta Regions like the people of Accra are also patrilineal. Unlike Accra, the people of the other two regions are fairly homogenous and it was possible to determine the ethnic background of the parties involved in the cases discussed below from these regions.

- **Northern Region--Walewale**

In 2002, the CHRAJ office was the leading child maintenance institution in Walewale in the West Mamprusi District. A number of factors accounted for this. First the Community Tribunal/Magistrate's Court which is statutorily mandated to sit as a Family Tribunal was not functioning because there was no magistrate available. Second, a number of interviewees mentioned high customary fees at the Chief's court as a deterrent to accessing that medium for resolving child maintenance disputes and third, the great inter-personal skills, affability and hard work of the then Acting District Director of CHRAJ, and the no fee service made CHRAJ the obvious choice.

Interviews with the Acting Director revealed that the office received 3 to 4 child maintenance cases per week. Complainants themselves generally walk in without prior appointments and are received and guided to make formal complaints. In other cases, they are accompanied by relatives, friends and concerned citizens who act as their spokespersons.

The mostly oral complaints are recorded by an officer and a copy sent to the respondent(s) with a letter requesting a response to the complaint within 7 days. Responses are either given in writing or orally at the CHRAJ offices after which a date is fixed for mediation or other process. Neither the complainants nor the respondents are represented by counsel. Indeed, there is no lawyer resident in Walewale and both the former Acting Director and the current Director are not lawyers. The office therefore limits its interventions in child maintenance disputes, as for all other disputes, to settlements, conciliation, mediation and arbitration. No fees are paid for accessing child maintenance services at the CHRAJ. All the records on these cases are kept in case files. The office also maintains a Case Book in which it summarizes all the cases that are filed with it.

The Acting Director noted that enforcement of child maintenance awards was a key problem. The office has however found ways around it. These include, running a range of public education sessions on child maintenance generally, the importance of shared parental responsibility in child maintenance, and the serious consequences that may attend parental neglect of children. The office also uses employers and senior state officials to prevail upon their subordinates to perform their child maintenance responsibilities or abide by terms of settlement, in particular child maintenance awards given by the CHRAJ office.

From our interviews with a wide range of officials and ordinary individuals in Walewale, including some who had accessed child maintenance services from the CHRAJ, we came to the conclusion that, more than anything else, it was the personal affability, hard work and commitment of the Acting Director which made the CHRAJ office effective in enforcing child maintenance awards. He visited both complainants and defendants and made them his friends. He visited errant husbands in their offices and reminded them to pay up their monthly maintenance awards. He talked with employers and superiors to urge their employees and subordinates to comply with awards.

The CHRAJ office is quite centrally located and therefore accessible to the people in Walewale town. It is, however, not that accessible to persons from outside the Walewale township who have to travel, in some cases, 90 Kms to reach the office. The office itself is housed in very modest buildings. It occupies two small rooms in a four-room building. It has even more modest

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furniture: four tables, four chairs, two benches, one bookshelf, one cupboard, all-wooden, and one steel cabinet. The office also has one typewriter, a stapler, a paper punch, a motorcycle and a bicycle.

In terms of staff, there is a Director, who was on leave in 2002, but came back to post in 2003, an Investigator who functioned also as Acting Director in 2002, a Registrar, a Bailiff and a Secretary.

The office received a quarterly imprest of ₡500,000 as at year 2002 through the Regional CHRAJ office with directions as to how to use the money. Sometimes NGOs sponsor public education sessions conducted by the office.

In the years 2000, 2001 and the first quarter of 2002, the CHRAJ office in Walewale recorded 34 cases. Of these 31 were child maintenance cases. Walewale is indeed a child maintenance town. The other three cases involved abduction to the witches' camp at Gambaga, a tenancy dispute and a peculiar complaint that a certain defendant was "conveying" the daughter of the complainant to Bolgatanga for someone "to make love to her". The following are the range of complaints in the child maintenance cases:

- a. Refusal by a prospective father to accept responsibility for a pregnancy;
- b. Refusal to pay ante-natal fees;
- c. Paternity disputes;
- d. Contests over custody of children;
- e. Neglect to provide for all or some of the needs of children and their mother (e.g. school fees, hospital bills); and
- f. Child abuse.

The reliefs sought by complainants are mainly financial provision, custody, payment of periodic maintenance and in some cases arrears of maintenance, and an order for a spouse to pick up the educational and health bills of the children. The CHRAJ office does settlements and mediations which essentially provide the following reliefs: determination of paternity; the grant of custody; orders for the payment of ante-natal fees, school fees, hospital bills, monthly maintenance and arrears of maintenance, and orders for a spouse to set the other spouse up in business so that she is better able to cater for the needs of their children.

There is almost strict gender differentiation by status of parties. Almost all complainants are females making complaints about errant husbands and partners. This is also true for the Department of Social Welfare in Walewale, which was another popular destination for seekers of child maintenance reliefs. Of the 32 cases dealt with by that department during the study pe-

riod, 28 were brought by women. Of the 28, all but one, were wives or partners against their errant male spouses or partners. Of the 5 complaints brought by men, one was by a grandfather seeking maintenance for her grand daughter.

Maintenance awards were varied. The highest was an award of ¢ 80,000 as payment for ante-natal expenses. The highest monthly maintenance award was ¢ 50,000 and the lowest was ¢6000 per week. The modal award was ¢ 30,000.

Sample Cases

In one case, a lady reported to the CHRAJ office that her partner was not meeting his parental responsibilities towards their child. The CHRAJ office wrote to the man for his response and eventually convened a session for settlement of the case. It was agreed that the woman should retain custody of the child. It was also agreed that he buys a sewing machine for her to start a trade as a seamstress and that he also pays a sum of money to her monthly as maintenance for her and the child. The amount to be paid as maintenance was not agreed upon.

He has bought her the sewing machine but CHRAJ investigations revealed that he does not pay any monthly maintenance for the child and her maintenance. When he was questioned about the monthly payments, he argued that maintenance of the child should go with custody and so he could not provide for the maintenance of the child as long as he was denied custody. The CHRAJ office clearly felt at the end of the road when we interviewed them on this case.

In another case, a dispute over maintenance for a wife and a 2 year old child was settled by the CHRAJ office. It was agreed that he pay a monthly sum of ¢30,000. He paid this sum consistently for five months and then he was transferred from the district. Once transferred, his name was moved from the district pay vouchers. Thus, the control that his superior officers in the district had over his pay, which the CHRAJ office exploited to secure maintenance for his partner and child, was lost.

In another complaint involving maintenance for a pregnant woman and a child, it was agreed that he buys her some foodstuff and some clothing. It was also agreed that he pays to her maintenance of ¢ 6000 a week. He complied, bought the foodstuff and the clothing and paid maintenance consistently for 4 months, until he lost his job. At the time of the field work he had just been employed again and had resumed paying the monthly maintenance. He however declined to organize a naming ceremony to name the second child.

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The situation had not changed when we visited Walewale again in January 2004. The majority of cases were still child maintenance cases, although the total number of cases had fallen drastically. Two-thirds of all cases for the year 2003 were on maintenance of spouses and children. For the year 2003, the office dealt with only 19 cases. Of these, 3 were carried forward from 2002. The breakdown of cases for 2003 is as follows:

| | |
|---------------------|----|
| Maintenance | 10 |
| Paternity | 1 |
| Custody | 1 |
| Dowry Claim | 2 |
| Harassment | 1 |
| Fraud | 1 |
| Retrieval of Assets | 1 |
| Tenancy | 1 |
| Unlawful detention | 1 |

The Community Tribunal that was not functioning during our first field interviews in 2002 started functioning in 2003. It appears that a lot of the cases on maintenance are now being dealt with in the court. Although the court charges a modest filing fee for such cases, this is still preferable to a CHRAJ office, which though free of charge, does not have the enforcement mechanisms of a court. It might also be that the personal efforts of the previous Acting Director to deal with the problem of enforcement have lapsed with his departure for further studies, making the court the only real option currently.

• **Greater Accra Region--Accra**

There were 9 Family Tribunals located in the Accra Metropolitan Area; most of them were accessible because they were centrally located in the communities and/or near transport terminals. Some were actually located in the palaces of traditional leaders or in Community Centres. There were 2 Family Tribunals in James Town that were supported by an office of the DSW. There were also traditional courts run by the various clan and religious heads. Both legal systems were easily available to, and patronised by the residents of the community. Most applicants accessed the Family Tribunals for child maintenance claims, especially after other attempts through the family system had proved ineffective.

The total payment by the applicants in the cases analysed was ø4,700 made up of the following costs:

| | |
|---------------------------|-------|
| Application form: | 1,500 |
| Hearing Notice: | 1,500 |
| Docket: | 1,000 |
| Filing service & mileage: | 700 |

Unofficially, applicants bear their own transportation and usually that of their witnesses. Many applicants also have to come to the court to collect the maintenance awards on the dates fixed for payment to court by the defendant fathers. Most applicants in James Town live within walking distance of the 2 Courts and would thus usually not incur transport expenses for themselves.

Sample Cases

The first case involves a claim made by a female plaintiff, in 2002 against the father of her children, for neglecting his responsibility to help maintain their children. The application was for the father to pay school fees, medical bills, and a monetary contribution of ₵120,000 per month towards feeding the children and to put the children into school. This claim involved the reliefs usually sought by people who have custody of children; they are also the reliefs that are usually granted by the courts. The Court granted an award of ₵120,000 per month and lump sum payment of arrears of school fees of ₵70,000 against the father. He was in addition ordered to pay for the cost of the forms used to lodge the complaint at the court. The Court awarded costs of ₵40,000 against the father in favour of the applicant mother. The applicant (the mother) was asked to put the children in a school near their place of abode.

Courts give orders of at least two thousand cedis (₵2,000) a day. The maximum usually depends on the merits of the case at hand. The other institutions through mediated settlements usually get parties to agree to amounts ranging from fifty thousand cedis (₵50,000) a month to over five hundred thousand cedis (₵500,000) a month depending on the case. One-off payments in the form of arrears and compensation over the period of neglect are usually agreed upon. This may be as low as fifty thousand cedis (₵50,000) or as high as five hundred thousand cedis (₵500,000) plus. Payments are made through institutions.

- **Big Ada**

The DSW, the Court, the Police, CHRAJ and traditional authorities are all available in Ada. The most preferred mechanisms for processing child maintenance claims are the CHRAJ, traditional authorities and the Court. The traditional system is the most accessible because the chiefs and family elders live within the community, especially in the villages, whereas the other institutions are located in the district capital. Many applicants for child

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maintenance reliefs initially access the traditional system and move on to the court and CHRAJ when the traditional system fails to get the required results. The trend has been for an increasing number of applicants who access the Court and CHRAJ.

Sample Case

In the second case at the Big Ada district community Tribunal a mother brought a case against the father of her baby. The claim was for ₵60,000 against the father for neglecting his responsibility of paying for the medical expenses incurred during delivery of his child, its naming ceremony and general maintenance. The court awarded ₵40,000 a month for medical bills and feeding. In this particular case, the applicant paid a total of ₵4800 as court filling fees.

The Court also awarded costs of ₵20,000 against the father in favour of the applicant mother. Here as in the case of James Town in Accra, applicants bear their own transportation costs and usually that of their witnesses and have to come to the court to collect the maintenance awards paid by fathers to the court on fixed dates. (The fare from Big Ada to the court was ₵500.00.). The same factors used to determine the quantum of awards in the earlier case at James Town were employed in this case.

• Volta Region

The Volta Region particularly Ho, its capital, has its fair share of maintenance institutions both formal and informal: the courts, DSW, CHRAJ WILDAF and traditional authorities. The maintenance reliefs requested from these institutions are: the monthly maintenance allowance, the payment of school fees and hospital bills when due, paternity payments, payment of compensation for past neglect and to clothe the child. In some cases, the man is ordered to name the child. The maintenance level is determined by taking into consideration the level of income of both parties, the number of children, the age of the children, and the number of other dependants on the parties. However, in most cases, at least two thousand cedis (₵2,000) a day per child making sixty thousand cedis (₵60,000) a month is awarded. The formal institutions mentioned normally require the respondent to pay the money to them. The court sometimes requests that for salaried respondents have their awards deducted at source. In cases where the relationship between the respondent and the petitioner is not hostile, they ask the respondents to pay directly to the complainant. The maintenance orders normally granted include:

- a. Payment of monthly allowance;

- b. Compensation for the past neglect;
- c. Payment of medical bills when due;
- d. Payment of school fees when due;
- e. Clothing the children regularly;
- f. Access to the children.

The quantum of monetary awards made for maintenance ranged from fifty thousand cedis (¢50,000) a month to two hundred and fifty thousand cedis (¢250,000) a month, depending on the number of children the award covered.

Sample Cases

In a typical case in Ho, the complainant was a woman 28 years old who had three children with the defendant, a driver. The parties lived apart, the children with their mother. She brought a complaint against the father of the children at the Ho Family Tribunal for neglect. The father had for two years ceased making contributions towards the maintenance of their children aged 4, 6 and 9 years.

During the hearing of the case at the Family Tribunal it was discovered that misunderstanding between the two had angered the respondent. His refusal to maintain the children was in effect the result of the anger he harboured against the mother of his children. The Tribunal ordered the respondent to pay a monthly maintenance of ¢150,000.00 towards the children. An interview with the complainant during the study period disclosed that the respondent had fairly complied with the order and was making regular maintenance payments.

- **Hohoe**

The second case study in the Volta Region we examine involved a 74 year old man who brought a complaint to the DSW at Hohoe, on behalf of his 24 year old daughter at the DSW at Hohoe. The complaint was that his daughter had 2 children with the defendant, a teacher. The said daughter and her children lived with the complainant, a peasant farmer. The defendant merely acknowledged paternity but had since refused to maintain the children.

The panel heard the complainant in the absence of the respondent, who refused to attend the hearing even though he was invited. The panel advised that the respondent pay a regular amount of money towards the maintenance of the children. At the time of interview with the complainant, she had come to the offices of the DSW to complain about the fact that the respondent was not complying with the orders. It was contemplated that the matter be re-

ferred to the family Tribunal which had greater authority to compel defendants to appear before it and to abide by its orders.

3.6.1.2 Matrilineal Communities—Ashanti and Western Regions

Communities within the Ashanti and Western Regions of Ghana are mainly matrilineal and as we explained in earlier chapters these communities, for purposes of lineage affiliation and succession to property and office trace descent through a common female ancestor. Fathers and their children therefore do not belong to the same extended family systems. This however does not absolve fathers of the responsibility of maintaining their children as the case studies presented below revealed.

- **Ashanti Region**

In the Ashanti Region specifically Kumasi and Asante Akyem Districts the High courts and community Tribunals hear and determine child maintenance cases while FIDA, CHRAJ, WAJU and Legal Aid Board do settlements, mediation and feedback or follow-up on reported cases.

- **Kumasi**

A 29-year-old petty trader in Ashanti New Town in Kumasi, the capital of the Ashanti Region had three children and lives with some members of the extended family in a family house together with the youngest and last daughter. Two of the children live with their father. Some few months after the last daughter was born, the father neglected to cater for the child on the excuse that he was not gainfully employed and therefore did not have the means to maintain the child.

She made a complaint to her parents and some members of her extended family about the refusal of the father of her daughter to live up to his responsibilities. She made her intentions of sending the matter to court clear to the family but they discouraged her explaining that she might end up providing her daughters father sufficient justification to cease maintaining her daughter. She was advised to “leave everything in the hands of God”. She decided to concentrate on her petty trading to take care of the child. Not too long after her decision the child fell sick and she was unable to foot all the medical expenses. She went to the father with a medical prescription as well as the medical bills. The father only purchased a few drugs and left the rest together with the bills to be settled by the mother.

She informed her parents who decided to approach the father and see if they could persuade him to be more responsible towards his child. Their meeting was deadlocked. They then appealed to his family, who arranged for a meet-

ing. At the said meeting the two families emphasised that it is the primary responsibility of the man to cater for the child. However, this statement angered the man who retorted that if any of the people present at the meeting could secure him a lucrative job, he would be more responsible towards his child. The man's family pleaded with her family that they will ensure that he performed his fatherly responsibilities. The man's mother took over the responsibility of maintaining the child by sending some amount of money which ceased after a while.

She decided to utilise a more formal institution to compel the father to be responsible. Her family gave her their support. Some members were prepared to foot the expenses involved. She had heard a lot about the activities of WAJU and FIDA on the media, especially on radio, in respect of child maintenance enforcement; she however, decided to use the Court because the Family Tribunal in Ashanti New Town was close to her. In addition to the proximity of the Court, she had also heard how fathers suddenly became responsible when they were summoned before the Court. More importantly, the Court used the Police to enforce its orders.

After consulting a few lawyers for assistance, she realized she could not afford their services. She therefore declined to engage the services of a lawyer and followed a friend's advice and asked the Registrar of the Court for assistance. The Registrar assisted her in filing the necessary applications for the Writ. The bailiff demanded money for his transportation to serve the respondent's husband. She in turn sought financial assistance from some members of the family to pay the bailiff.

On the appointed day, the father appeared before a panel without a lawyer and was asked why he did not maintain his child. His explanation again was that he was not gainfully employed therefore he did not have the means to maintain his child. The panel rejected this excuse and ordered him to pay ₵1,000,000.00 as lump sum towards the upkeep of the child, and ₵200,000.00 every month to cater for the feeding, medical and educational expenses for his child. He was told that failure to comply with the payment schedule would result in his arrest by the police.

The plaintiff was initially, satisfied with the arrangement made by the panel. The father complied and made regular monthly payments and when he was unable to, he would either send a message or plead for time to pay up. Matters continued for a while in this manner till the monthly payments became inadequate and her husband started defaulting on payment without any explanation. She was at the time of the study contemplating going to court again.

- **Western Region**

In the Western Region specifically Sekondi/Takoradi and Agona Nkwanta, the court, DSW, CHRAJ and WILDAF normally require the respondent to pay the monetary awards into the coffers of the institution. The court sometimes asks for the award to be deducted at source from the defendant's salary if the defendant is on salary. In cases where the relationship between the respondent and the petitioner is not hostile, they ask the respondents to pay directly to the petitioner. Respondents make payments to the office of the institutions and the offices issue receipts for the necessary payments.

- **Agona Nkwanta**

A banana seller who had been married for 17 years has 5 children whose ages range between 3 and 15 years. On a good market day she makes close to ₵40,000.00. On a normal business day she makes less than ₵16,000. Her husband is a farmer employed by an Oil Palm Company in the town. He also doubles as palm-wine tapper. The marriage has not been easy going. Her husband neglects to take care of their children. She has been threatened with a divorce for insisting that her husband plays his role as a man and the breadwinner of the household. The husband earns an income a little higher than ₵240,000 a month. Lately he has resorted to heavy drinking.

She lodged a complaint with the DSW to force her husband to live up to expectations. An award of ₵50,000.00 a month was to be paid to the DSW to be collected by her. Her husband honoured the award by making payment on only two occasions and has since declined to make further payments. Only two of their 5 children are still in school. The rest have dropped out and are helping their mother sell banana by hawking around town. She has lost hope but believes that if she secured a better job for herself she could cater for her children without her husband's help. She was contemplating following up on the maintenance order she was awarded earlier by the DSW at the time of the study.

In the second case at Sekondi/Takoradi, a trader who sells second-hand clothing has a son out of wedlock with a man employed as a Naval Officer. The boy is 8 years of age and is elementary school, primary 4. Their short-lived romance ended when their son was just 2 years. He has since refused to cater for their son because he questions the child's paternity and has rejected the boy as his son. He is married to another woman and has children in his new relationship.

She lodged a complaint with the WILDAF which took up the matter. He refused to turn up for negotiations on the child's maintenance and pay the awarded monthly award. WILDAF has taken the matter to court. At the time of the interview she explained that legal processes had been filed for the necessary action to be taken.

These case studies affirm earlier conclusions that the norms and rules of customary practices on child maintenance are the same for all lineage systems in Ghana. Succession and inheritance rights are treated differently from the child's right to maintenance from his/her father. The next sections look more closely at data from the interviews in the selected communities and describe the broad trends that emerge.

3.6.2 Initiating and Conducting Action Related to Child Maintenance

The children who are involved in the maintenance cases reviewed were at the background. The application for a declaration of paternity, maintenance, or custody will be made by one of the parents, usually the mother of the child (ren). In cases of adoption, the application will normally be made by both foster parents. In a few instances, children have filed complaints with institutions such as the DSW against their parents, and nearly all cases against their father, for neglecting to pay their school fees.

The complaints, in nearly all the cases, were lodged by low-income complainants who could not afford the services of lawyers. In a number of cases, complainants were supported by relatives to present and argue their cases. In some instances where defendants were represented by lawyers in the courts, the cases invariably took longer to resolve because of several adjournments requested by the lawyers.

Aggrieved parties who seek redress from the other formal institutions aside the courts lodge their complaints either verbally or in writing. In a significant number of cases, the complainants wrote their own complaints or were assisted. Oral applications are normally reduced into writing and respondents served by the complainant or the institution handling the case. In the informal institutions, the complaints are usually oral. The parties appear before the institutions on dates determined by the institutions for the hearing of the case.

Securing the attendance of the defendant or the other party can be incredibly difficult. This may be because the party becomes elusive and evades service, or is otherwise uncooperative. Where the complainant is uncomfortable or afraid to serve a summons or letter to the defendant, someone else does it on

his/her behalf. In the case of maintenance cases before the courts, a court bailiff will do this.

Maintenance cases, whether in court or in other formal or informal institutions are heard in camera. The family tribunal does not sit in public. In the case of other institutions, a limited number of people are invited for the proceedings. A panel is constituted to sit on these cases. The head of the panel is usually the head of the institution. Members of the panel listen to the parties to deliberate on the matter and make appropriate recommendations. The traditional courts and the churches usually operate with a council of elders. The panel or judge, arbitrator, mediator, officer or other person examines the case and allows each party to make representations. A ruling or a settlement is then reached and pronounced.

3.6.3 Main Complaints

The main complaints or applications in the documents reviewed were the following: maintenance, declaration of paternity, specific orders for the payment of school fees, medical bills, custody and applications for adoption. The following represents samples of the main reasons that were provided by complainants to support their complaints. The main reasons were the following:

- a. The father of the child has denied paternity and responsibility for the maintenance of the unborn child (the payment of ante-natal clinic fees etc) and the maintenance of the mother of the child;
- b. The father of the child is in a relationship with another woman and has neglected his children and their mother;
- c. The father has refused to pay the maintenance award given by some other institution such as the DSW;
- d. The marriage between the parties is being dissolved and certain maintenance orders need to be made;
- e. The father provides money for food for the child (ren) but refuses to pay other bills in respect of the children such as school and hospital fees;
- f. The parents have some disagreements and the father has refused to maintain the children as punishment to the mother;
- g. The father has some disagreements with the child and has refused to maintain him/her;
- h. The father has fallen in love with some other woman and refuses to maintain his children.

The main reliefs sought by complainants or applicants were the following:

- a. General maintenance orders;

- b. Specific maintenance orders for the payment of school fees, medical bills etc;
- c. Declaration of paternity;
- d. An order to name a child or to perform some other customary duty or obligation plus all the necessary ceremonies incidental to same;
- e. Orders relating to custody and access;
- f. Compensation for period of neglect; and
- g. Adoption.

Orders made ranged from maintenance, paternity and custody orders and more specific ones related to the payment of school fees, monthly remittances and lump sum payments. Most orders were made for maintenance (45%); nearly 70% of maintenance awards were for females. Monthly remittances were next in terms of frequency of occurrence and they accounted for nearly 22% of the orders made, paternity awards ranked third.

3.6.4 Maintenance Levels

It is worthy to note that the orders made by the courts and in most cases, CHRAJ, are in the form of rulings and judgements, whilst the other institutions make awards and recommendations. The Children's Act has provided guidance as to the types of maintenance awards that should be made by the family tribunals. Usually where the courts order a maintenance award for a child, monetary awards are made. Maintenance levels are determined by considering the income and resources of both parties as well as the earning capacity of the person against whom the award is made. The Children's Act clearly spells out the factors that should be taken into account in making maintenance orders. Mention is made of the financial responsibility of a person with respect to maintenance of other children, the cost of living in the area where the child is resident, the rights of the child under the Act, and any other matter that the Family Tribunal considers relevant.

The main factors that are used to determine the quantum of awards in the sphere of the biological father and mother are:

- a. The nature of employment
- b. The declared income (salaries and benefits)
- c. The ability to care for other children
- d. The number of other dependants
- e. Support from relatives

In the sphere of the child, the main factors include, the age of the child, the type of education being received and the medical requirements of the child. In order to ensure that the awards granted are fair the court employs several mechanisms for soliciting the information about the income levels of the

parents in the case. The parties are often questioned about the nature of their income and their occupations as well as additional responsibilities that they have. In addition the nature of their jobs and the positions they hold within these jobs are assessed. Where possible their salary or pay slips are inspected by the court.

The study revealed that maintenance levels awarded varied greatly according to the income level of the defendant, which in turn depended on the economy of the locality in which parties lived. In Accra in the Greater Accra region, maintenance levels awarded ranged from ₵50,000 to ₵500,000 per month. In Ada-Foah, a district in the same region, maintenance levels ranged from ₵50,000 to ₵250,000 a month. In Tamale, the regional capital of the Northern Region, maintenance levels ranged from ₵60,000 to ₵100,000, whilst in Walewale, a district in the same region they ranged from ₵20,000 to ₵50,000. In Tamale bulk payments of up to ₵600,000 were ordered in a few cases. In Ho in the Volta Region, the modal maintenance award was about ₵60,000. In some cases, one-off payments are ordered, especially in cases involving payment of arrears of maintenance. Maintenance levels also vary as between people in the same locality and with similar means. This is because, other factors such as the number of other dependants a person has, affect the quantum of the maintenance award. A review of monetary awards made in the regions shows the highest lump sum award of ₵1.2million which was recorded in Kumasi and the lowest of ₵2,000 in Tamale.

The economic situation in this Country renders the awards made inadequate. However the poor financial backgrounds of those against whom the orders are made do not make room for the award of higher sums. Despite the inadequacy of these awards, recipients were of the view that it made the parties against whom the awards are made contribute towards the upbringing of their own children. Personal experiences and other opinions gathered from individuals gave a clear picture of the adequacy or otherwise of the awards made.

3.6.5 Enforcement and Monitoring of Orders and Settlements

The predominant orders are monetary awards payable periodically, usually monthly, to the complainant. In some cases, such awards are made payable through the institution making the award. Most institutions especially the family Tribunal, DSW, LAB and CHRAJ make such orders. At Takoradi, key persons in the formal institutions for example the courts, CHRAJ, DSW and LAB noted that the institutions demand payments to be made directly to them. These orders are the easiest to monitor. A few recalcitrant ones avoid paying either to the institutions or to the beneficiary. The institutions are

therefore burdened with another task of verifying compliance. The most common form adopted is by advising parties to report back to them. In Agona Nkwanta and Walewale the DSW and CHRAJ go an extra mile by making regular visits to the homes of parties to enquire about these payments. This form of verification is very prominent in the district capitals where there is a close-knit society. At Asante Akyem, Hohoe and Kumasi the courts, CHRAJ, the DSW the police, the traditional leaders and the opinion leaders demand feedback from parties.

Where payments are made directly to the complainant, (s) he reports any default to the institution and the defendant is summoned and asked to make good the default. Most of the informal institutions also rely on feedback to verify compliance. For instance at Ho and Hohoe, the churches, chiefs, family elders and Asogli traditional council use feedback as a major tool for verifying compliance with maintenance orders. The same holds for the Legal Resource Centre, Ark foundation, Africa Legal Aid, all in Accra and the Religious bodies and churches.

In cases heard before the Family Tribunal, recalcitrant defendants are put before court to show cause why they should not be imprisoned for failing to pay maintenance awards and are sometimes remanded in custody until they pay the awards. Where the defendant is a salaried worker and takes his/her salary through a bank or other such institution, the court may *ganeshie* part of his salary and cause same to be deducted at source and paid to the complainant. *Ganeshie* is the technical legal term for this process. For instance, at Agona Nkwanta the employers of a naval officer were compelled by the court to pay directly to them. At Ho, key persons at the court cited this form of ensuring compliance as a major tool used by them.

Sometimes the courts advice an amicable settlement by the families of the parties, and may appoint a mediator for the purpose. In other dispute resolution forums such as the CHRAJ, DSW and the informal institutions, the same results were obtained through negotiation and mediation. These are however not enforceable except by recourse to the courts. There are several instances of cross referrals within and between institutions, formal and informal. It is pertinent to note that where recommendations are not complied with or an institution is of the opinion that a case referred to it could be appropriately dealt with by another institution they tend to refer them to the other institution. Recalcitrant respondents are mostly referred by other institutions to the courts. Some complaints are referred from district offices to regional offices and from one institution to another. In almost all cases referrals were to the Family Tribunal, the Police, and CHRAJ, a family meeting or the Chief's palace.

Generally, all the institutions have a major problem with enforcement. Levels of compliance vary according to institutions and their locations within the country. The courts, CHRAJ, the courts and religious bodies like the Asogli traditional council at Ho tend to attract the higher levels of compliance than the DSW for example. The fear of being imprisoned for failure to comply plays a major role in getting people to comply with the orders of the courts and CHRAJ, which has the power to enforce its orders in court. This holds true for institutions such as FIDA and LRC which first mediate maintenance claims, by may enforce these claims in fresh legal action in the courts of law against recalcitrant defendants. Traditional authorities in the Ashanti, Northern and the Greater Accra Regions attracted higher levels of compliance than those in the Volta and Western Regions. The capacity of traditional rulers in exacting compliance with the orders they make is related to the amount of the authority and deference they wield particular communities. Some traditional authorities are also capable of imposing sanctions on defaulting persons.

3.6.6 Cost of Accessing the Institutions

In court cases, a filing fee of between ₵4,000 and ₵7,000 is paid on average in all the regions. The cost of accessing the courts range from ₵2,500 to ₵130,000 depending on the reliefs sought. A Complainant is made to pay more when the reliefs sought are many. In Accra, the cost of using the courts is generally between ₵20,000 and ₵80,000. At Ada-Foah, the sums paid to the courts range between ₵2,500 and ₵50,000 and in Tamale ₵2,000 to ₵30,000.

The LAB is exempted from paying filing fees. In the case of NGOs such as AFLA, LRC, and WILDAF which also offer legal aid, filing fees are paid by the complainant and/or the organisation. The LRC almost always pays the filing fees of complainants. In a few cases, complainants have on their own volition paid filing fees or made donations to NGOs to cover some costs. WILDAF in Takoradi does not demand any fees, but complainants normally pay token sums for the purchase of files and other logistics. The services of all the other formal institutions are absolutely free. The same is true for service provision NGOs which see to the physical and material needs of children. In the case of informal institutions such as the chief's palace, customary gifts and charges can be quite high and severe penalties may attend those who are unable to pay such costs. In southern Ghana, the standard charge is some drinks and money. In the Northern Region, complainants are required to provide cola nuts and money. In Accra, the demand for drinks in the Chief's Palace and the payment of fines were cited as impediments in accessing the traditional courts. The Table 3.4 below shows the cost of accessing some of the institutions.

Table 3.4 Cost of Accessing Services (¢)

| Insti- tution | Institutions | | | | | | |
|---------------------------|-----------------------|--------------------------------|--|------------------|---|--------------------|-------------------|
| | <i>High Court</i> | <i>Com. Tri- bunal</i> | <i>Dept. of Soc. Wel- fare</i> | <i>FID A</i> | <i>Le- gal Aid Boar d</i> | <i>CHR -AJ</i> | <i>WA- JU</i> |
| Agona Nkwant a | | 5,600 – 58,000 | Nil | | | Nil | |
| Ho | | 7,400 | Nil | Nil | Nil | Nil | Nil |
| Hohoe | 7,600 | Nil | Nil | | | Nil | |
| Sekondi /Takora di | 8,000 + | 10,000 - 30,000 + | Nil | Nil | Nil | Nil | Nil |
| Ada Foah | 7,600 + | | | | | Nil | |
| Accra Central | 7,600 + | | | | | | |
| Kumasi /Asante Akim | | 4,100 - 53,100 | Nil | Nil | Nil | Nil | Nil |
| Tamale | 7000 + | 2000+ | Nil | | Nil | Nil | Nil |
| Wale- wale | | | Nil | | | | Nil |

Standard costs in the courts could include the following:

| | |
|-------------------|---------------|
| Application fee | ¢200 |
| Judicial relief | ¢2,000 |
| Service charge | ¢200 |
| Docket fee | ¢1,000 |
| Hearing notice | ¢1,500 |
| Mileage* | ¢1,200 |
| Maintenance order | ¢1,500 |
| Total | ¢7,600 |

*Any extra mile that the bailiff travels for service of a court process over and beyond a specified distance costs an additional ¢1,200. Thus the final

Analysis from Findings of the Field

amount paid depends on the distance between the courthouse and place where service is to be affected.

It is obvious, that any recommendations for the reform of child maintenance laws, institutions and associated practices, and particularly, any prescriptions or recommendations on how to promote shared parental responsibility in childcare must be based on sound diagnoses of the current practices and the relevant institutions that are involved in the said practices. The purpose of this chapter has been to provide this raw material on the basis of which any prescriptions may be made.

CHAPTER FOUR

ENFORCING CHILDREN'S RIGHT TO MAINTENANCE

4.0 INTRODUCTION

In this concluding chapter, we highlight the main themes, issues and findings in the preceding chapters; draw some conclusions based on these findings and offer recommendations for legal and institutional reform, as well as further research to enrich attempts at making the child maintenance regime more effective. The recommendations are geared towards promoting an enhanced sense of shared parental responsibility towards maintenance of the Ghanaian child.

As noted in chapter one, the overall goal of the Legal Pluralism and Gender Project of the GTZ is to enhance women's rights in a plural legal system by initiating processes to generate better responses to the economic and social interests of women. The focus is on research and action to promote change at the local level and to advance the rights of women. Additionally, the project seeks to explore alternative approaches to bridging the gap between the two different systems of traditional living law (customary law) and the imported or received central state legal systems through an examination of the plural legal system, an identification of priority areas for intervention in this regard, and the promotion of dialogue among stakeholders in aid of these interventions.

The interventions are conceived of as properly belonging to the improvement of the rule of law and access to justice, including the protection of identified vulnerable groups and the promotion of mechanisms that ensure gender equity.

In this report, the overarching themes just mentioned are being applied to research and action on child maintenance issues in Ghana. The aim is to create the information resource base for designing, developing, and testing strategies to promote shared parental responsibilities in childcare and maintenance.

The specific terms of reference for the research aspects of this project included: gathering information on child maintenance practices in Ghana's plural legal system; describing the various internal conflict of laws issues that arise there from and how they are resolved; assessing the level of awareness of existing laws on child maintenance in Ghana and the level of utilisation of these laws within select communities; identifying problems faced by child maintenance institutions in the enforcement of maintenance orders; making recommendations for reviewing and strengthening existing child maintenance laws; and identifying ways in which institutions that deal

with child maintenance cases can be strengthened in order to enhance women's access to justice.

This study on Child maintenance under the Legal Pluralism and Gender Project of the Family Law Focal Area (FLFA) is based on the position that plural legal systems provide unequal and inequitable participation for particularly poor rural women in the enforcement of their rights in terms of securing the additional resources from fathers for the maintenance of their children. The study as a result sought to gather the base information required to review and strengthen existing laws and institutions for the enforcement of maintenance orders.

4.1 SUMMARY OF RESEARCH FINDINGS

Child maintenance is one of the fundamental rights granted every Ghanaian child under the customary and statutory laws of the country. Both customary and statutory laws in Ghana ensure that children, however situated, have access to maintenance. There are also many child maintenance institutions in Ghana, formal and informal, traditional/customary and statutory, coercive and non-coercive.

These customary and statutory legal provisions notwithstanding, many Ghanaian children are denied the right to maintenance. Evidence from institutions which deal with maintenance cases suggest that some parents are finding it increasingly difficult to provide the necessary care for their children. The main cause of child neglect and parental inability to adequately maintain their children in Ghana is low income levels, although there are parents who have the means but refuse to cater for their children out of sheer irresponsibility.

Responsibility for the care of children is increasingly becoming the lot of mothers. Thus, two issues that have become closely related to child maintenance are women's right to inheritance and their financial protection during and after marriage. The findings are that, women who have custody of children in non-marital relationships as well as those who live apart from their husbands are known to experience difficulties getting them to contribute towards the maintenance of their children. The gendered and low-income nature of child maintenance issues in Ghana is perhaps best exemplified in the gender differentiation by status of complainant. Almost all complainants in child maintenance matters were females seeking access to support for the maintenance of children from an errant male, usually the father. Again, in almost all cases, the complaints were lodged by low-income complainants.

The research project has also identified the various systems of laws in simultaneous operation in Ghana for the resolution of child maintenance issues. These are: the formal statutory legal system, mostly inherited from the British colonial administration; the more informal customary rules (with a veneer of Constitutional and Statutory endorsement) and living law; and an array of religious and mixed rules and practices that form an identifiable third system. There are as many customary laws as there are ethnic groups in Ghana, and this further complicates the picture. In Chapter two, we described this plural legal system, the problems that arise from it, and how conflicts between the various systems are resolved in law and in fact. The hegemony of statutory law often ensures that the *de jure* resolution of such conflicts is in favour of the formal and statutory. Yet, in fact, many people adhere to the customary system and the living law, especially in places where the reach of the formal and statutory system is limited. The problem of conflict of laws is not as pronounced in the area of child maintenance because all the legal systems tend to agree broadly about the child's right to maintenance from both parents and the form the maintenance should take. Thus in the application of some law one is unlikely to infringe on the jurisdiction of the other.

The various legal systems are enforced by an array of institutions. The effectiveness of an institution in ensuring compliance with the system of laws it enforces is determined largely by recourse to sanctions, operational resources, and deference for the system of laws. These issues are discussed in chapter three. That chapter also outlines the various functions of the institutions, their ranking as to usage and effectiveness and how they are generally perceived by various categories of respondents. The chapter also notes the logistical, organisational and human resource capacity problems of the various institutions.

Chapter three analyses data from the interviews conducted in 5 regions in Ghana, namely Ashanti, Greater Accra, Northern, Volta and Western regions. A number of actual cases are discussed in this chapter as a means for identifying the issues that in fact surround child maintenance. These case studies were drawn from cases analysed from different institutions in the five regions in the years 2000, 2001 and the first quarter of 2002. The analyses of these cases revealed the types of services provided by child maintenance institutions; the types of documentation kept by the institutions; the types and number of cases handled; and gender differentiation by status of parties. Other findings included typical reasons for seeking maintenance, factors affecting access to child maintenance institutions, the cost of accessing these institutions, methods of calculating awards, and enforcement mechanisms.

The main claims in child maintenance cases were: monetary contribution for maintenance, declaration of paternity, specific orders for the payment of school fees and medical bills, applications for custody and applications for adoption. The following represents samples of the main reasons that were provided by complainants to support their complaints:

- The father of the child has denied paternity and responsibility for the maintenance of the unborn child (the payment of ante-natal clinic fees etc) and the maintenance of the mother of the child;
- The father of the child is in a relationship with another woman and has neglected his children and their mother;
- The father has refused to pay the maintenance award given by some other institution such as the DSW;
- The marriage between the parties is being dissolved and certain maintenance orders need to be made;
- The father provides money for food for the child (ren) but refuses to pay other bills in respect of the children such as school and hospital fees;
- The parents have some disagreements and the father has refused to maintain the children as punishment to the mother;
- The father has some disagreements with the child and has refused to maintain him/her;
- The father has fallen in love with some other woman and refuses to maintain his children;

The main reliefs sought by complainants or applicants were mainly financial provision which covered the following: general maintenance orders; specific maintenance orders for the payment of school fees, medical bills etc; declaration of paternity; an order to name a child or to perform some other customary duty or obligation plus all the necessary ceremonies and financial incidents; orders relating to custody and access; compensation for periods of neglect; and applications for adoption.

Orders made by child maintenance institutions ranged from maintenance, paternity and custody orders and more specific ones related to the payment of school fees, monthly remittances and lump sum payments. The orders made by the courts and by CHRAJ in most cases, are in the form of rulings and judgements, whilst the other institutions make awards and recommendations. The predominant orders are monetary awards payable periodically, usually monthly, to the complainant. In some cases, such awards are made payable through the institution making the award. Most institutions especially the family Tribunal, DSW, LAB and CHRAJ make such orders. These orders are the easiest to monitor. A few recalcitrant ones avoid paying either

to the institutions or to the beneficiary. The institutions are therefore burdened with another task of verifying compliance.

Many factors come into play in determining the quantum of maintenance awards. The erring parent's situation with respect to the following is considered before the award: the nature of his employment; his declared income (salaries and benefits); his liability to care for other children; the number of other dependants; whether or not he provides support to other of his relatives. Other factors such as the income of the other spouse, the age of the child, the type of education being received by the child and his medical requirements are also considered. The study revealed that maintenance levels awarded varied greatly according to the income level of the defendant, and the financial commitment of the defendant in relation to other dependants, which in turn depended on the economy of the locality in which parties lived.

The study revealed that all the child maintenance institutions generally have a major problem with enforcement. Even the first step of securing the attendance of the defendant or the other party to a child maintenance claim can be extremely difficult.

Levels of compliance vary according to institutions and their relative stature (coercive power, deference for the institutions, respect for its officials etc). The courts, CHRAJ, and traditional/religious bodies, tend to attract higher levels of compliance. The first two have coercive powers, and religious and traditional bodies are generally respected in Ghana. The point on coercion holds true for institutions such as FIDA and LRC which first mediate maintenance claims, but may enforce these claims in fresh legal actions in the courts of law against recalcitrant defendants.

All in all, it was realized that those institutions that had remarkable success in enforcing child maintenance orders were those who went beyond the legal rules for enforcement. Indeed, coercive institutions that stuck to strict legal rules for enforcement realised that defendants who had financial awards for maintenance made against them stopped paying after a while and monitoring was incredibly difficult. When they added another dose of legality and got the defendants arrested and imprisoned for violating a court order, this caused a backlash as the complainant/plaintiff lost even the little assistance she would have received had he been out and working. Indeed sometimes the courts and other maintenance institutions advice an amicable settlement by the families of the parties, and may appoint a mediator for the purpose, in order to get around the enforcement problem. The reason is that, a defendant may likely feel more bound by an amicable settlement than by an order reached after an unpleasant legal contest.

In Agona Nkwanta and Walewale, the DSW and the CHRAJ respectively go an extra mile by making regular visits to the homes of parties to enquire about payment of maintenance awards. This form of verification is very prominent in the district capitals where there is a close-knit society.

Access to institutions from outlying and remote areas was also noted. In these areas, the impact of formal institutions is limited indeed and most people depend on informal institutions to resolve their maintenance cases. The rules applied in these forums are the customary rules of the particular locality which are often not favourable to women.

The ability of institutions to deliver to the satisfaction of people who access their services depends to a large extent on the resources available. We found that child maintenance institutions are generally under resourced, in terms of human resources, equipment, financial and physical facilities to undertake their responsibilities, with formal institutions better resourced than informal institutions. In instances where NGOs are classified as informal institutions, they are an exception to this rule, and are in fact the best resourced. We also found that in most instances, resources in formal institutions were very sub-optimally applied. In some cases, there was downright misuse of scarce resources.

4.2 CONCLUSIONS

In the rest of this chapter, we will attempt to draw tentative conclusions from the data we gathered and analysed and provide some recommendations. These recommendations will benefit from further research along certain lines of inquiry that we will indicate. These include an examination of gaps in the legal regime (including shortfalls in enforcement) and institutional set-up for the resolution of child maintenance issues and various socio-cultural matters. The brevity of the recommendations is our way of positing them as areas for further research and action.

4.2.1 Legal Shortfalls

The legal regime of child maintenance as seen in the resolution of child maintenance cases assumes and takes for granted the contribution of the mother to the maintenance of child. A mother's contribution in providing physical care is often not adequately computed and therefore not taken into consideration when awards are being made. Non-material inputs for child maintenance, usually provided by the mother – emotional support, character building, training, daily supervision, and other essentials for the proper growth and development of the child – are even more difficult to compute. It is not enough to assess maintenance costs in terms of payments that have to be made for feeding the child, payments of hospital and school fees and the provision of other necessities of life such as clothes.

Maintenance awards also tend to be computed on the basis of ability to pay and not the actual needs of the child. The determining factors are the father's income and other financial commitments in relation to other dependent children. The understanding is that if the award is beyond the father's income he will be unable to comply with it. This implies that a father who, relative to his income, has too many children will be able to afford not more than a certain quantum of award that will be meaningless in terms of his children's needs. The law should not condone parents' abdication of their responsibility for the needs of their children. The decision to have children should take into account the means for taking care of them. Besides there is the need to determine standards of maintenance that children are entitled to and sanctions that defaulting parents should undergo. All legal systems assume women's commitment to their children and leave them to determine the standard of care that the children should have. This flows out of gendered perception of women's role which places them at a disadvantage. It is possible to design a more sophisticated model for determining the quantum of awards based on the actual needs of the child. The simple model based on the premise that an award should not be outside the means of the person

required to pay should be increasingly dis-applied to child maintenance awards

Flowing from the above, the definition of a parent in the children's Act, which in most contexts is limited to the natural or adoptive parents, needs to be reconsidered. The customary definition of a parent is far broader and allows for the ingenuous mobilisation of scarce resources for the development of the child in traditional societies. Children assurance of maintenance in such settings is invariably more secure.

The emphasis in this report is on the shortfalls of the primary law on children, the Children's Act, 1998 (Act, 560). This is because; the other statutory laws on child maintenance have very limited scope. The Criminal Code is limited to instances where child neglect is classified within the bounds of the criminal, whilst the provisions of the Matrimonial Causes Act is relevant only to children of a married or divorced couple. The rise in single parenthood in Ghana, coupled with the fact that it is mainly in situations of marriage failure that fathers are apt to give up their child maintenance roles, severely limits the deployment of the provisions of this act. The provisions of the Intestate Succession law only allow children a right to maintenance from their dead parents' estate, and not from their living parents.

The effectiveness of the statutory provisions discussed above is further limited by a general lack of knowledge, especially of the contents of the laws. Beyond the fact that errant parents can be made accountable for their child maintenance responsibilities by certain identifiable state institutions, most individual respondents, including persons who had sought the services of these institutions, did not know the range of resources the child maintenance laws and institutions could provide for them. We propose that any action to improve child maintenance practices in Ghana should include grassroots level interactive and deliberative discussions on what laws and institutions exist for the resolution of child maintenance issues and how they may be accessed.

4.2.2 Institutional Shortfalls

Given the limited knowledge about child maintenance laws, most people relate more to child maintenance institutions and individual employees and staffers of these institutions. The array of institutions in the child maintenance world appears to give claimants some choice and some innovative experimentalist manoeuvres. Thus mothers will first utilise the less formal institutions by reporting errant fathers to their families, traditional authorities, NGOs or the DSW. The courts are the last resort when all other avenues fail.

Our research noted the low capacity of all child maintenance institutions in terms of physical and human resources. The different categories of institutions had varying degrees of resource constraints. NGOs were better resourced in terms of physical and material resources and would sometimes come to the aid of state child maintenance institutions like the DSW. State institutions fared better on resources than traditional institutions. We, however, noted that the transposition of the centralised bureaucratic methods of doing things to the local level both kills local innovation to deal with local problems and leads to the misapplication of scarce resources to sub-optimal ends. A greater degree of control over the use of resources by local level state/formal institutions is called for.

In terms of human resources, the key things to work on are: the provision of key personnel to staff formal institutions that deal with child maintenance issues such as Family Personnel. At the time of research, there was only one functioning Family Tribunal in the whole of the Northern Region, the largest region in Ghana in terms of land mass! In the case of informal institutions, such as the traditional courts, there is a need to dialogue with them as to the best methods for working hand in hand with them to resolve child maintenance issues. Such collaborations could include educational programs designed and implemented together with traditional authorities and training for panels that sit on child maintenance cases in the traditional courts. The Legal Resources Center (LRC) is already doing this with councils of chiefs in the Nima and Mamobi areas in Accra, Walewale in the Northern Region and Bongo in the Upper East Region.

Another key problem is the capacity of the institutions to compel the attendance of defendants and to ensure compliance with orders. Generally the courts had the highest degree of success because of their coercive powers. Yet we have noted that such compliance was not sustainable. This is because, the courts have no effective monitoring procedures to ensure that those against whom orders are made comply with the same and defendants, with time, live down their fear of the police and prison and cease payments. Where the defendant is a salaried worker, his pay may be garnished and deducted at source. The problem is complex in the case of non-salaried workers, and people who do not earn regular incomes. Again, the courts are over burdened by the volume of work and these occasions' delays in the administration of justice, including the hearing of child maintenance petitions. Institutions like the DSW and NGOs (unless they take the matter to court) are not by themselves able to compel attendance or ensure compliance with orders. The CHRAJ and DSW offices we studied have essentially turned themselves into award collection points, receiving and disbursing awards from fathers to mothers. In such instances, mothers invariably incur

additional cost travelling to the offices of the CHRAJ or DSW to claim such monies.

Thus, the better resource capacity of NGOs is whittled away by these other incapacities. The authority of traditional institutions varies and depends greatly on the deference to the authority of chiefs and religious leaders in a particular community.

There are no easy answers to dealing with enforcement problems. We have however noted that the most successful cases have been instances where institutions and persons have gone beyond legal enforcement strategies, and used inter-personal contact and deliberation, and arm-twisting to ensure compliance. Procedures for ensuring compliance are not well developed and appear to be dependent on the personal efforts of some officers in child maintenance institutions. This is not, by itself, sustainable since the reliance is placed on individuals instead of institutional efforts.

Even where institutions are able to ensure compliance, or where a defendant willingly complies without coercion, awards that are quite adequate at the time they are made are subsequently dis-stabilized within months by our hyper-inflationary economy. Maintenance institutions therefore have to carry an additional burden of reviewing such awards periodically. This is done upon application by the complainant. The records show that this hardly happens. It is essential that a system be put in place to automatically mark-up maintenance awards in tandem with inflationary trends. There is the need for a mechanism to ensure that regular payments do not cease. The situation where salaried workers are garnished appears to be the best for the moment. The problem arises as to how to deal with non-salaried workers who do not earn regular income. Here again mothers have the additional responsibility to travel to the courts to collect maintenance allowances.

The reputation of the courts for instilling fear and extracting better compliance appears to influence mothers in their choice of institutions. High costs involved in prosecuting child maintenance claims-transportation cost for serving notices, extortion of illegal fees from court officials amongst others constitute another problem for mothers. This is the case in both formal and informal institutions. Our research has also shown that the cost of the drinks that are presented to traditional bodies in order to invoke their jurisdiction is often prohibitive. In towns and villages outside regional and district capitals, formal institutions do not exist, and residents have to rely on these traditional systems for child maintenance reliefs or travel to the nearest district or regional capital to access the services of child maintenance institutions there.

All the institutions we studied had their strengths and weaknesses. The state/formal institutions like the courts and CHRAJ, which recorded greater compliance with their orders, were limited in coverage to regional, and in some cases, district capitals. Traditional authorities despite their weaknesses in securing compliance with their orders were more easily accessible, although the cost of accessing them was prohibitive in some places.

4.2.3 Socio-Cultural Factors

The key conclusion here is that the functionaries of many child maintenance institutions are heavily influenced by traditional gender stereotypes that are unfavourable to women. Indeed, aside poverty levels; this is the most crucial finding in this research project.

All traditions assign child maintenance roles to both parents on gender lines. Women, as a result, are under a heavier burden to maintain their children. Mothers who fail in the discharge of their maintenance responsibilities towards their children come under a harsher regime of social sanctions than fathers. Child maintenance is indeed a gender problem. It appears that fathers' sense of responsibility towards their children is quite weak. They will fall on any excuse to repudiate their responsibility towards their children, especially in situations where they live apart from these children. Mothers, however, do not have a similar perception of their roles towards their children. In one of the case studies, the defendant father felt that it was a sufficient response to say that he had no earnings to take care of his child. Child maintenance is unconsciously and unquestioningly reduced to what fathers consider to be convenient to them. The interest of the child is still a long way from being the dominant consideration. Any attempt to ensure shared responsibility for the maintenance of children must tackle this problem. One way would be to ensure that the cultural system of sanctioning and shaming people who do not uphold the norms and values that underlie the customary laws on maintenance of children are not differentially applied as between men and women.

The attitude of fathers to their children's maintenance did not vary according to the lineage system. Fathers in both patrilineal and matrilineal communities were just as likely to reject their parental responsibility at the slightest excuse. In the same vein, mothers in the two descent systems had the same attitude towards their children and took up as much of the rest of the child maintenance responsibilities as they could when their partners defaulted.

Perhaps the customary law assumption, very true in practice, that mothers will not neglect to maintain their children, appears to contribute to the spate of errant fatherhood. This issue was not thoroughly investigated in this research project and should be further analysed. The question is how fathers

come to so conveniently give up their parental role without any sense of shame. This raises other questions about male dominance, notions of masculinity, and their effects on their sense of responsibility towards their children.

4.3 RECOMMENDATIONS

In sum, the following general (additional) recommendations need to be noted:

- There is a need to re-conceive women's care giving role and compute it as an essential component in making child maintenance roles;
- It is essential to set standards of living for various categories of children and utilise these standard for making maintenance awards instead of using ability to pay as the standard;
- Methods for curbing the practice where men are with several women with whom they have children well beyond their means and those of their partners need to be developed;
- There is the need to expand levels of supervision over natural parents within the communities and thereby increase channels of pressure on fathers to enhance their sense of commitment to their children;
- The definition of parent needs to be rethought with a view to incorporating the much broader customary definition of that term;
- We noted in our work how women made use of all forms of child maintenance institutions that were in operation in their communities. The fact that they moved from one to the other, suggests some level of acceptance and convenience in using the institutions in that order. It indicated further that the institutions complement rather than contradict each other. In looking at ways in which the institutions can be strengthened to enhance their effectiveness, we suggest the following:
- The activities of all child maintenance institutions both formal and informal should be synchronised and legal processes evolved to guide the activities of each institution at the various levels. Each institution should be given specific lines of authority and distinct responsibilities in child maintenance cases;
- The institutions should be conceived of as occupying various levels of operation in the resolution of child maintenance issues, with the relations between the institutions standardised, and decision taken at the lower levels informing the work of institutions at other level;

- It is necessary to specifically deal with how to best utilize the child maintenance resources provided by traditional authorities and NGOs in the area of child maintenance;
- In particular, the capacity of traditional child maintenance institutions to ensure compliance with child maintenance awards through the use of social pressures and various methods of appealing to the conscience of members of the community, thus helping to improve fathers' sense of responsibility towards their children, should be further analysed, harnessed and deployed;
- More research is needed into the various ways in which the array of child maintenance institutions complement or undermine each other;
- There is the need to work towards greater levels of decentralisation, especially financial decentralisation, in order to remove bureaucratic procedures that frustrate access to funds for carrying out the work of formal/state child maintenance institutions;
- Special education packages on child maintenance will have to be developed for specific target groups. These include workers in the various child maintenance institutions and even the entire public, to disseminate laws on child maintenance and the operations of child maintenance institutions. Such educational programmes should also target fathers and aim at sensitising them to their responsibilities towards their children.

Suggestions for further research point to the need for more information provide clarity in terms of how to proceed towards the implementation of recommendations. Further research is needed to understand better notions of masculinity within Ghana and how this affects Ghanaian fathers' sense of responsibility towards their children. It will be interesting to investigate further, the extent to which rural conditions reduce the tendency to apply statutory laws for child maintenance. There is also the need for closer examination of the laws in the lives of the people as they utilise these laws to solve the problems for which the laws have been set out.

The problems of inadequate resources and poor salaries that are a disincentive for key senior personnel to take up positions in child maintenance institutions go beyond the scope of this study. They relate to the general problems of development and the framework adopted to manage the economy of the nation. Such policies act to reduce salaries of government employees and make positions unattractive to highly qualified personnel needed to carry out sensitive tasks like managing child maintenance. The point here is that finally provisioning to support the work of state institutions is intricately linked to Ghana's socio-economic development and this fact has to be taken

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into consideration in devising strategies for promoting women's access to justice.

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PART 2:

Paper No. 4b

Child Maintenance Cases with FIDA Ghana

an empirical analysis by the

**International Federation of Women Lawyers
(FIDA) Ghana**

March 2004

**Child Maintenance in Plural Legal Systems in Ghana
Part 2: Child Maintenance Cases with FIDA Ghana – an empirical
analysis**

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Executive Summary

EXECUTIVE SUMMARY (Cross-Reference)

An executive summary has been presented in Access-to-Justice Series No. 9
Conference Proceedings

PREFACE

1. BACKGROUND OF FIDA

FIDA-Ghana is a non-governmental organisation affiliated to the International Federation of Women Lawyers, a body founded in Mexico in 1944 by a group of women lawyers. The acronym FIDA stands for *Federacion Internacional de Abogadas*, the Spanish words for International Federation of Women Lawyers. FIDA-Ghana is a non-partisan and non-profit organisation dedicated to the promotion of the rights of women and children in society. Established in 1974, it is made up of women lawyers whose cardinal aim is to improve the status of women and children by employing their knowledge, experiences and expertise to promote the legal rights of women and children in Ghana. FIDA-Ghana's ultimate aim therefore, is to enhance and promote through the law, the welfare of women, in recognition of the fact that the cohesion of the family, the well being of society and national development depend to a large extent on the status of women.

A survey conducted in Ghana in 1983 revealed that women and children were suffering unnecessarily from deprivation and hardship, caused by ignorance of their rights, compounded by their inability to afford the services of counsel for redress of their grievances. Consequently in 1985 FIDA-Ghana set up a programme for the provision of free legal aid services to indigent families, particularly women and children. In pursuit of this objective FIDA-Ghana runs a Legal aid and Counselling centre in Accra and Kumasi and mobile Legal Aid clinics in the Regions where the services of the organisation are not accessible.

At the Legal Aid Services Centre, FIDA-Ghana provides services in the area of counselling, mediation and court representation in matters involving maintenance, inheritance, paternity, domestic violence, child custody and other related matters. In providing such services, the principal aim of FIDA-Ghana is to promote the human rights of women and children and to enhance their status and provide opportunities for them. It is worth mentioning that the said services are provided by volunteer FIDA Ghana members, assisted by National Service Personnel. The main process used by the legal aid officers for the settlement of cases is mediation.

The increasing demand for the free legal aid services offered by FIDA-Ghana is reflected in the dramatic rise in the number of cases handled annually by the Accra office, which have risen from 330 in 1991 to 1785 in 2001. As part of its objectives of enhancing the status of women and children, FIDA-Ghana also provides legal

literacy and human rights educational programmes for the general public and

Introduction

women and children in particular. The legal literacy program takes the form of simplification and translation of laws affecting women as well as seminars, workshops and media programs to educate society, women and children on these laws.

The organisation complements the work of its Centres through the operation of mobile Legal Aid Clinic across the country. This is to ensure that clients and potential clients in the communities outside Accra and Kumasi also gain access to the free legal aid services. Other activities of FIDA-Ghana include the promotion of the welfare of women and children through advocacy, legal literacy programmes and programmes for gender sensitisation of the public on issues affecting the rights of women and children.

2. SCOPE AND BACKGROUND OF THE STUDY

This research study, which is being conducted by FIDA-Ghana, forms part of the activities of the Family Law Focal area (FLF A) of the GTZ Legal Pluralism and Gender Project, which is a pilot project initiated by the German Development Cooperation (GTZ) to promote the rule of law and gender equity in the Ghanaian plural legal system. The FLF A is particularly concerned with issues relating to family law and the impact of Ghana's plural legal system on individual rights particularly within the context of marriage, child maintenance and property rights of spouses. One of the issues that are of particular interest to the FLF A is the practice of childcare and maintenance in Ghana. Thus one of its expected project activities is to gather information to serve as a basis for the review and strengthening of existing laws and institutions for the enforcement of maintenance orders. This research study is one of the activities being supported by the Family Law Focal Area in this direction.

The purpose of this Research Project is to conduct a quantitative and qualitative research into child maintenance cases handled by FIDA-Ghana from 1999 to 2001 at its Legal Aid Centre in Accra and Kumasi. The study is aimed at ascertaining the trends and problems encountered in child maintenance cases handled by FIDA-Ghana based on a comprehensive analysis of records on such cases. The study represents a comprehensive review of the child maintenance cases handled by the Legal Aid Centres of FIDA-Ghana in Accra and Kumasi between 1999 and 2001. The research aims at ascertaining the trends with regard to the number of applications handled on a yearly basis, the gender and backgrounds of applicants, the nature of claims submitted, and the kinds of settlements made at the Centres. The study is also aimed

at ascertaining the trends with regard to problems encountered in the en-

forcement of FIDA settlements, the kinds of cases referred to the courts and the outcome of such cases, the kinds of orders made by the courts and the problems with enforcement of such orders.

Apart from the analysis of the cases handled by the Centres, the report also discusses the following issues:

- Factors which inhibit women from seeking help and cause them to give up when they do take the initiative to file claims;
- settlement of disputes; . Problems encountered by FIDA-Ghana in the provision of legal services;
- Details of cases handled by the Centres other than child maintenance cases;
- The ratio between the number of child maintenance cases and other cases handled at the centres.

The report also makes recommendations on ways of improving the enforcement of maintenance orders in Ghana. It is hoped that this study will inform as well as impact on any review of legislation or policies pertaining to Family Law with a view to promoting the maintenance of children in Ghana.

3. METHODOLOGY

The principal aim of the study is to determine the relevant trends in child maintenance practices in Ghana and the problems and challenges faced by the organisation as well as individuals in the area of child maintenance in Ghana. The Research Project is therefore a quantitative and qualitative research into child maintenance cases handled by FIDA-Ghana from 1999 to 2001 at its Legal Aid Centre in Accra and Kumasi.

The study is based on data extracted from the records of the Accra and Kumasi offices of FIDA-Ghana on child maintenance cases handled by the offices between 1999 and 2001. Details of the gender and backgrounds of applicants, the nature of claims submitted, and the kinds of settlements made at the Centres were individually recorded for analysis. The data collected was entered into the computer and converted into a Statistical Package for Social Sciences (SPSS) file to generate tables and figures for presentation. Gender, place of residence, nature of claim and type of settlement, among others were used as variables for analysis of the data collected.

Information and notes on individual cases handled by the Centres were also used as resources for the analysis and the establishment of relevant trends on child maintenance practices from the point of view of FIDA-Ghana's experience.

4. STRUCTURE OF THE REPORT

The Report is divided into six chapters. The first chapter provides an overview of the laws and practices on child maintenance in Ghana. The second chapter discusses the general problems and challenges associated with the practice of child maintenance in Ghana and considers some of the practical problems faced by women who seek assistance from FIDA-Ghana. Chapter Three provides an overview of the nature of cases handled by FIDA-Ghana and the nature of problems faced by the organisation in the settlement of cases. Chapters four and five present the results of detailed analysis of child maintenance cases handled by the FIDA-Ghana, in the Accra and Kumasi Legal Aid Centres in the period between 1999 and 2001. Chapter six, which is the final chapter, provides a summary of the research findings and makes recommendations for the improvement of the practice of child maintenance in Ghana.

CHAPTER ONE
OVERVIEW OF LEGAL FRAMEWORK ON CHILD MAINTENANCE
IN GHANA

1.0 INTRODUCTION

The Ghanaian legal system places a premium on children generally and recognises the important role they play in society. In recent times, the welfare of the child within the family and the state's responsibility towards the child has become the subject of much concern. A wide range of laws and policies has been instituted for the protection and promotion of the rights and interests of children in Ghana. The Convention on the Rights of the Child (CRC), the 1992 Constitution and the Children's Act, 1998 (Act 560) each define the child as a person below the age of 18 years. According to the Ghana Living Standards Survey (GSS 1995), 54% of the population of Ghana is under 18 years and can be considered as children.

The issues affecting children are numerous and varied and derive from a wide range of sources. Principally, the rights of children recognised by the Ghanaian legal system include the rights of the child to survival, physical care and protection, maintenance, education and health, among others, to ensure that each child grows up in an atmosphere of safety and security. Ghana is subject to a wide array of international and national obligations with regard to the promotion of the family unit and the protection of the rights of children. International covenants such as the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child have been ratified by the Ghanaian Government as evidence of the state's commitment to the promotion of the children's rights.

Every child in Ghana has a right to maintenance under the customary law, the common law and statute law. Under customary law, the duty to maintain a child is principally considered as the responsibility of the father. On the part of the father, the duty to maintain under customary law is based upon his paternal status and is deemed to extend to the customary successor upon the death of the father. This obligation has been extended by statute to cover both parents. The Constitution of Ghana sets out the rights of children, and requires specifically that laws be passed to ensure that every child receives the same measure of care, assistance and maintenance from its parents as is necessary for its development²⁶. The Children's Act, 1998 (Act

²⁶ Article 28 of the 1992 Constitution.

560), which consolidates and reforms the laws relating to children, provides that a parent of a child who is legally liable to maintain a child is under a duty to supply the necessities of health, life, education and reasonable shelter for that child²⁷.

In spite of the various laws enacted to guarantee the child's right to maintenance, much remains to be done to translate this right into reality for a majority of children in Ghana. Current trends show that with the increasing number of divorces, separation and improper co-habitation, children are increasingly being denied the care and maintenance they require for their development. The high prevalence of street children, drug abuse among adolescents and child prostitution provide ample evidence of the extent of neglect of children in Ghana. The records on child maintenance cases handled by the FIDA-Ghana Legal Aid Centres in the period under review shows an increased tendency for fathers to default in their obligation to maintain their children. In many of the cases, the parents involved are either separated, divorced or in casual or informal relationships. The incidence of multiple fathering contributes significantly to the lack of maintenance of children, demonstrating that many Ghanaians are entering into informal relationships without regard to the consequences for the children born out of such unions. This results in situations where fathers are compelled to share scarce resource among many children, thereby reducing the quality of care²⁸.

1.1 STATE OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Ghana was the first country to ratify the Convention on the Rights of the Child, which states the principle that parents have the primary responsibility to secure within their means, the conditions that are necessary for the child's development. Article 18 of the CRC state:

State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

²⁷ See, section 47 of the Children's Act, 1998 (Act 560).

²⁸ See, Situational Analysis of Children and Women in Ghana, United Nations Children's Fund (UNICEF), 2001, pp 155-6.

Ghana has since its ratification of the Convention, attempted to incorporate some its principles in the 1992 Constitution, the Children's Act, 1998 (Act 560) and the Criminal Code Amendment Act, 1998 (Act 554). Despite the efforts made to address the issue of maintenance for Ghanaian children through legislation, it appears that the results have been minimal because of the significant enforcement problems in the handling of child maintenance cases.

1.2 STATE OBLIGATIONS UNDER THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Charter on the Rights of the Child, (ACC) was adopted by the Organisation of African Unity (OAU) as a binding regional instrument on the rights of the child in order to provide a stronger voice for the African child. The Charter provides in Article 18:

- a. *The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.*
- b. *State Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses. In case of dissolution, provision shall be made for the necessary protection of the child.*
- c. *No child shall be deprived of maintenance by reference to the parent's marital status.*

Ghana has made some efforts to translate the ideals stated in the African Charter on the Rights of the Child by incorporating the duty of maintenance into the Constitution and the Children's Act.

1.3 CONSTITUTIONAL PROVISIONS ON THE RIGHTS OF THE CHILD - ARTICLE 28 OF THE 1992 CONSTITUTION OF GHANA

The 1992 Constitution is the first Ghanaian Constitution, which contains provisions specifically aimed at promoting and protecting the rights of children. This has been done despite the fact that the general provisions of the constitution on human rights also protect children as citizens of Ghana. This serves to underline the importance attached to the welfare of the child in the national agenda.

Article 28 of the 1992 Constitution of Ghana, which defines a child as a person below the age of 18 years, spells out the rights of children which include the right to the same measure of special care, assistance and maintenance as is necessary for their development from their natural or adopted parents. The family as the unit of society responsible for safeguarding the

interest of children is recognised and protected by the Constitution. In order to provide the requisite protection for children, Parliament is enjoined to enact law to ensure that children are given the right to special care, assistance and maintenance for their proper development.

Article 28(1) provides among other things that Parliament shall enact such laws as are necessary to ensure that:

- a. *Every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;*
- b. *Every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;*
- c. *Parents undertake their natural right and obligation of care, maintenance and upbringing of their children in co-operation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interests of the children are paramount;*
- d. *Children and young persons receive special protection against exposure to physical and moral hazards; and*
- e. *The protection and advancement of the family as the unit of society are safeguarded in promotion of the interest of children.*

The constitutional provisions on the child's right to maintenance and physical care from its parents are therefore clearly spelt out as fundamental principles, which should guide the process of law making. The constitution also requires that in designing policies or legislation, which affect children, the best interests of the child must be upheld as paramount.

1.4 CHILDREN'S ACT, 1998 (ACT 560)

The Children's Act, 1998 (Act 560) is a comprehensive piece of legislation, which was enacted to consolidate and reform the laws relating to children in Ghana. Prior to its enactment, laws affecting children in Ghana were scattered in various pieces of legislation and in some cases were in need of modernisation and simplification. The Children's Act compiles almost all child-related laws, which hitherto were contained in separate legal documents. As stated in the law, the *Children's Act was enacted to reform and consolidate the law relating to children, to provide for the rights of the child, maintenance and adoption, regulate child labour and apprenticeship, and for ancillary matters concerning children generally and to provide for related matters. To a large extent, the Children's Act seeks to implement the rights of Ghanaian children in conformity with the principles stated in the Convention on the Rights of the Child. It espouses the welfare principle and states*

unequivocally that the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.

The Act recognises a number of parental duties and responsibilities, including the duty to register children at birth, provide them with education, shelter, health, clothing and protection from all forms of harm. Part three of the Children's Act specifically provides for the maintenance of children. Sections 47-56 of the Act provide among other things, for the following:

- Duty to maintain a child
- Application for maintenance order
- Consideration for maintenance order
- Form of maintenance order
- Duration of maintenance order etc.

The Children's Act states the fundamental principle that a parent or person who is legally liable to maintain a child is under a duty to supply the necessities of life, health, education and reasonable shelter for the child²⁹. The Act provides that a parent or guardian or any other person who has custody of a child may apply to a Family Tribunal for a maintenance order for the child. The application for maintenance may be made against any person who is liable to maintain the child or contribute towards the maintenance of the child.

In making the order, a Family Tribunal shall, according to section 49 of the Act 560, consider the following:

- The income and wealth of both parents of the child or of the person legally liable to maintain the child;
- Any impairment of the earning capacity of the person with a duty to maintain the child;
- The financial responsibility of the person with respect to the maintenance of other children;
- The rights of the child under this Act;
- The cost of living in the area where the child is resident.

Other factors typically considered by the court include the age of the child, specific needs of the child in terms of health, education etc. and any other relevant matters, which may be contained in the report of the Social Welfare Department. Section 50 of Act 560 provides that a Family Tribunal may

²⁹ Section 47 of the Children's Act, 1998 (Act 560).

request a social welfare officer to prepare a social enquiry report on the issue of maintenance, which the Tribunal is required to consider in making any order on maintenance.

The Act provides that a Family Tribunal may order a periodic payment or lump sum payment for the maintenance of a child³⁰. Practice has shown that the courts are inclined to share the responsibility of maintenance between both parents. Fathers are usually mandated to pay a monthly allowance to cover school fees, health costs etc. Mothers are also ordered to supplement the monthly allowance and supply the child's regular clothing.

In recent years, there seems to be an increase in the number of maintenance cases being submitted to the Family Tribunal. The experience of FIDA-Ghana's Legal Aid Centres shows there is also a high incidence of default in complying with maintenance orders issued by the court, mainly as a result of low earning capacity. Appropriate sanctions ranging from fine to prison terms have been provided in the Act in case of non-compliance or violation of the provisions. As an enforcement procedure, the Act provides that the earnings or property of the person liable may be attached in the event of default in complying with such an order³¹. However, it must be noted that in cases where the defaulting parent is not employed in the formal sector, it is impossible to ascertain the precise level of his income, let alone to attach his earnings as provided in the Act. The methods of enforcement provided for in the Act therefore tend in practice to be very limited in many of the cases dealt with by FIDA-Ghana, which involve mainly indigent persons, majority of whom are either unemployed or self-employed.

Generally, the impact of the law on the maintenance of children has been extremely limited principally because of the crippling problems with the enforcement of the law. For indigent women who apply to FIDA-Ghana for assistance with maintenance claims, a sizeable majority of them abandon the case mid-stream for financial reasons. Most of the clients seeking maintenance for their children often cannot afford to comply with court procedures involved in the actual enforcement of court orders, when they are obtained. Many of the women cannot afford to spend the amount of time needed to attend court, when cases are continually adjourned. Many are unable to pay bailiffs to serve hearing notices to recalcitrant defendants, and are often compelled to abandon their claims in frustration. It must also be noted that

³⁰ Section 51(2) of Act 560.

³¹ Section 51(3) of Act 560.

since not all cases of non-maintenance get to FIDA-Ghana or the courts, several children are denied their right to maintenance. The huge influx of street children testifies to this fact.

1.5 THE CRIMINAL CODE (AMENDMENT) ACT, 1998 (ACT 554)

Section 79 of the Criminal Code, 1960 (Act 29) as amended by the Criminal Code (Amendment) Act, 1998 (Act 554) imposes a duty on every parent or guardian to provide the necessities of life to a child. The section provides that a parent /guardian is under a duty to give his child who is under his or her control, and who due to age (i.e. below eighteen years) cannot obtain the necessities of life and health. Necessaries of life include proper food, clothing, shelter, warmth, medical treatment and any other matters, which are reasonably necessary for the preservation of health and life of a person. It must be noted however, that the fulfilment of the requirements of maintenance depends to a large extent on the economic ability of the parent. Thus in seeking to enforce this law, questions have arisen as to whether a parent who is unable to provide these necessities of life for economic reasons should still be faced with criminal liability, and how effective such an approach would be³².

1.6 CHILD'S RIGHT TO MAINTENANCE UNDER THE CUSTOMARY LAW

Generally, under Ghanaian Customary law, a person belongs to his or her family as an incident of birth. In Ghana, there are two types of communities, usually described as patrilineal or matrilineal. In patrilineal communities, the general principle is that a person's family is that of his father. This means that the right to succeed to and enjoy rights in property is derived from membership of a family traced through the male line. In matrilineal communities, a person belongs to his mother's family, so that the right to suc-

³² Mensa-Bonsu H.J.A.N., "Protecting the Child Through Legislation in the Fourth Republic" in *The Rights of the Child in Ghana: Perspectives* (Mensa-Bonsu H.J.A.N. & Dowuona-Hammond C. Eds) Woeli Publishing Services, Accra, 1994, 96,101-2.

ceed to and enjoy rights in property is derived from membership of a family traced through the female line³³.

In patrilineal communities, the children of a man who dies intestate are entitled to a beneficial interest in his self-acquired property as successors. In matrilineal communities however, the children of a man who dies intestate are not entitled to succeed to his self-acquired properties. In matrilineal communities, the child belongs to the mother's family, and not the father's family for purposes of succession. The principles of customary law generally impose on a father an obligation to maintain his children, a duty, which requires him to house, support and advance his children. This duty is deemed to pass on to the customary successor upon the death intestate of a man. The principle that a man is responsible for the maintenance and training of his children has been stated as follows:

*"While young, the children are entitled to maintenance. It is the duty of the father or the father's family to maintain the children, exercise disciplinary authority over them, to find work for them, such as put them in a trade or profession, to marry for them and find them a place in society, for example, in the army groups. The father does this because they as his children carry his spirit"*³⁴.

It must be pointed out however, that customary norms and traditions on family membership and succession tend in practice, to affect the duty of maintenance imposed on fathers. In matrilineal communities, for example, since customary norms stipulate that the man's children are not entitled to succeed to his property upon his death, the duty to maintain the children is often not considered as paramount as the duty to maintain the man's nephews (the children of his sister), who are entitled to inherit him under the customary law. Thus even though the customary law and statute law impose the obligation of maintenance on the father, cultural norms which define the membership of a man's family in matrilineal communities (to exclude his wife and children) and cultural norms of succession tend to create practical problems in the practice of childcare and maintenance.

Even though customary law places the obligation of maintenance on the father, it has been noted that in practice, the responsibility for childcare and maintenance is not seen as the exclusive responsibility of the father. In both

³³ See, Kludze A.K.P., *Modern Law of Succession in Ghana*, Foris Publications, Netherlands, 1988, p 245-7.

³⁴ See, Ollennu, *The Law of Succession in Ghana*, 1960, p 19.

matrilineal and patrilineal societies, it has been found that couples generally accept that the care and maintenance of children are the joint responsibilities of both parents³⁵. The statute law clearly places the obligation of maintenance on both parents, who are deemed to be equally responsible. However, the quality of care and maintenance that can be provided for the children is often significantly eroded by the economic circumstances of the parents, especially the fathers. Morally reprehensible conduct such as heavy drinking, spending long hours outside the home and maintaining relationships outside marriage have been found to have detrimental effects on the children and the level of care and maintenance available for children³⁶.

Every individual in Ghana is born into a clan or lineage. The extended or customary family therefore forms an important part of the Ghanaian social structure. The extended family system is such that it includes everybody related to both parents of the child. Traditionally, the customary or extended family serves as a social refuge against the effects of poverty and illness. In traditional societies the customary family generally played a significant role in the upbringing and maintenance of children as required by customary law and acted as a safety net for children whose parents were unable to maintain them for a variety of reason. Studies have shown that the wider family under customary law played a significant role in the maintenance of the children of a deceased member of the family³⁷. The extended family has been known to financially assist individuals from poor nuclear family backgrounds with their education, maintenance etc. with the expectation that such persons will reciprocate by assisting other members.

To a large extent, this role of the customary family seems to have declined over the years, with growing urbanisation and emphasis on individual ownership of property. State policy as articulated in the policy reasons for the passage of the Intestate Succession Law, 1985 (P.N.D.C. Law 111)³⁸ clearly favours the nuclear family as the economic unit responsible for the welfare of children. In practice the increasing emphasis on the nuclear family with regard to inheritance as promoted by the Intestate Succession Law has re-

³⁵ See, L. Oware Gyekye, Arthur A., & Dankwa E.V.O. "Family Law and Customary Practices for Child Maintenance and Inheritance in Ghana" in Ardayfio-Schandorf E., (Ed.) *The Changing Family in Ghana*, Ghana Universities Press, Accra (1996) p 86, 102.

³⁶ *Ibid*, p 107-108.

³⁷ *Ibid*.

³⁸ See, Memorandum to the Intestate Succession Law, 1985 (P.N.D.C. Law 111).

Overview of Legal Framework on Child Maintenance in Ghana

sulted in the extended family taking less interest in investing in individual members of the extended family. The increasing numbers of street children clearly illustrates this fact. The objective of P.N.D.C. Law 111 was clearly to amend the practice of intestate succession within the traditional matrilineal system which favours nephew inheritance at the expense of a man's own children. Experience has shown however, that even though the statute seeks to amend and override the customary norms and practices, there is still widespread resistance to the statute, which is considered alien to the customary law, especially in matrilineal communities.

The foregoing overview clearly demonstrates that the existing legislative framework for the maintenance of children is quite comprehensive. The laws of Ghana impose a definite and enforceable obligation on all parents to maintain their children. However the enforcement of these laws has presented formidable challenges for the courts, non-governmental organisations such as FIDA-Ghana and for society in general. Problems of child maintenance also tend to arise from the plurality of laws, which exist with regard to inheritance, which in turn affects the practice of child maintenance in Ghana.

CHAPTER TWO

PROBLEMS ASSOCIATED WITH CHILD MAINTENANCE IN GHANA

2.0 INTRODUCTION

The problems associated with the practice of child maintenance in Ghana are varied and range from cultural practices, socio-economic factors, marital and paternity issues, and issues relating to the property rights of women upon divorce. Experience at the Legal Aid Centres has revealed that there are several factors, which inhibit women from seeking legal assistance for child maintenance where the father of the child defaults. These factors may be categorised as sociological and cultural factors, economic factors, and problems of access. This section begins with an overview of the various issues, which affect the practice of the maintenance of children in Ghana, and proceeds to discuss the specific factors that inhibit women from seeking legal assistance for child maintenance from FIDA-Ghana's Legal Aid Centres.

2.1 CULTURAL/CUSTOMARY PRACTICES ON INHERITANCE AND MAINTENANCE

As has been noted many of the Akan ethnic groups in Ghana practice the matrilineal system of succession. Under this system, the children of a man do not form part of his matrilineal family and therefore are not entitled as of right to succeed to or inherit any part of their father's self-acquired property upon his death. Thus, traditionally, men from matrilineal communities tend to maintain the children of their sisters, who are entitled to inherit them, rather than their own children, who are not so entitled.

Experience at FIDA-Ghana has shown that the problems of maintenance of children are even more manifest within the context of intestacy. Especially in matrilineal communities, where widows and children are excluded from succeeding to the estate of the man under customary law, examples abound where widows and children are ejected from their matrimonial homes with very little or no provision being made for their upkeep and maintenance. Prior to the enactment of the Intestate Succession Law, 1985 (P.N.D.C. Law 111), attempts by the courts to enforce the duty of the customary successor to maintain the widow and children out of the estate of the deceased had very little impact. Even though the courts confirmed in a number of cases that children from matrilineal communities should be maintained from their

father's estate and that this duty must be performed by the customary successor, practical experience showed that this responsibility was hardly adhered to³⁹.

Experience has also shown that especially in the rural areas and even in the urban centres, there is stiff resistance to the implementation of the provisions of the Intestate Succession Law, which seeks to give a larger share of the estate to the spouse and children of the deceased, while limiting the portion which devolves on the customary family. The fact that the law seeks to radically change the customary and cultural norms and practices on succession has created extensive problems of legal pluralism, which have a significant impact on the practice of child maintenance in Ghana. The introduction of Law 111 has created tensions between the customary family and the nuclear family, which translate into long standing conflicts during the distribution of estates upon intestacy. In many cases, members of the customary family have sought to forcibly eject the widow and children of deceased persons from their matrimonial homes, thereby depriving the children of their right to maintenance⁴⁰.

Many of the clients who apply to FIDA- Ghana for assistance do so as a result of death intestate. Records of FIDA-Ghana's Legal Aid Centres show that a great majority of applications for assistance with child maintenance are made within the context of intestate succession, where mothers and children are ejected from their homes upon the death intestate of the man by the members of the customary family and left with no means of support. This practice has a significant impact on the future upkeep of the widow as well as the maintenance of the children of the marriage. Despite the introduction of the Intestate Succession Law, 1985 (P.N.D.C. Law 111) which makes ample provision for the spouse(s) and children to benefit from the estate of the man, the experience at the Legal Aid centre, shows that deep cultural prejudices continues to impede the full implementation of the Law.

2.2 PATERNITY ISSUES AND NAMING OF CHILDREN

The issue of paternity has a direct bearing on maintenance of children. When a father refuses to acknowledge paternity of a child, the logical conclusion is

³⁹ See *Manu v. Kuma* [1963] 1 G.L.R. 464. See, also *Adjei v. Ripley* (1956) 1 W.A.L.R. 62.

⁴⁰ See, Dowuona-Hammond C., "Women and Inheritance in Ghana", in A. Kuenyehia (Ed.) *Women and Law in West Africa*, Accra, WalWA (1998) P. 132.

that he will not maintain the child. Naming and outdooring ceremonies of children are common features of most cultures in Ghana. It is usually performed on the eighth day of the birth of the child, and by the performance of the naming ceremony; the child is considered a member of the family. In Ghanaian culture the naming of a child is very significant because not only does it give the child an identity, but it also establishes parental responsibility. Naming of the children in Ghana is consistent with the standards set by the CRC with regard to the child's right to a name to ensure that every child is given the minimum form of identity⁴¹.

Experience at the Legal Aid Centres shows that many of the maintenance cases arise out of paternity disputes. Generally, fathers who deny paternity automatically refuse to name the children and consequently refuse to maintain them. The problem of refusal to name children often arises within the context of informal or casual unions, where the male partner feels no commitment to the women and by extension to the child or children born out of such associations. Disputes involving paternity are usually referred to the Family Tribunal for determination and the making of appropriate orders. In cases where the Legal Aid Centre is able to mediate successfully, a naming ceremony to be hosted by the man and his family is often incorporated into the settlement agreement to ensure continued care and support for the child.

2.3 POLYGyny AND ITS IMPACT ON CHILD MAINTENANCE

Polygyny is a cultural practice, which allows a man to marry more than one wife. A great majority of marriages in Ghana are customary marriages and therefore potentially polygynous. There is also a high incidence in Ghanaian society of men married under the Marriage Ordinance having children outside the monogamous union. These situations raise problems with regard to the maintenance of children, because of the costs involved, resulting in the neglect of the children. Many men are saddled with the heavy responsibility of maintaining more children than they can afford to cater for. The irony of this situation is that the low-income earning group tend to father more children than those in the high-income group. This situation accounts for the high incidence of default in complying with settlements arrived at by FIDA-Ghana in such cases as well as maintenance orders issued by the courts.

⁴¹ Article 18 of the Convention on the Rights of the Child.

2.4 SOCIO-ECONOMIC FACTORS

Most people who fail to maintain their children attribute it to their poor socio-economic status. Most of them lack education and the requisite skills to enable them fit into high-income job positions, and this situation impacts greatly on the level of maintenance they can provide for their children. The generally low-income level of workers in this country is another factor that makes it difficult for some of them to maintain their children. This, coupled with the lack of family planning, creates a situation where people of low-income groups tend to have more children than they can afford to maintain and results in the neglect of children.

2.5 MARITAL ISSUES/MATRIMONIAL CAUSES

Marital issues are of utmost concern to FIDA- Ghana because of its underlying effect on child maintenance. When the marriage or relationship deteriorates some fathers refuse to maintain the children as a kind of punishment to the women. Often the relationship becomes so sour that the parties cannot co-operate in any way and this tends to affect the maintenance of the children. Experience at the FIDA Legal Aid Centres shows that in many cases the breakdown of marriage raises not only issues of custody and access of children, but also issues of the maintenance of the children of the marriage. There are many cases where a child who chooses to live with one parent often suffers hardship because the other parent is unwilling to contribute to his or her maintenance. In such cases, FIDA- Ghana encourages the non-custodial parent to continue to provide maintenance and where he fails to do so the case is referred to Court.

2.6 PROPERTY RIGHTS OF WOMEN UPON DIVORCE

Another disturbing trend, which significantly impacts the level of maintenance of children in Ghana, is the denial of wives by their husband of their interest in property acquired by the couple during the period of the marriage. This also extends to joint business ventures undertaken by the couple whilst married. Where, upon divorce, women are denied any interest in property jointly acquired during the marriage, they leave the marriage with very little means of support and a diminished ability to maintain the children of the marriage. In cases where the women have custody of the children, it becomes extremely difficult for them to get the man to contribute adequately to the maintenance of the children. Often the man is reluctant to give the women money, alleging that she may not use it for the maintenance of the child. This affects the maintenance of the children especially where the woman financial situation makes it impossible for her to assume sole responsibility for the maintenance of the children.

2.7 FACTORS THAT INHIBIT WOMEN FROM SEEKING LEGAL HELP

Generally, women tend to bear a disproportionately high burden for the maintenance of children where the men fail or refuse to assist in the maintenance of children. A significant majority of women who have children in non-marital relationships tend to maintain custody of the children. In many of such cases, the women experience great difficulty in getting their male partners to contribute towards the maintenance of the children. Even though the Children's Act clearly states that the maintenance of children is the joint responsibility of both parents, in practice many women find it difficult to enforce their partner's obligations in the maintenance of their children. In marriages where the spouses do not live together and in situations where women are divorced or separated, they tend to retain custody of the children and are often faced with resistance from spouses or ex-spouses when they are called upon to contribute towards the maintenance of the children of the marriage. Studies have shown that women tend to assume significant financial responsibilities in the home, including paying for health care and supplementing the household food cash expenditure⁴². However, in spite of their efforts, the financial and socio-economic limitations faced by most women make it difficult, if not impossible for them to assume sole responsibility for the maintenance of the children.

FIDA-Ghana provides free legal services to indigent women and children in a wide range of areas including maintenance of children, divorce, inheritance, custody and visitation rights, paternity etc. Experience has shown however that a number of factors tend to inhibit women from seeking help from FIDA-Ghana's Legal Aid Centres. These factors could be categorised as: sociological, cultural and economic factors, and problems of access.

2.7.1 Sociological and Cultural Factors

Even though women form about half of Ghana's population and 47% of the labour force, they have for a long time been accorded a subsidiary position both at the societal and family levels. This situation is complex because it is steeped and rooted in the tradition and culture of gender imbalance and inequality.

To a large extent, women have had their lives and welfare determined by traditional practices, which tend to limit their property rights and access to

⁴² See, *Situational Analysis on Children and Women*, 2000, p 34.

productive resources. Women's inheritance and other property rights are largely governed by matrilineal and patrilineal systems, which exclude women from inheriting the property of their husbands. Even in patrilineal societies where children do inherit from parents, female children often receive proportionately less of the property than male children, especially in the case of land. As noted earlier, efforts to redress this situation through the enactment of the Intestate Succession Law have only had a limited impact on actual practice.

Thus overall, the low socio-economic status of women tends to inhibit them when it comes to asserting their rights. To a large extent, cultural and societal attitudes about the status of women in society and in marriage tend to inhibit women from seeking help for their legal problems. In the traditional setting women are socialised to be subservient and to submit to male authority at the family and community levels without question. Experience at the FIDA Legal Aid Centre has shown that male dominance continues to form a strong cultural characteristic of our society. Men are traditionally considered as heads of the family and this perception prevails even where the man is not fulfilling his parental duties of maintenance towards his children. Thus society generally frowns on a woman who takes steps to report her husband's irresponsible behaviour to any institution for redress. This is considered as an act calculated to disgrace the man and has far reaching consequences. The Legal Aid Centres often witness episodes in which male partners or husbands who have been invited by the Centre, threaten to mete out all forms of punishment to their wives or partners for disgracing them by seeking assistance from FIDA- Ghana. It is sad to note that in many cases, the relatives who come to support such invitees, including women, often express more sympathy for the male defaulting party than the female client.

2.7.2 Illiteracy and Ignorance of Rights of Women

Access to justice for a majority of women is also relatively limited for most women for a variety of reasons. First of all, it must be noted that female literacy rates have consistently been about half male rates, especially in the rural areas. The Ghana Living Standards Survey 3 found that the proportions of men and women over the age of 15 who are literate in both English and Ghanaian languages was 52% for males, 29% for females and 39% overall (Ghana Statistical Service, 1995).

Generally, most illiterate women are uninformed about their rights. Most of them have been so degraded that they have lost their dignity and are not in any position to assert their rights. Illiteracy and ignorance of their rights is one of the major factors, which inhibit women from seeking help with their legal problems. Many of the women who are educated are unwilling to seek

legal help because of the wrong perception that offences, which occur within the family setting, should be handled as family/domestic matters. In fact even law enforcement agencies tend to send complainants back to resolve such cases at home. In some cases, even where women are aware of their rights, ignorance of the modes of accessing assistance for the enforcement of these rights inhibit them from seeking help. These factors inhibit women greatly from seeking help and there is an urgent need to address them to enable women to enjoy their full rights as provided by law. There is the need for more sensitisation and education of the general public on gender inequality and the legal rights of women.

2.7.3 Economic Factors

The vast majority of our women are in the rural areas and even though they are hard working and engage in farming activities and constitute the backbone of our labour force, their efforts tend to be grossly undervalued. In traditional society, the roles and responsibilities of males and females in household production are well defined. Men are expected to be the breadwinners and women are expected to provide services such as child bearing and care for the household. These demarcations have affected the training of male and female children in the household and affected the economic empowerment of women generally. In urban areas, access to the formal job market tends to be quite restricted for women, due to their limited educational qualifications and skills. Early marriages and teenage pregnancies also deprive young women of opportunities to enter and survive in the labour market⁴³. Increasing numbers of female headed households both in the urban and rural areas, majority of whom are classified in the lowest levels of poverty groups, are self employed and have little or no education contribute to worsen the poverty situation of women in particular⁴⁴.

Generally, there is a relatively low level of investment in the education and training of women and girls by both the family and the state. This subsequently has led to the low economic empowerment of women, which diminishes their ability to obtain redress where their rights are violated. Most women in need of assistance with maintenance of their children do not have

⁴³ Asenso-Okyere, W.K. (1997) "Social-Cultural and Political Aspects of Development in the 21st Century Ghana", In: Anthony Ikpi and J.K. Olayemi (eds) *Governance and Development in West Africa*, Winrock International, Morrilton, Ar., USA.

⁴⁴ Awumbila M., "Women and Gender Equality in Ghana: A Situational Analysis", Tsikata D. (ed) *Gender Training in Ghana: Politics, Issues and Tools*, Accra, Woeli Publishing Services, 2001, p 33, 49-50.

the means to engage the services of counsel, or to pay for the processing of court papers etc. for the initiation of court action.

The experience of FIDA-Ghana has shown that even with the free legal services being offered by the Centres, majority of the women who apply to the Centres cannot afford transportation fees to and from the Legal Aid Centre. This accounts for the high incidence of discontinuation of cases initiated by the Legal Aid Centres on behalf of clients. Especially where court cases involve many adjournments, indigent women are forced to stop attending court and abandon their claim before the case is resolved. Many cannot afford the legal fees or the expenses related to initiating legal action. There is a need to economically empower women by assisting them with income generating activities. It is also important for the courts to waive legal fees for indigent women or a fund to be set up to assist them since FIDA- Ghana can only provide free legal services.

2.7.4 Problems of Access

Distance and lack of proximity to the Legal Aid Centres currently located in Accra and Kumasi only, constitutes a major obstacle to many women who need to access the free legal service provided by FIDA-Ghana. As indicated earlier, a great majority of women who need legal assistance with child maintenance reside in the rural areas and cannot afford to travel long distances to the urban centres to gain access the free legal services being offered by the FIDA-Ghana Legal Aid Centres. Though there are courts in the Regions and districts, most of these women are indigent and cannot afford to pay the expenses involved in initiating court action. Their only option therefore is to turn to the FIDA-Ghana Legal Aid Centres. Unfortunately the organisation has offices in only two regions, namely Accra and Kumasi. Many women cannot gain access to the two centres by virtue of the costs involved in travelling long distances. Thus in many cases, such women are pressurised to submit to the settlement of such cases at home by their families or simply to continue to live with their problems.

It is clear from the above discussion that the practice of child maintenance in Ghana is a pivot around which many ancillary issues rotate. In seeking to promote the right of children to maintenance therefore, it is important that related matters affecting child maintenance are comprehensively addressed in order to achieve maximum results. Improving child maintenance and child care will require extensive education of the general public on the provisions of the Intestate Succession Law, 1985 (P.N.D.C. Law 111) and marriage and divorce laws since issues of child maintenance cannot be separated from the related issues discussed.

CHAPTER THREE
OVERVIEW OF CASES HANDLED BY FIDA-GHANA
FROM 1999-2001

3.0 INTRODUCTION

This chapter provides an overview of the various categories of cases handled by FIDA-Ghana in its Legal Aid offices in Accra and Kumasi and presents the results of a comprehensive review of cases handled by the Legal Aid Centres from 1999 to 2001. The section also provides an overview of the various modes of settlement of cases handled by FIDA-Ghana during the period under review.

The background of the clients who visit the FIDA Legal Aid Centres in Accra and Kumasi reveals that majority of them are indigent persons and low-income earners. Most of them are self-employed persons from the informal sector, consisting mainly of market women, street hawkers, petty traders and apprentices of various professions including hairdressers, seamstresses and caterers. The indigent group comprises the unemployed, the aged and students. The records show that persons from the middle-income group and high-income earning group constitute the smallest category of clients of the FIDA-Ghana Legal Aid Centres.

**3.1 GENERAL PROCEDURE OF THE LEGAL AID CENTRE -
AVERAGE NUMBER OF VISITS**

FIDA-Ghana provides legal services in the area of counselling, mediation and court representation in matters involving maintenance, inheritance, paternity, domestic violence and other matters relating to the human rights of women and children. The main dispute resolution method employed by volunteer FIDA-Ghana members for the settlement of cases is mediation.

The first visit of the client to the Legal Aid office is usually to lodge the complaint. The client is given a form to fill (See Appendix) on which he or she provides the Centre with details of the client's background. A file is opened for the client and on this occasion, a letter is given to the client inviting the other party (the Respondent) to the Centre and requesting the client to return to the Centre on a specified date. In cases where the invitee does not show up on the dates specified, reminders are sent. On some occasions, where the need arises, witnesses may be invited. During the mediation process, parties may be given time to go back and reconsider certain decisions they may have taken, or proposals made during the course of the mediation. In some cases, clients and respondents may be requested to return to the Centre for a review of their case after a period of time. On average a client

visits the centre about five times before a case is settled. The highest number of visits by a client ascertained from the records was found to be 14.

3.2 OVERVIEW OF CASES HANDLED BY FIDA-GHANA LEGAL AID CENTRE, ACCRA (1999-2001)

3.2.1 Number of Cases Handled by Legal Aid Centre, Accra (1999-2001)

In the period between 1999 and 2001, the Legal Aid Centre in Accra handled a total of 4,666 cases. The number of cases handled by the Legal Aid Centre in Accra in each year under review was found to be as follows: -

Table 3.1: Total Number of Cases Handled by Legal Aid Centre, Accra per Year

| Year | Total Number of Cases |
|--------------|------------------------------|
| 1999 | 1358 |
| 2000 | 1521 |
| 2001 | 1787 |
| Total | 4666 |

Source: FIDA-Ghana Legal Aid Centre, Accra

The figures show that the total number of cases handled by FIDA-Ghana's Legal Aid Centre, Accra has risen steadily in the three-year period under review.

3.3 GENDER OF CLIENTS OF LEGAL AID CENTRE, ACCRA (1999-2001)

An overwhelming percentage of the clients of FIDA-Ghana are female as shown in the table below, which illustrates the gender profile of clients over the 3-year period under review.

Table 3.2: Gender of Clients in Cases Handled by Legal Aid Centre, Accra

| Year | Gender | | | | |
|--------------|------------|------------|-------------|-------------|--------------|
| | Male | % | Female | % | TOTAL |
| 1999 | 41 | 3.0 | 1,317 | 97.0 | 1,358 |
| 2000 | 40 | 2.6 | 1,481 | 97.4 | 1,521 |
| 2001 | 73 | 4.1 | 1,714 | 95.9 | 1,787 |
| Total | 154 | 3.4 | 4512 | 96.6 | 4,666 |

Source: FIDA-Ghana Legal Aid Centre, Accra

Overall, the figures showed that 96.6% of persons who applied to FIDA-Ghana's Legal Aid Centre in Accra over the three year period were women, with men constituting a mere 3.4%.

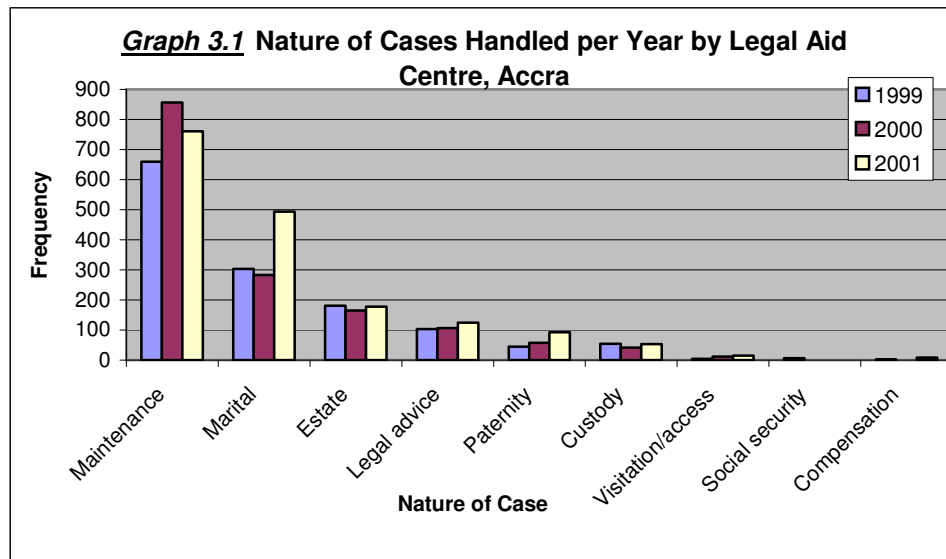
3.4 NATURE OF CASES HANDLED BY LEGAL AID CENTRE, ACCRA (1999-2001)

The table below presents an overview of the nature of cases submitted to the Legal Aid Centre in Accra over the three-year period under review. Apart from maintenance cases, FIDA-Ghana handles cases on inheritance or estates, paternity, custody and visitation rights, marital issues/matrimonial causes, social security and compensation. As shown in the table below, maintenance and marital issues alone constituted about 70% of the total number of cases handled by FIDA-Ghana in the three-year period under review.

Table 3.3: Nature of Cases Handled per Year by Legal Aid Centre, Accra

| Nature of Case | Year | | | Total Frequency |
|-------------------|-------------|-------------|-------------|-----------------|
| | 1999 | 2000 | 2001 | |
| Maintenance | 660 | 856 | 761 | 2277 |
| Marital | 303 | 283 | 494 | 1080 |
| Estate | 181 | 165 | 178 | 524 |
| Legal advice | 103 | 106 | 125 | 334 |
| Paternity | 45 | 57 | 93 | 195 |
| Custody | 54 | 42 | 53 | 149 |
| Visitation/access | 4 | 12 | 15 | 31 |
| Social security | 6 | 0 | 0 | 6 |
| Compensation | 2 | 0 | 8 | 10 |
| Not available | 0 | 0 | 60 | 60 |
| Total | 1358 | 1521 | 1787 | 4666 |

Source: FIDA-Ghana Legal Aid Centre, Accra, 2003



3.4.1 Child Maintenance Cases

As shown in the table 3.3 above, maintenance cases were the biggest single category of cases handled by the Centre over the 3-year period. In 1999, child maintenance cases formed the greatest percentage of cases recorded, representing 48.6% (almost half) of all the cases reported to FIDA-Ghana. In the year 2000, child maintenance cases accounted for over half of the total number of cases handled by the Centre, (56.2%), reflecting an increase of about 8% as compared to the percentage recorded in 1999. Maintenance cases continued to be the highest recorded at the centre in 2001, accounting for 42.6% of the total number of cases handled at the Centre.

Claims for maintenance brought to the Centre generally arose in cases where the parents were divorced, separated or married. Majority of the child maintenance cases handled by the Centre arose from casual or informal unions. Child maintenance claims made were mainly for money for the payment of school fees, healthcare and the general upkeep of the children.

3.4.2 Marital Problems/Matrimonial Causes

Marital problems consistently ranked second highest in the three-year period under review. In 1999, the Centre recorded 303 of such cases, representing 22.3% of all the cases handled. Marital problems once again ranked second

highest in the year 2000, representing 18.6% of the total number of cases handled in that year. In 2001 marital cases again ranked the second highest, representing almost 28% of the total number of cases handled in that year.

The category of marital cases handled by the Legal Aid Centre covered disputes between couples, who are divorced, separated or still married. Some of the marital problems presented to the Centre included breach of promise to marry and failure to perform marital rites. Generally, women who are divorced apply to the Centre for assistance to claim compensation from their spouses. In many cases, the breakdown of the marriage results in a total breakdown in communication between the spouses, which adversely affects the maintenance of the children in the marriage.

3.4.3 Inheritance/Estate Matters

Cases involving inheritance disputes also constitute a significant category of cases dealt with at the Legal Aid Centres. The trends show that in 1999, about 13.4 % of the total number of clients sought FIDA's assistance on inheritance matters with regard to the estates of their deceased spouses, parents and other family members. In the year 2000 almost 11% of the total number of cases handled by the Centre were in respect of estate matters, whilst about 12% of the cases handled in 2001 involved estate matters. Many of the estate cases presented to the Centre involved situations where a husband or father had died intestate and the relatives of the man were seeking to deprive the wife and/or children from benefiting from the estate as provided for in the Intestate Succession Law, 1985 (P.N.D.C. Law 111). In some cases, widows and children who applied to the Centre had been forcibly ejected from the matrimonial home and the contents of the house taken over by relatives of the deceased person. Some of the clients who reported such cases were teenagers who had lost a parent and whose older siblings or the customary successor were not maintaining them. Some of the cases involved polygamous marriages. Experience with such cases shows that often the existence of multiple wives and different sets of children tends to generate extensive problems after the death of the man over the devolution of property and maintenance of children.

3.4.4 Custody and Visitation Matters

In 1999, about 4.3% of the total number of clients who applied to the Legal Aid Centre in Accra sought assistance with regard to the custody of their children. In 2000, about 3.5%% of the cases handled in were on custody and visitation rights, while 3.8% of the cases handled in 2001 were on custody and visitation rights. Some of the male clients who submitted claims for custody gave reasons such as the remarriage of their ex-partners as the basis for requesting custody. Others alleged that their ex-partners were incapable

of maintaining their children because they either lacked accommodation, or were unemployed. Male clients requesting custody for their young children were often motivated by their own reluctance to abide by maintenance orders.

3.4.5 Paternity Issues

In 1999, 3.3% of the total number of cases reviewed involved issues of paternity, and mainly involved men denying responsibility for pregnancies or children born in casual or informal unions. In the year 2000, 3.7% of the cases recorded at the centre were paternity cases, whilst about 5.2% of the cases handled in 2001 involved paternity issues. The ultimate reason for denial of paternity was often found to be the reluctance or inability to maintain the children. It is interesting to note however, that apart from female clients, seeking to establish paternity of their children, there have been a few instances where men who have initially denied paternity have sought the assistance of FIDA-Ghana to help them reconcile with their children.

3.5 PLACES OF RESIDENCE OF CLIENTS IN CASES HANDLED BY LEGAL AID CENTRE, ACCRA (1999-2000)

An examination of the records which indicated the client's place of residence, revealed that on average, over 90% of the clients who applied to the FIDA-Ghana's Legal Aid Office in Accra were resident in the Greater Accra Region. The table below shows the distribution of the region of residence of clients who applied to the Legal Aid office in Accra in 1999 and 2000.

Table 3.4: Region of Residence of Clients in Cases Handled by Legal Aid Centre, Accra (1999-2000)

| <i>Region</i> | 1999 | 2000 |
|---------------|-------------|-------------|
| Greater Accra | 1236 | 1224 |
| Central | 27 | 66 |
| Volta | 7 | 8 |
| Eastern | 77 | 74 |
| Ashanti | 6 | 7 |
| Brong-Ahafo | 2 | 2 |
| Western | 0 | 7 |
| Abroad | 0 | 2 |
| Total | 1358 | 1390 |

Source: FIDA-Ghana Legal Aid Centre, Accra

3.6 OUTCOMES OF CASES HANDLED BY LEGAL AID CENTRE, ACCRA (1999-2001)

The review of the cases showed that in the 3-year period under review, FIDA-Ghana's Legal Aid Centre in Accra was able to settle about 30% of the cases submitted to it by mediation. The review also showed that a significant proportion of the cases presented to the Legal Aid Centre in Accra had to be discontinued because of lack of follow up by the client. The records showed that about a quarter of the total number of clients who applied to the Centre were unable to conclude and settle their legal problems, principally for financial reasons. Experience at the Legal Aid Centres shows that many of the clients are indigent and are thus unable to afford the transportation and other costs of constant visits to the Centre or to the courts, especially where cases involve several adjournments. Follow-up often becomes too expensive for such clients, who in some cases, have to visit the centre between six and fifteen times before an amicable settlement is arranged. It is not surprising that a good number of them get discouraged and give up along the way. Other problems include inability of clients to locate the whereabouts of invitees i.e. the persons against whom they lodge the complaint. In some of the cases, clients are discouraged from pursuing their claims by family members, or by the intervention of religious groups.

Over the 3-year period a number of the cases presented to the Centre were referred to organisations such as the Women and Juvenile Unit of the Police Service (WAJU), the Department of Social Welfare, Legal Aid Board and the Commission on Human Rights and Administrative Justice (CHRAJ) for assistance. Some of the cases presented to FIDA-Ghana had to be referred to the Legal Aid Board because of the limited number of staff and volunteers which did not enable the Centre take up all the cases referred to court for action. Referrals to the Legal Aid Board was also necessary in some of the cases where the clients were so poor that they could not afford to pay the filing fees for the initiation of court action on their behalf. Such cases were referred to the Legal Aid Board to be assigned to counsel by the Board. In cases where the invitees proved to be recalcitrant the Centre had to solicit the help of the Police service to effect service of the invitation letter from FIDA-Ghana on such invitees. With regard to the cases, which were referred to the courts and Family Tribunal, it was noted that in all the cases the decisions or judgements invariably were given in favour of the clients from FIDA-Ghana. This shows that if the courts are strengthened and made accessible to all, they could adequately address these issues.

3.7 OVERVIEW OF CASES HANDLED BY FIDA-GHANA LEGAL AID CENTRE, KUMASI (1999-2001)

A review of the records of the FIDA-Ghana Legal Aid Centre in Kumasi showed that in the period between 1999 and 2001, the Centre handled a total of 1135 cases. The cases handled were on child maintenance, estate/inheritance matters, custody and visitation rights, marital/matrimonial causes, and paternity issues. The table below provides an overview of the number of cases handled by the Kumasi Legal Aid Centre per year in the 3-year period under review.

Table 3.5: Number of Cases Handled Per Year, Kumasi Legal Aid Centre

| Year | Total Number of Cases |
|--------------|------------------------------|
| 1999 | 444 |
| 2000 | 442 |
| 2001 | 249 |
| Total | 1135 |

Source: FIDA-Ghana Legal Aid Centre, Kumasi

The figures show that even though the total number of cases handled by the Kumasi Legal Aid Centre was about the same in the first two year under review, there was a marked drop in the number of cases handled by the Centre in the year 2001. This drop in the number of cases reported in 2001 could be attributed to the relocation of the FIDA-Ghana Legal Aid office during that period. As stated earlier, such changes in location result in a decrease in the level of access to the Centre for both existing and potential clients.

3.7.1 Gender of Clients in Cases Handled by Kumasi Legal Aid Centre, (1999-2001)

As was noted from the analysis of the records of the Legal Aid Centre in Accra, an overwhelming proportion of the clients who sought the services of the Legal Aid Centre in Kumasi were female. Overall, about 95% of the clients who applied to the Kumasi Centre in the 3-year period under review were female, with the males forming only 5%. The table below presents the gender profile of clients who applied to the Kumasi Centre in the 3-year period under review.

Table 3.6: Gender of Applicants, Kumasi Legal Aid Centre (1999-2001)

| Year | Male | % | Female | % | Total |
|--------------|-----------|-------------|-------------|--------------|-------------|
| 1999 | 22 | 5.0% | 422 | 95.0% | 444 |
| 2000 | 24 | 5.5% | 418 | 94.5% | 442 |
| 2001 | 14 | 5.6% | 235 | 94.4% | 249 |
| Total | 60 | 5.3% | 1075 | 94.7% | 1135 |

Source: FIDA-Ghana Legal Aid Centre, Kumasi

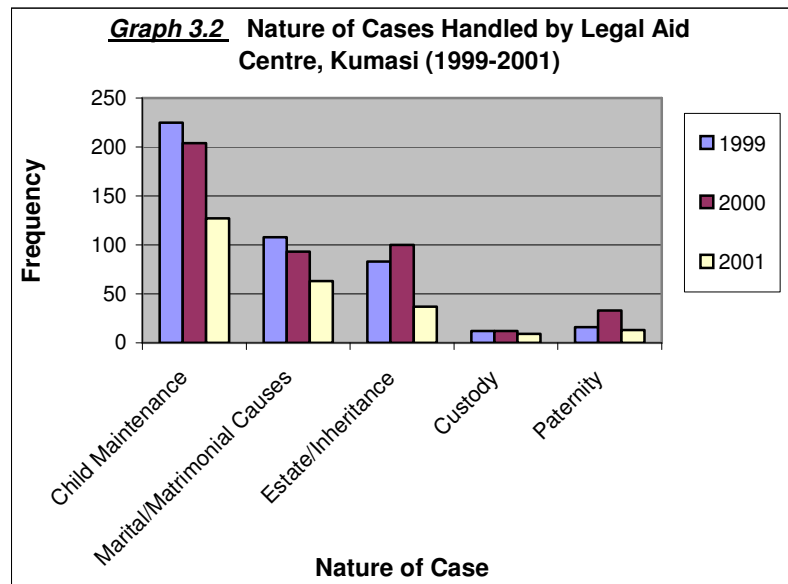
3.8 NATURE OF CASES HANDLED BY FIDA-GHANA, LEGAL AID CENTRE, KUMASI (1999-2001)

The table below presents an overview of the nature of cases handled by FIDA-Ghana's Legal Aid Centre in Kumasi in the period under review.

Table 3.7: Nature of Cases Handled by Legal Aid Centre, Kumasi (1999-2001)

| Nature of Case | 1999 | 2000 | 2001 | Total Fre- quency |
|----------------------------|------------|------------|------------|----------------------|
| Child Maintenance | 225 | 204 | 127 | 556 |
| Marital/Matrimonial Causes | 108 | 93 | 63 | 264 |
| Estate/Inheritance | 83 | 100 | 37 | 220 |
| Custody | 12 | 12 | 9 | 33 |
| Paternity | 16 | 33 | 13 | 62 |
| Total | 444 | 442 | 249 | 1135 |

Source: FIDA-Ghana Legal Aid Centre, Kumasi



3.8.1 Child Maintenance Cases

The trends observed from the cases handled in the Centre in Kumasi also showed that child maintenance cases formed the highest percentage of the cases handled over the 3-year period. In 1999, child maintenance cases constituted about 50% of the total number of cases. In the year 2000, child maintenance cases accounted for 46%, while in 2001, 51% of the total number of the cases handled was on child maintenance. The nature of claims made for maintenance included money for the payment of school fees, medical expenses, housekeeping money, money for clothing, transportation, shelter, feeding and other expenses involved in the upkeep of the child or children. Some of the claims for maintenance presented to the Centre were coupled with applications for the solution of marital issues.

3.8.2 Marital Cases

Marital cases also constituted a significant category of cases that the Legal Aid Centre in Kumasi handled during the period under review. In 1999, marital cases constituted about 24% of the total number of cases handled. In the year 2000, marital cases ranked third highest, constituting 21%, while in 2001, marital cases handled formed 25% of the total number of cases, again ranking second. The nature of issues dealt with in this category was similar to those raised at the Centre in Accra as discussed. It must be noted that in

most cases, marital problems handled by the Centre were closely linked with child maintenance problems. Thus in many cases, applications for assistance with marital problems were combined with claims for child maintenance. At the Legal Aid Centre in Kumasi, it was noted that in the 3-year period, out of the 556 child maintenance cases presented by clients, 128 of them (representing 23%) were coupled with claims in respect of marital issues.

3.8.3 Estate/Inheritance Matters

As was noted from the records of the Legal Aid Centre in Accra, cases involving inheritance or estate matters also constituted a significant category of cases handled by the Legal Aid Centre in Kumasi. The trends as shown in table 3.7 above, established that in 1999, 2000 and 2001 inheritance/estate matters constituted 19%, 23% and 15% respectively of the total number of cases handled by the Centre. It is important to note that Kumasi being in the Ashanti Region, where the matrilineal system of inheritance is practised, it is not surprising that the proportion of cases on inheritance and estate matters were found to be relatively higher as compared to the Accra Centre. The nature of claims presented followed the same trend as those presented to the Accra Centre as discussed.

3.8.4 Custody and Visitation Matters

The percentage of cases handled by the Legal Aid Centre in Kumasi which were on custody and visitation were found to be 2.6%, 2.7% and 3.6% in 1999, 2000 and 2001 respectively.

3.8.5 Paternity Issues

Cases involving paternity disputes were also a significant category of cases handled by the Kumasi Legal Aid Centre in the period under review. Paternity issues presented were often closely linked to issues of child maintenance. The records showed that in 1999, 2000 and 2001, paternity cases constituted 3.6%, 7.5% and 5.2% of the total number of cases handled by the Legal Aid Centre in Kumasi.

3.9 PROBLEMS ENCOUNTERED BY FIDA-GHANA IN THE SETTLEMENT OF CASES

3.9.1 Financial Constraints

FIDA-Ghana generally records a relatively high level of success in the settlement of cases by mediation. However cases that the organisation is unable to settle are referred to the court or Family Tribunal for resolution. In almost all the cases the court ruled in favour of clients and respondents are thereby

compelled to adhere to the orders given by the courts or Family Tribunals. However not all the cases are able to go to court due to clients' inability to pay the filing fees. Often, the organisation lacks finances to pay transport costs for the lawyers to attend court. Thus cases are sometimes abandoned mid-stream on account of lack of funds. This tends to defeat FIDA-Ghana's objective of achieving justice and obtaining redress for indigent women and children in our society. Moreover with only a limited number of lawyers providing legal services for court representation and providing pro bono services, very few cases can be handled effectively.

The work of the Legal Aid Centre in Kumasi is significantly hampered by the lack of funding and logistics. The Centre currently has no permanent secretariat of its own and therefore operates from rented premises. Whenever the Centre is compelled to re-locate its offices, it loses many of its clients since it takes existing and prospective clients some time to locate the new location. Inadequacy of staff is also a problem faced by both Legal Aid Centres. The Centres are currently run by a total of about 7 permanent staff, and this limits the number of cases that the Centres can take on. Reliance on volunteers is not always guaranteed. This means that clients and invitees have to wait for longer periods of time before being attended to, a situation which tends to dissuade prospective clients from accessing the services of the Legal Aid Centres.

The Legal Aid Centres of FIDA-Ghana need to be strengthened financially to be able to motivate more volunteers to take up cases referred to court. Women Lawyers are few and are not always available. To fill this gap, FIDA-Ghana has introduced the concept of initiating paralegals into the mainstream work to assist with the provision of legal services for indigent women. These paralegals are laypersons in society who have been given training in the laws affecting women and children as well as in the processes of counselling and mediation. With sponsorship from the UNSYSTEMS programme for Gender Equality in Ghana, FIDA-Ghana has opened a paralegal centre in Koforidua, in the Eastern Region of Ghana, where women with legal problems can go to for directions and referrals.

3.9.2 Access of Clients to Legal Aid Centres

Currently, FIDA-Ghana runs only two Legal Aid Centres in the country, in Accra and Kumasi. This means that the countless women in the Eastern, Brong-Ahafo, Central, Western, Upper East, Upper West and Northern Regions of the country, who are in need of such services, are denied access to this kind of legal aid. FIDA-Ghana currently does not have the human or financial resources to open offices in all the ten regions in Ghana. Thus clients often have to travel long distances to Accra or Kumasi to access the

services provided by FIDA-Ghana, and most of them find it extremely difficult to pay for transportation.

3.9.3 Limitations in Monitoring Compliance with Settlements

The experience of the Legal Aid Centres of FIDA-Ghana has revealed that there is a high incidence of default after settlement agreements have been reached. One significant setback in the work of the Centre is the fact that it cannot compel the invitee/respondent to comply with the settlement made where they default or fail to comply. In fact the Centre has no means of monitoring compliance with the settlement made where the client fails to notify the centre, as occurs in many cases.

3.9.4 Limitations in the Enforcement of Settlement Agreements

Since the process employed by FIDA-Ghana for dispute resolution is essentially voluntary in nature, there are currently no legally backed procedures available to FIDA-Ghana for the enforcement of agreements reached at the Centre where the parties subsequently fail to comply. Under the current practice, settlement agreements arrived at are not reduced into writing or into legally enforceable agreements, which could be construed as contracts between the parties. FIDA-Ghana's inability to directly enforce settlement agreements reached during mediation is a major setback in cases where parties renege on these agreements. This limitation in the enforcement of settlement agreements in some cases, makes the whole process an exercise in futility, and tends to be frustrating both for the clients and the organisation itself.

It is noted that the proposed Ghana Alternate Dispute Resolution Bill, which is currently under consideration would play a critical role in the solution of this problem. The proposed Bill makes provision for settlement agreements arrived at by mediation to be reduced into writing with the assistance of the mediator, signed by the parties and authenticated by the mediator so as to make the agreement legally binding on the parties. Such a settlement agreement would then have the same effect as if it is an arbitral award⁴⁵. Such an approach or procedure, sanctioned by the law, could be routinely employed by FIDA-Ghana as the means of enforcing settlement agreements reached between parties with the assistance of the Centres' volunteer lawyers and this would greatly enhance the effectiveness of the work of FIDA-

⁴⁵ See, Alternative Dispute Resolution Bill, sections 88-89.

Ghana. It is therefore recommended that FIDA-Ghana join in the advocacy for the enactment of the Alternate Resolution (ADR) Bill into law as soon as possible.

3.10 LINKAGES WITH OTHER ORGANISATIONS

FIDA-Ghana collaborates with organisations such as the Commission on Human rights and Administrative Justice (CHRAJ), The Women and Juvenile Unit of the Police Service (WAJU), The Department of Social Welfare and Legal Aid Board in dispensing justice to indigent women and children in our society. WAJU and the Department of Social Welfare refer civil cases to FIDA- Ghana for settlement or legal representation whilst FIDA-Ghana refers criminal cases to WAJU and the Legal Aid Board for court representation. The organisation collaborates with other non-governmental organisations as well to provide services for indigent women and children in Ghana. FIDA-Ghana collaborates with the Gender Violence Supporting Systems network (GVSS) to provide support for victims of abuse. Other NGOs like Child Rights International, The NGO Coalition on Children also collaborate with FIDA-Ghana in the holding of seminars, workshops and dissemination programmes aimed at sensitising the Ghanaian public on women and children's rights.

CHAPTER FOUR

ANALYSIS OF CHILD MAINTENANCE CASES HANDLED BY FIDA-GHANA'S LEGAL AID CENTRE IN ACCRA BETWEEN 1999 AND 2001

4.0 INTRODUCTION

This chapter presents the results of the analysis of the data extracted from the records of the Legal Aid Centre of FIDA-Ghana in Accra on child maintenance cases handled between 1999 and 2001. Details of the gender and backgrounds of applicants, the nature of claims submitted, and the kinds of settlements made at the Centres have been comprehensively analysed to establish the relevant trends. Gender, marital status, occupation, place of residence, nature of claim and type of settlement, among others were used as variables for analysis of the data collected. The chapter also presents relevant information on problems with the enforcement of settlements, the kinds of cases referred to the courts, the kinds of orders made by the courts and the problems encountered in the enforcement of such court orders.

4.1 NATURE OF CHILD MAINTENANCE CLAIMS

The nature of child maintenance claims made by clients at the Legal Aid Centre in Accra were for the payment of school fees, medical bills, house keeping, clothing, transportation, shelter and other expenses involved in child maintenance.

4.2 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY LEGAL AID CENTRE, ACCRA (1999)

4.2.1 Gender of Applicants in Child Maintenance Cases, Legal Aid Centre, Accra, 1999

A review of the records of the Legal Aid Centre in Accra on child maintenance cases handled in 1999 showed that of the 649 records (out of 660 records), which responded to the query on gender, all but 1 of the persons who applied to the Centre for assistance with child maintenance were female. This showed that virtually 100% of the clients on child maintenance tend to be women. These results reinforce the general perception that even though the responsibility of child maintenance is placed by law on both parents, in practice, Ghanaian women tend to bear an undue burden of this obligation. As shown from the results of the study, in many cases, women in non-marital relationships, tend to maintain custody of the children and have

a hard time getting their male counterparts to contribute to the maintenance of the children.

4.2.2 Age Profile of Clients in Child Maintenance Cases Handled by Legal Aid Centre Accra, 1999

A review of the ages of the women who reported child maintenance cases to the Legal Aid Centre in Accra in 1999 showed that a predominant percentage were between the ages of 21 and 40 years. The table below shows that about 78% of the total number of applicants for that year was aged between 21 and 40 years. Thus a good majority of women who report child maintenance cases tend to be mothers of young children or newborn babies. The table below shows the age distribution of women who applied for child maintenance in 1999.

Table 4.1: Age of Applicants in Child Maintenance Cases, 1999

| Range | Frequency | Percentage |
|--------------|------------|--------------|
| Below 10 | 1 | 0.1 |
| 11 – 20 | 44 | 6.8 |
| 21 – 30 | 288 | 44.6 |
| 31 – 40 | 213 | 32.9 |
| 41 – 50 | 89 | 13.8 |
| 51 – 60 | 8 | 1.2 |
| Above 60 | 4 | 0.6 |
| Total | 647 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

4.2.3 Number of Children of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 1999

A broad overview of the number of children of women who reported child maintenance cases to the Centre in 1999 showed that about 85% of them had up to three children. Only about 10% of the applicants were found to have more than three children. The table below shows the details of the number of children of women who reported cases on child maintenance to the Legal Aid Centre in Accra in 1999.

Analysis of Child Maintenance Cases handled by FIDA-Ghana's Legal Aid Centre in Accra between 1999 and 2001

Table 4.2: Number of Children of Applicants in Child Maintenance Cases, Legal Aid Centre, Accra, 1999

| Children | Frequency | Percentage |
|-----------------|------------------|-------------------|
| Expecting | 34 | 5.3 |
| One | 310 | 48.6 |
| Two | 160 | 25.2 |
| Three | 69 | 10.8 |
| Four | 29 | 4.5 |
| Five | 18 | 2.8 |
| Six and more | 18 | 2.8 |
| Total | 638 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

4.2.4 Occupations of Clients in Child Maintenance Cases Reported to Legal Aid Centre, Accra, 1999

An overview of the occupations of the women who applied to the Centre for assistance with child maintenance in 1999 showed that a majority of the applicants were self-employed women from the informal sector. About 71% of the clients in child maintenance cases were found to be hairdressers, traders, bakers, seamstresses, restaurant operators and farmers. The data showed that about 18% of the clients were unemployed and 2% were students. Less than 5% of the clients in child maintenance cases presented in 1999 to the Legal Aid Centre were employed in the formal sector. It is significant to note that overall, about 80% of the women who reported child maintenance cases were gainfully employed and were therefore contributing to the maintenance of the children in respect of whom the report was made. The table below presents the details of the occupations of clients who reported child maintenance cases to the Legal Aid Centre, Accra in 1999.

Table 4.3: Occupation of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 1999

| Occupation | Frequency | Percentage |
|------------------------------|------------------|-------------------|
| Hair dresser | 56 | 8.6 |
| Trader | 331 | 50.8 |
| Unemployed | 116 | 17.9 |
| Baker | 2 | 0.3 |
| Seamstress | 41 | 7.7 |
| Caterer/ Restaurant operator | 15 | 0.9 |
| Student | 13 | 2.0 |
| Teacher | 22 | 3.4 |
| Farmer | 6 | 0.9 |
| Health service personnel | 7 | 1.1 |
| Secretary | 2 | 0.3 |
| Housewife | 3 | 0.4 |
| *Other | 37 | 5.7 |
| Total | 651 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

*Others include, accounts clerk, fishmonger, civil servant, public servant, clerk, designer, herbalist, house-help and clerical services

4.2.5 Marital Status of Clients in Child Maintenance Case Reported to Legal Aid Centre, Accra, 1999

A review of the records on child maintenance cases reported to the Legal Aid Centre in Accra in 1999 showed that about 74% of the clients were single, almost 17% were married and 8.2% were either divorced or separated from their spouses. The results confirm the general perception that a great majority of women who seek assistance with child maintenance are those who have had children in casual or informal relationships outside the bounds of marriage. Generally, where children are born in non-marital relationships, women tend to retain custody of the children, and often experience great difficulty in getting assistance from male partners for the maintenance of the children. Even in situations where the parties are married, where the spouses do not live together under the same roof, the women tend to have custody of the children and often encounter great resistance from non-resident spouses when they are required to contribute to the maintenance of the children. Again in situations of divorce or separation, child maintenance tends to become the sole responsibility of the women, who usually maintains custody of the children, where the men refuse to contribute.

Analysis of Child Maintenance Cases handled by FIDA-Ghana's Legal Aid Centre in Accra between 1999 and 2001

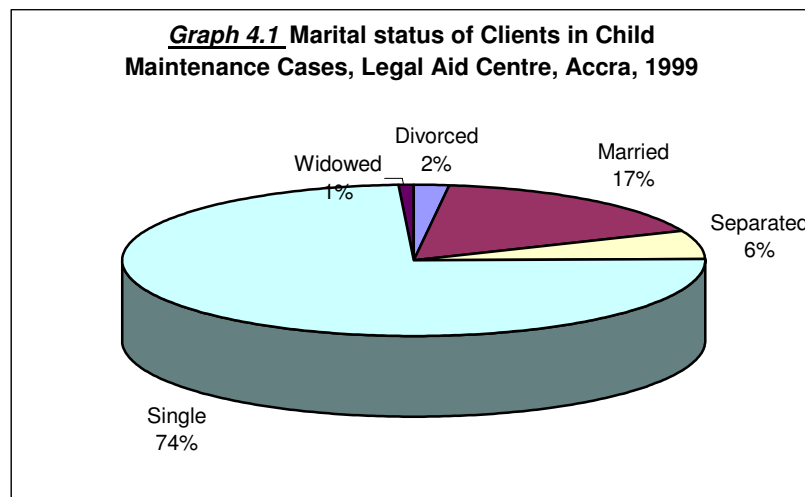
The table below shows the marital status of applicants in child maintenance cases presented to the Legal Aid Centre in Accra in 1999.

Table 4.4: Marital status of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 1999

| Marital status | Frequency | Percentage |
|----------------|------------|--------------|
| Divorced | 13 | 2.0 |
| Married | 106 | 16.5 |
| Separated | 40 | 6.2 |
| Single | 477 | 74.3 |
| Widowed | 6 | 1.0 |
| Total | 642 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

4.2.6 Outcomes of Child Maintenance Cases Reported to the Legal Aid Centre, Accra, 1999



The records of FIDA-Ghana's Legal Aid Centre in Accra on child maintenance cases showed that of the 618 cases examined, 359 of the cases had been dealt with by the Centre, while 259 cases were still pending. It was noted that of the 359 cases, which had been dealt with by the Centre, 226 (63%) of them had been successfully settled by the Centre. The remaining 37% of the cases, which had been considered by the Centre, were sent to the courts, the Family Tribunal, Legal Aid Board, Police, Department of Social Welfare or WAJU.

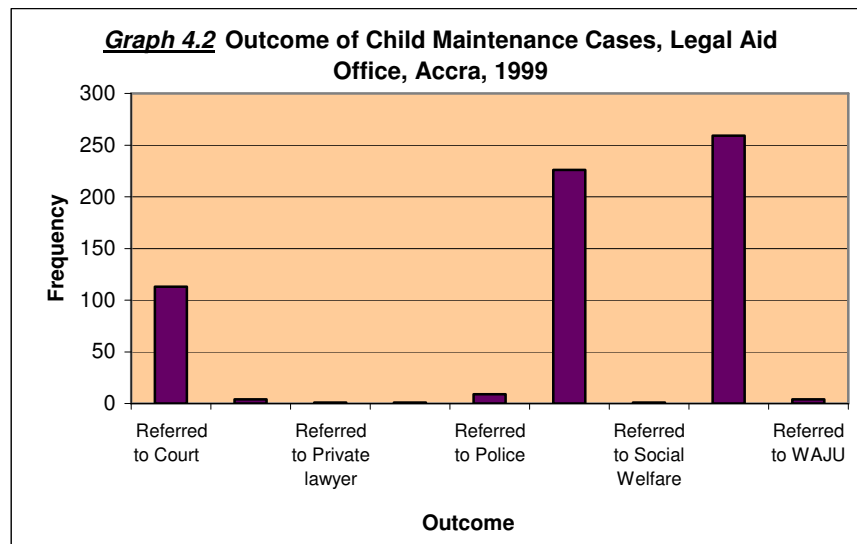
It is significant to note that 113 (31% of the cases which had been considered) were transferred to the courts for resolution.

The table below provides an overview of the outcomes of the child maintenance cases submitted to the Legal Aid Centre, Accra, in 1999.

Table 4.5: Outcome of Child Maintenance Cases, Legal Aid Office, Accra, 1999

| Outcome | Frequency | Percentage |
|-----------------------------|------------------|-------------------|
| Referred to Court | 113 | 18.4 |
| Referred to Family tribunal | 4 | 0.6 |
| Referred to Private lawyer | 1 | 0.2 |
| Referred to Legal Aid Board | 1 | 0.2 |
| Referred to Police | 9 | 1.1 |
| Settled by Mediation | 226 | 36.7 |
| Referred to Social Welfare | 1 | 0.2 |
| Pending | 259 | 42.0 |
| Referred to WAJU | 4 | 0.6 |
| Total | 618 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra



Analysis of Child Maintenance Cases handled by FIDA-Ghana's Legal Aid Centre in Accra between 1999 and 2001

4.3 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY LEGAL AID CENTRE, ACCRA (2000)

4.3.1 Gender of Applicants in Child Maintenance Cases, Legal Aid Centre, 2000

A detailed examination conducted on the records of 853 child maintenance cases handled by FIDA-Ghana's Legal Aid Centre in Accra showed that males had submitted less than only 5, representing 0.6% of the cases. Thus women formed over 99% of the clients in the child maintenance cases handled by the Centre in the year 2000.

4.3.2 Age of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 2000

A review of the ages of the women who reported child maintenance cases to the Legal Aid Centre in Accra in 2000 showed that again that about 78% of the women were between the ages of 21 and 40 years. Women aged 40 years and above constituted 13.6%, while adolescents aged between 11 and 20 years constituted 8.5% of the total number of clients who reported child maintenance cases in the year 2000. The table below shows the age distribution of women who applied to the Legal Aid Centre, Accra for assistance with child maintenance cases in 2000.

Table 4.6: Age of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 2000

| Range | Frequency | Percentage |
|--------------|------------------|-------------------|
| 11 – 20 | 72 | 8.5 |
| 21 – 30 | 349 | 41.0 |
| 31 – 40 | 313 | 36.9 |
| 41 – 50 | 99 | 11.6 |
| 51 – 60 | 12 | 1.4 |
| Above 60 | 5 | 0.6 |
| Total | 850 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

4.3.3 Number of Children of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 2000

An overview of the number of children of women who reported child maintenance cases to the Centre in 2000 showed that about 84% of them had up to three children. About 9.8% of the applicants were found to have more than three children. The table below provides an overview of the number of

children of women who reported cases on child maintenance to the Legal Aid Centre in Accra in 2000.

Table 4.7: Number of Children of Clients in Child Maintenance Cases, Legal Aid Centre, Accra

| Number of Children | Frequency | Percentage |
|---------------------------|------------------|-------------------|
| None | 10 | 1.2 |
| Expecting | 43 | 5.0 |
| One | 399 | 46.9 |
| Two | 211 | 24.8 |
| Three | 105 | 12.3 |
| Four | 42 | 4.9 |
| Five | 24 | 2.8 |
| Six and more | 18 | 2.1 |
| Total | 852 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

4.3.4 Occupations of Clients in Child Maintenance Cases Reported to Legal Aid Centre, Accra, 2000

An overview of the occupations of the women who applied to the Centre for assistance with child maintenance in 2000 showed that a majority of the applicants were self-employed women from the informal sector. The data on child maintenance cases reported to the Centre in the year 2000 showed that about 70% of the clients in child maintenance cases were hairdressers, traders, bakers, seamstresses, restaurant operators and farmers. 17.7% of the clients were found to be unemployed. Only about 4% of the clients in child maintenance cases presented in year 2000 were employed in the formal sector. It is significant to note that overall, about 82% of the women who reported child maintenance cases to the Legal Aid Centre in 2000 were gainfully employed and were therefore contributing to the maintenance of the children in respect of whom the report was made.

The table below presents the details of the occupations of clients who reported child maintenance cases to the Legal Aid Centre, Accra in 2000.

Table 4.8: Occupations of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 2000

| Occupation | Frequency | Percentage |
|------------------------------|------------------|-------------------|
| Hair dresser | 72 | 8.5 |
| Trader | 400 | 47.1 |
| Unemployed | 150 | 17.7 |
| Baker | 4 | 0.5 |
| Seamstress | 98 | 11.6 |
| Caterer /Restaurant Operator | 15 | 1.8 |
| Student | 18 | 2.1 |
| Teacher | 18 | 2.1 |
| Farmer | 8 | 0.9 |
| Health service personnel | 9 | 1.1 |
| Secretary | 5 | 0.6 |
| Housewife | 3 | 0.4 |
| *Other | 48 | 5.6 |
| Total | 848 | 100.0 |

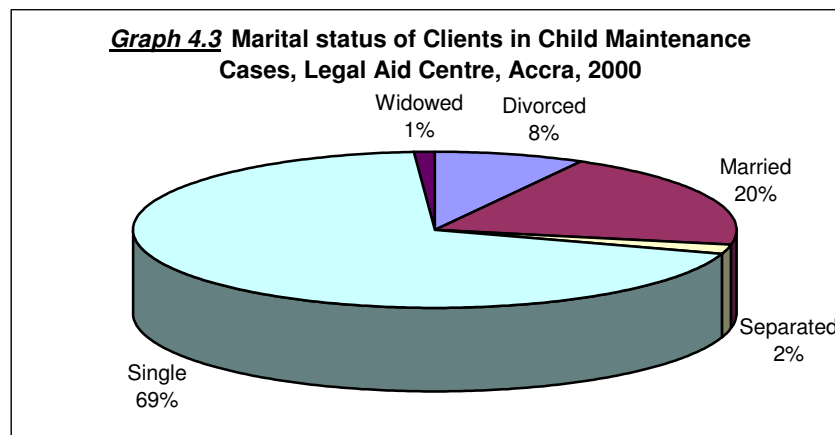
Source: FIDA-Ghana Legal Aid Centre, Accra

*Others include, accounts clerk, fishmonger, civil servant, public servant, clerk, designer, herbalist, house-help and clerical services

4.3.5 Marital Status of Applicants in Child Maintenance Cases, Legal Aid Centre, Accra, 2000

An examination of the records on child maintenance cases reported to the Legal Aid Centre in Accra in 2000 showed that 69% of the clients were single, 20% were married and about 10% were either divorced or separated from their spouses. The results followed the trends noted from the analysis of cases handled in 1999 and again confirmed the general belief that a significant majority of women who seek assistance with child maintenance do so in respect of children born in casual or informal relationships outside the bounds of marriage.

The table below shows the marital status of applicants in child maintenance cases presented to the Legal Aid Centre in Accra in 2000.



4.3.6 Outcomes of Child Maintenance Cases Reported to the Legal Aid Centre, Accra, 2000

An overview of the outcomes of cases presented to FIDA-Ghana's Legal Aid Centre in Accra on child maintenance cases showed that of the 833 cases examined, 389 (47%) of the cases had been dealt with by the Centre, while 444 cases (53%) were still pending. Of the 389 cases, which had been considered by the Centre, 255 (65.5%) of them had been successfully settled by the Centre. The remaining 34.5% of the cases, which had been considered by the Centre, were sent to the courts, the Family Tribunal, Legal Aid Board, Police, Department of Social Welfare or WAJU. It was also noted that that 100 (26%) of the cases which had been considered were transferred to the courts for resolution.

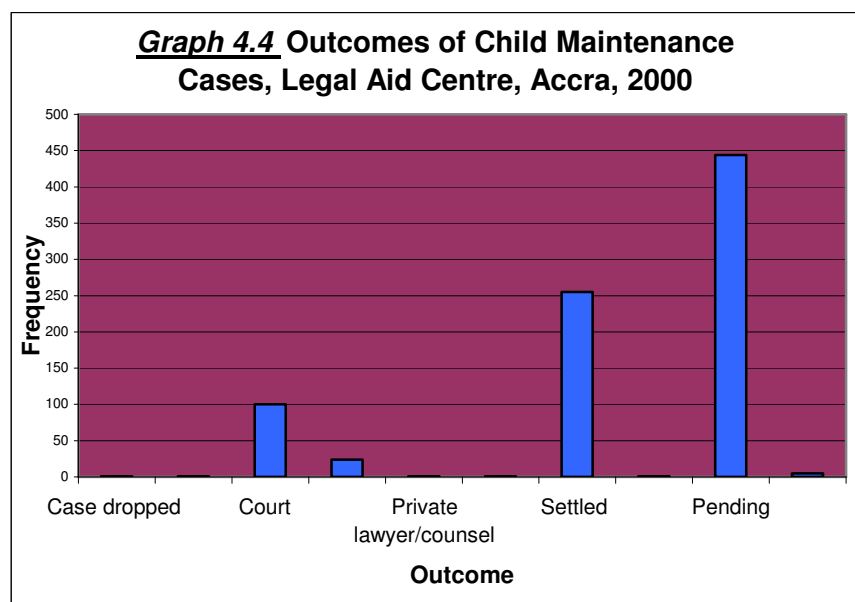
Analysis of Child Maintenance Cases handled by FIDA-Ghana's Legal Aid Centre in Accra between 1999 and 2001

The table below provides an overview of the outcomes of the child maintenance cases submitted to the Legal Aid Centre, Accra, in 2000.

Table 4.10: Outcomes of Child Maintenance Cases, Legal Aid Centre, Accra, 2000

| Outcome | Frequency | Percentage |
|------------------------|------------|--------------|
| Case dropped | 1 | 0.1 |
| CHAID | 1 | 0.1 |
| Court | 100 | 12.0 |
| Family tribunal | 24 | 2.9 |
| Private lawyer/counsel | 1 | 0.1 |
| Legal aid | 1 | 0.1 |
| Settled | 255 | 30.6 |
| Social Welfare | 1 | 0.1 |
| Pending | 444 | 53.4 |
| WAJU | 5 | 0.6 |
| Total | 833 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra



4.4 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY LEGAL AID CENTRE, ACCRA (2001)

In all, records on a total of 761 maintenance cases reported to the Legal Aid Centre in Accra were analysed for presentation in this section. The data showed that 98.4% of the clients who reported child maintenance cases to the Centre in 2001 were female, while only 12 of the clients, representing 1.6% were male.

4.4.1 Age of Clients in Child Maintenance Cases Reported to the Legal Aid Centre, Accra in 2001

An overview of the records with regard to the age of clients in child maintenance cases presented in 2001 showed that almost 80% of the clients were aged between 21 and 40 years. About 14% of the women who reported child maintenance cases were aged above 40. This trend is similar to that observed from the records of 1999 and 2000. The table below provides an overview of the age profile of women who submitted child maintenance claims to the Legal Aid Centre in Accra in 2001.

Table 4.11: Age of clients in Child Maintenance Cases, Legal Aid Centre, Accra (2001)

| Age | Frequency | Percentage |
|--------------|------------------|-------------------|
| 10 – 20 | 50 | 6.6 |
| 21 – 30 | 332 | 43.6 |
| 31 – 40 | 270 | 35.5 |
| 41 – 50 | 82 | 10.8 |
| 51 – 60 | 17 | 2.2 |
| 61 and above | 10 | 1.3 |
| Total | 761 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

4.4.2 Occupations of Clients in Child Maintenance Cases Reported to the Legal Aid Centre, Accra, 2001

In 2001, the records on the occupations of the women who applied to the Centre for assistance with child maintenance again showed that a majority of the applicants were self-employed women from the informal sector. About 71% of the clients who reported child maintenance cases were hairdressers, traders, bakers, seamstresses, restaurant operators and farmers. About 12.7% of the clients were found to be unemployed. Only about 3% of the clients in child maintenance cases presented in year 2001 were employed in the formal sector. It is significant to note that overall, over 85% of the women who reported child maintenance cases to the Legal Aid Centre in 2001 were gain-

Analysis of Child Maintenance Cases handled by FIDA-Ghana's Legal Aid Centre in Accra between 1999 and 2001

fully employed and were therefore contributing to the maintenance of the children in respect of whom the report was made.

The table below presents the details of the occupations of clients who reported child maintenance cases to the Legal Aid Centre, Accra in 2001.

Table 4.12: Occupation of clients in Child Maintenance Cases, Legal Aid Centre, Accra (2001)

| Occupation | Frequency | Percentage |
|--------------------------|------------|--------------|
| Farmer | 8 | 1.1 |
| Hair dresser | 45 | 5.9 |
| Seamstress | 78 | 10.2 |
| Student | 22 | 2.9 |
| Baker | 6 | 0.8 |
| Teacher | 16 | 2.1 |
| Restaurant operator | 10 | 1.3 |
| Trader | 398 | 52.3 |
| Health service personnel | 4 | 0.5 |
| Secretary | 10 | 1.3 |
| Unemployed | 96 | 12.7 |
| Other | 68 | 8.9 |
| Total | 761 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

Others include bankers, auto mechanics, drivers, housewives, fishmongers, factory hands, pensioners, etc

4.4.3 Marital Status of Applicants in Child Maintenance Cases, Legal Aid Centre, Accra, 2001

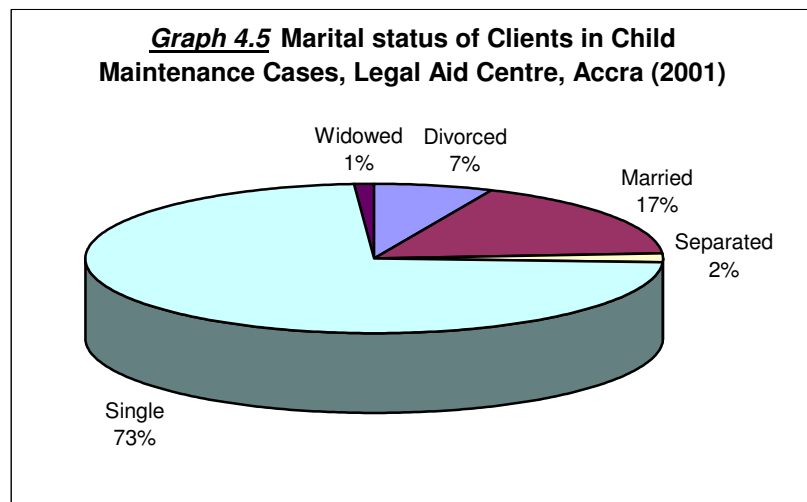
The records on child maintenance cases reported to the Legal Aid Centre in Accra in 2001 showed that 73% of the clients were single, 17% were married and about 9% were either divorced or separated from their spouses. Again the results followed the trends noted from the analysis of cases handled in 1999 and 2000, and confirmed the general belief that a significant majority of women who seek assistance with child maintenance do so in respect of children born in casual or informal relationships outside the bounds of marriage.

The table below shows the marital status of applicants in child maintenance cases presented to the Legal Aid Centre in Accra in 2001.

Table 4.13: Marital status of clients in Child Maintenance Cases, Legal Aid Centre, Accra (2001)

| Marital status | Frequency | Percentage |
|----------------|------------|--------------|
| Divorced | 46 | 6.7 |
| Married | 117 | 17.2 |
| Separated | 14 | 2.1 |
| Single | 498 | 73.0 |
| Widowed | 7 | 1.0 |
| Total | 682 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra



4.4.4 Number of Children of Clients in Child Maintenance Cases, Legal Aid Centre, Accra, 2001

An overview of the number of children of women who reported child maintenance cases to the Centre in 2001 showed that about 73% of them had up to three children. About 9.6% of the applicants were found to have more than three children. The table below provides an overview of the number of children of women who reported cases on child maintenance to the Legal Aid Centre in Accra in 2001.

Table 4.14: Number of children of Clients in Child Maintenance Cases,

Analysis of Child Maintenance Cases handled by FIDA-Ghana's Legal Aid Centre in Accra between 1999 and 2001

Legal Aid Centre, Accra (2001)

| Number of children | Frequency | Percentage |
|--------------------|------------|--------------|
| Expecting | 48 | 6.3 |
| None | 84 | 11.0 |
| One | 329 | 43.2 |
| Two | 155 | 20.4 |
| Three | 72 | 9.5 |
| Four | 44 | 5.8 |
| Five | 19 | 2.5 |
| Six and more | 10 | 1.3 |
| Total | 761 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra

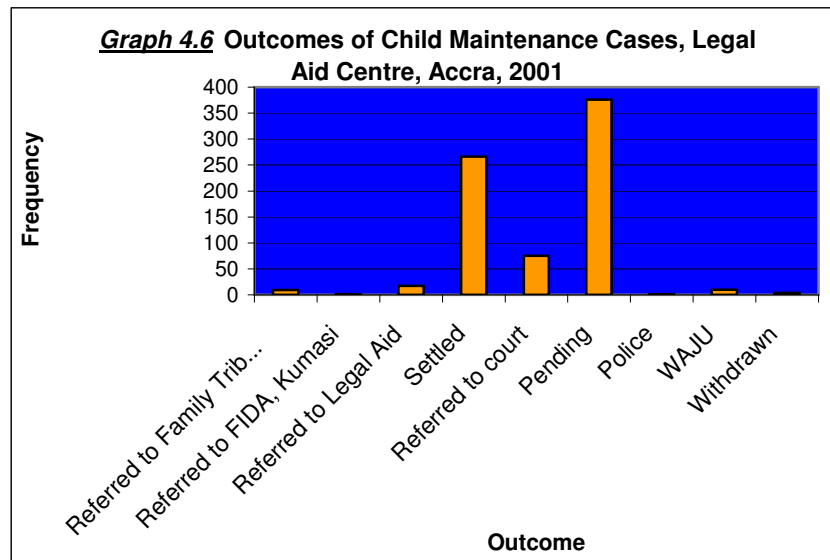
4.4.5 Outcomes of Child Maintenance Cases Reported to the Legal Aid Centre, Accra, 2001

Of the child maintenance cases examined for the year 2001, 50.4% of the cases had been dealt with by the Centre, while 49.6% of the cases were still pending at the Centre. 35% of the total number of cases reported had been successfully settled by the Centre. This however represents almost 70% of the 383 cases, which have been dealt with by the Centre. The rest of the cases were sent to the courts, the Family Tribunal, Legal Aid Board, Police, Department of Social Welfare or WAJU. The table below provides an overview of the outcomes of the child maintenance cases submitted to the Legal Aid Centre, Accra, in 2001.

4.15: Outcome of Child Maintenance Cases Handled by Legal Aid Centre, Accra (2001)

| Outcome | Frequency | Percentage |
|-----------------------------|------------|--------------|
| Referred to Family Tribunal | 9 | 1.2 |
| Referred to FIDA, Kumasi | 1 | 0.1 |
| Referred to Legal Aid | 17 | 2.2 |
| Settled | 266 | 35.1 |
| Referred to court | 75 | 9.9 |
| Pending | 376 | 49.6 |
| Police | 1 | 0.1 |
| WAJU | 10 | 1.3 |
| Withdrawn | 4 | 0.5 |
| Total | 759 | 100.0 |

Source: FIDA-Ghana Legal Aid Centre, Accra



4.5 TYPES OF SETTLEMENTS MADE AT THE FIDA-GHANA LEGAL AID CENTRES

As noted earlier, the main process by which FIDA-Ghana's Legal Aid Centres resolve matters presented by clients is by mediation. In handling child maintenance cases presented to the FIDA-Ghana Legal Aid Centres, the lawyers are guided by the provisions of the Children's Act, 1998 (Act 560). Settlements are therefore made in accordance with the principles of the law as stated in the Act. The Legal Aid Centre seeks to promote the rights of indigent women in accordance with the remedies stipulated in the Act and along the lines of the orders that the Family Tribunals are empowered to make.

Child maintenance cases handled by the Legal Aid Centres are usually settled according to the following terms:

- That monthly or weekly payments for maintenance agreed upon be made by the invitee to the Centre to be collected by the client;
- In some cases, the client may be required to deposit receipts for school fees and medical expenses incurred by her at the Centre. These are shown to the invitee, who is then required to refund a portion of the expenses already incurred by the client.
-

4.6 PROBLEMS WITH THE ENFORCEMENT OF SETTLEMENT AGREEMENTS MADE BY FIDA-GHANA

First of all, the FIDA-Legal Aid Centres cannot compel the invitee to comply with the settlement agreement if he defaults. In cases where the clients themselves fail to follow up to check on the payment of the moneys agreed upon, the Centre has no way of monitoring compliance with such payments. Where the Centre receives reports of the default of the invitee, a renewed effort is made to re-invite the person for further mediation. Where this fails, the Centre recommends the matter for court action.

It must be noted that not all cases referred to the courts from the Legal Aid Centres reach final resolution because in many cases, the clients are unable to bear the costs involved in initiating and following up on the court action. Many clients give up in frustration where the invitee remains recalcitrant and refuses to attend court and to co-operate. This is because many of the Centres' clients are unable to afford the financial cost of court processes required to compel invitees to attend court for the case to proceed. Many of the women, who are mostly petty traders, street hawkers, apprentice seamstresses, bakers, etc. can hardly afford to spend the amount of time involved in daily court attendances etc. and therefore give up altogether.

One of the most fundamental problems faced by FIDA-Ghana in its enforcement of settlements arrived at stems from the fact that the entire process of mediation is essentially voluntary and therefore enforceability depends totally on the goodwill of the parties, especially the invitee. Thus FIDA-Ghana can only use persuasion to compel compliance with settlement agreements arrived at between the parties. It is hoped that with the enactment of the Alternative Dispute Resolution Law, provision will be made for the enforcement of agreements drawn up by or for the parties upon successful mediation. FIDA-Ghana will be in a much better position to actively promote compliance with settlement agreements arrived at on maintenance and other cases presented to their Centres.

4.7 TYPES OF MAINTENANCE ORDERS MADE BY COURT

A significant percentage of the cases on child maintenance reported to the Legal Aid Centres of FIDA-Ghana are referred to the courts and the Family Tribunals for resolution. This usually happens where the invitee is recalcitrant and refuses to co-operate, or where he persistently defaults or reneges on settlement agreements entered into with the assistance of the Centres.

Provision is made in the Children's Act, 1998 (Act 560) for the Family Tribunal to make a wide array of orders or remedies aimed at ensuring that both parents of a child fulfil their obligations of maintenance irrespective of the

kind of relationship, which exists between them. According to section 50 of Act 560, the Family Tribunal may award maintenance to the mother of a child whether married to the father or not where the father has been identified. The types of orders, **which may be made by a Family Tribunal**, include the following:

- Medical expense may be paid to a pregnant mother throughout her pregnancy, delivery, or even where the child dies.
- Where the mother is herself a child and was undergoing her education or apprenticeship before she was made pregnant, the Family Tribunal may also make an order for a reasonable sum of money to be paid for the mother to continue her education or training or apprenticeship.
- The Family Tribunal can make an order for the money for child maintenance to be paid daily, monthly or weekly instalments (periodically) or the tribunal can make an order for the payment of lump sum of money against the person who is liable to pay maintenance.
- The Tribunal may request that the earnings, salary, allowances, income or property of a person who is liable to pay maintenance be seized and controlled for the purpose of obtaining maintenance and this will be done whenever the person fails to pay maintenance.
- If that person is employed, the Tribunal has power to make an order, which will require his employers to deduct the amount of maintenance from his or her salary and pay it into court so that the applicant can collect it or else pay it directly to the applicant. If the parent is not in employment but has property, that property can be taken by an order of the Tribunal and sold or managed to get periodic money to cover the maintenance order.
- A family Tribunal may make an order for arrears of maintenance against any person who is liable to pay maintenance. In other words the tribunal may consider any past failures to pay maintenance and order that the person pays the arrears, which have accumulated.

Usually the court makes orders for lump sum payment to the Applicant in respect of arrears of maintenance where appropriate and monthly child maintenance orders requiring the Respondent to bear a proportion of the cost of maintenance of the children, often covering educational and medical expenses, cost of feeding etc. The Applicant may also be required to supplement the provision to be made by the Respondent and to contribute to the feeding costs, clothing expenses and general upkeep of the child.

Analysis of Child Maintenance Cases handled by FIDA-Ghana's Legal Aid Centre in Accra between 1999 and 2001

Below are two examples of cases involving child maintenance sent to the Family Tribunal and the orders made therein.

Box 1: Family Tribunal Maintenance Order 1

Kofi, an apprentice attached to a garage impregnated and had a baby with Ama, who is a seamstress apprentice. All efforts to get Kofi and his elder sister who happens to be his next of kin to agree on maintenance terms for the child failed. The case was therefore sent to the Family Tribunal. The Tribunal ordered and ensured that Kofi named the child. The naming ceremony was done at the premises of the court. After that the court accepted a request from Kofi's sister to maintain the child until Kofi found himself a job.

Box 2: Family Tribunal Maintenance Order 2

After all efforts through mediation to get Mr A to agree to maintain his three children had failed, the matter was referred to the Family Tribunal. After hearing the case, the Family Tribunal made the following orders: That Mr A should pay the school fees of his three children; That Mr A should pay a monthly allowance of 200,000 cedis for the maintenance of the children; That Mr A should register the children at the clinic in his workplace so they could attend as and when it was necessary; and that Mr A's wife should allow the children to spend vacations with their father.

4.8 PROBLEMS WITH THE ENFORCEMENT OF COURT ORDERS ON CHILD MAINTENANCE

4.8.1 Client's Inability to Afford Costs Involved in Enforcement of Court Orders

One of the most significant problems hindering the enforcement of court orders on child maintenance is the inability of most clients of FIDA-Ghana to pay the costs involved in the process of enforcement of such orders. In many cases, clients are unable to pay court bailiffs for the service of hearing notices. In cases where Respondents fail to attend court, many clients are unable to afford the costs involved in getting the court to issue a subpoena to compel the Respondent to attend court for the case to continue. Many women tend to abandon the case when they are faced with such formidable financial obstacles and frustrations.

4.8.2 Process of Enforcement of Court Orders on Maintenance

To a large extent, parties against whom a maintenance order has been made tend to make an effort to comply for fear of being held in contempt of court. In some instances however, compliance is not consistent and in such cases, the applicant, if she can afford to pay the costs involved, may opt to go back to court by way of a summons to show cause, to comply or be imprisoned. In cases where a bench warrant is issued and the defaulting party is taken into custody until he complies, it is the applicant who is responsible for the upkeep of the defaulting party in the period when he is in custody. This adds to the costs of the applicant and serves to deter many women from pursuing the case further. Experience also has shown that in many cases, women are reluctant to go this far in compelling their partners or spouses to contribute to the maintenance of their children. Women tend to be reluctant because of the repercussions from relatives of the men as well as their own relatives, who tend to berate such women for getting the father of their children arrested and humiliated on account of the maintenance of their children.

4.8.3 Attaching of Salaries of Defendants

As noted earlier, the Children's Act provides that if the person against whom the maintenance order is sought is employed, the Tribunal has power to make an order, which will require his employers to deduct the amount of maintenance from his or her salary and pay it into court so that the applicant can collect it or else pay it directly to the applicant. If the parent is not in employment but has property, that property can be taken by an order of the Tribunal and sold or managed to get periodic money to cover the maintenance order.

In practice however, this remedy stipulated in the law can only be invoked and applied where the person against whom the maintenance order is sought is employed within the formal sector. It must be noted however, that an overwhelming majority of the clients as well as the invitees or respondents that FIDA-Ghana deals with tend to be self-employed persons in the informal sector. With self-employed persons forming the bulk of the persons against whom maintenance orders are sought, this remedy is of no practical value. Experience at the Centres shows that many of such invitees tend to under-declare their income and often there is hardly any evidence in the form of filed tax returns or documentation from which their income levels can be determined.

4.8.4 Sale or Management of Properties of Defendants to Cover Maintenance Order

The Children's Act also makes provision for the taking over of the property of a person against whom a maintenance order is sought and the sale or management of such property to fulfil an order made by the Court. Again this method of enforcement tends to be inapplicable to a majority of the persons against whom child maintenance orders are sought at the Legal Aid Centres. The majority of such persons tend to be indigent, unemployed or persons in the low-income group, who often default because of their low financial status. Very few, if any of such persons are likely to own property which may be taken over and sold to fulfil such maintenance orders. Further, considering the amount usually awarded by the courts for maintenance, it would only be in rare cases, that the arrears of maintenance would so accumulate as to warrant the sale of properties to fulfil such orders. Thus it would seem that even though these remedies exist in the law, they tend to be of very little practical value in the cases handled by the Legal Aid Centres.

4.8.5 Fines and Imprisonment

In cases of persistent non-compliance with the maintenance order the Act prescribes a penalty of a fine of one million cedis or imprisonment for not more than six months or both. Again, most women are not ready to allow the law to take its course, if it will result in the fathers of their children being imprisoned. As noted earlier, in most cases, non-compliance with maintenance orders is as a result of poor financial position of the person involved, especially where such persons are unemployed. In such cases, the futility of having such persons arrested is obvious and it is unlikely that the woman would go through the process and incur the displeasure of her family and that of the man in an exercise, which is not likely to yield any money for the upkeep of her children.

CHAPTER FIVE

ANALYSIS OF CHILD MAINTENANCE CASES HANDLED BY FIDA-GHANA'S LEGAL AID CENTRE IN KUMASI BETWEEN 1999 AND 2001

5.0 INTRODUCTION

This chapter presents the results of the analysis of the data extracted from the records of the Legal Aid Centre of FIDA-Ghana in Kumasi on child maintenance cases handled between 1999 and 2001. Details of the gender and backgrounds of applicants, the nature of claims submitted, and the kinds of settlements made at the Centres have been comprehensively analysed to establish the relevant trends. The chapter also presents relevant information on problems with the enforcement of settlements, the kinds of cases referred to the courts, the kinds of orders made by the courts and problems encountered in the enforcement of such court orders.

5.1 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY FIDA-GHANA'S LEGAL AID CENTRE, KUMASI (1999)

The examination of the records of FIDA-Ghana's Legal Aid Centre in Kumasi showed that in the 3-year period under review the total number of child maintenance cases handled was 556. For purposes of this section, a total of 312 of the child maintenance cases handled were examined in detail. 106, 135 and 71 child maintenance cases were examined in detail out of the total number of child maintenance cases handled by the Centre in 1999, 2000 and 2001 respectively. The results of the analysis are presented in this section.

As was expected an overwhelming majority of the clients who submitted child maintenance claims to the Legal Aid Centre in Kumasi were found to be resident in Kumasi. In the 3-year period under review, the records showed that about 80% of women who presented child maintenance claims to the Centre were resident in Kumasi, while 19% of them were resident in other parts of the Ashanti Region. Only about 2% of the clients were found to be resident outside the Ashanti Region.

5.1.1 Gender of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi 1999

The records showed that of the 106 records on child maintenance cases examined, all but one of the cases had been reported by females. This showed that the trend observed with regard to the cases presented to the Centre in Accra was the same in Kumasi. The results also demonstrate that to a large extent women tend to bear a disproportionately great burden for the mainte-

nance of children and are therefore the ones in greatest need of legal assistance.

5.1.2 Age of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 1999

An overview of the ages of the women who reported child maintenance cases to the Legal Aid Centre in Kumasi in 1999 showed that about 82% of them were aged between 21 and 40 years. Clients aged over 40 years constituted about 12% of the total. The table below shows the age distribution of the clients in the child maintenance cases examined for the year 1999.

Table 5.1: Age of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi (1999)

| Age | Frequency | Percentage |
|--------------|------------|--------------|
| 10 – 20 | 6 | 5.7 |
| 21 – 30 | 33 | 31.2 |
| 31 – 40 | 54 | 50.9 |
| 41 – 50 | 10 | 9.4 |
| 51 – 60 | 3 | 2.8 |
| 61 and above | 0 | 0.0 |
| Total | 106 | 100.0 |

Source: FIDA, Kumasi (2003)

5.1.3 Number of Children of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 1999

A review of the 106 records of child maintenance cases examined for 1999 showed that about 86% of the women who reported child maintenance cases to the Centre in Kumasi had up to three children. About 10.3% of the women were found to have more than three children. The table below provides an overview of the number of children of the 106 clients whose records were examined.

Table 5.2: Number of Children OF clients in Child Maintenance Cases, FIDA-Kumasi (1999)

| Number of children | Frequency | Percentage |
|--------------------|-----------|------------|
| Expecting | 0 | 0.0 |
| None | 3 | 2.8 |
| One | 52 | 49.1 |
| Two | 24 | 22.6 |

| | | |
|--------------|------------|--------------|
| Three | 15 | 14.2 |
| Four | 7 | 6.6 |
| Five | 3 | 2.8 |
| Six and more | 2 | 1.9 |
| Total | 106 | 100.0 |

Source: FIDA, Kumasi (2003)

5.1.4 Occupations of Clients in Child Maintenance Cases Reported to the Legal Aid Centre, Kumasi, 1999

The records examined showed that about 51% of the clients were self-employed women from the informal sector, majority of who were traders. Others were seamstresses, farmers, hairdressers etc. As shown in the table below 27.4% of the clients were unemployed, while 3.8% were students. Overall, about 70% of the clients were gainfully employed and were therefore contributing to the maintenance of the children. In many cases, what the women were earning was not enough to enable them assume sole responsibility for the maintenance of the child or children in respect of whom the claim was being made. The table below provides the details of the occupations of the 106 clients whose cases were examined in detail.

Table 5.3: Occupation of clients, Child Maintenance Cases, FIDA-Kumasi (1999)

| Occupation | Frequency | Percentage |
|-------------------|------------------|-------------------|
| Farmer | 7 | 6.6 |
| Hair dresser | 4 | 3.8 |
| Seamstress | 4 | 3.8 |
| Student | 4 | 3.8 |
| Teacher | 8 | 7.5 |
| Trader | 39 | 36.7 |
| Unemployed | 29 | 27.4 |
| Others | 11 | 10.4 |
| Total | 106 | 100.0 |

Source: FIDA, Kumasi (2003)

5.1.5 Marital Status of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi 1999

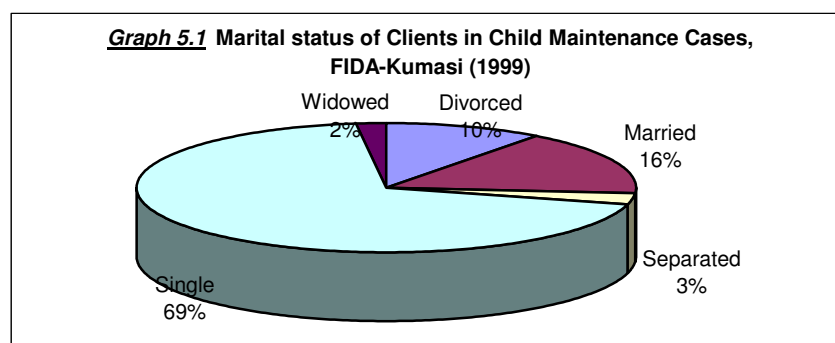
The trends observed with regard to the marital status of clients in child maintenance cases presented to the Legal Aid Centre in Accra were also observed at the Kumasi Centre. An overwhelming majority of the women who reported child maintenance cases were found to be single. As shown in the

table below, about 70% of the clients were single, 16% of them were married, and 13.2% of the clients were either divorced or separated. The table below provides an overview of the marital status of the 106 clients whose records were examined for this purpose.

Table 5.4: Marital status of clients in Child Maintenance Cases, FIDA-Kumasi (1999)

| Marital status | Frequency | Percentage |
|----------------|------------|--------------|
| Divorced | 11 | 10.4 |
| Married | 17 | 16.0 |
| Separated | 3 | 2.8 |
| Single | 73 | 68.9 |
| Widowed | 2 | 1.9 |
| Total | 106 | 100.0 |

Source: FIDA, Kumasi (2003)



5.1.6 Outcomes of Child Maintenance Cases Reported to Legal Aid Centre, Kumasi, 1999

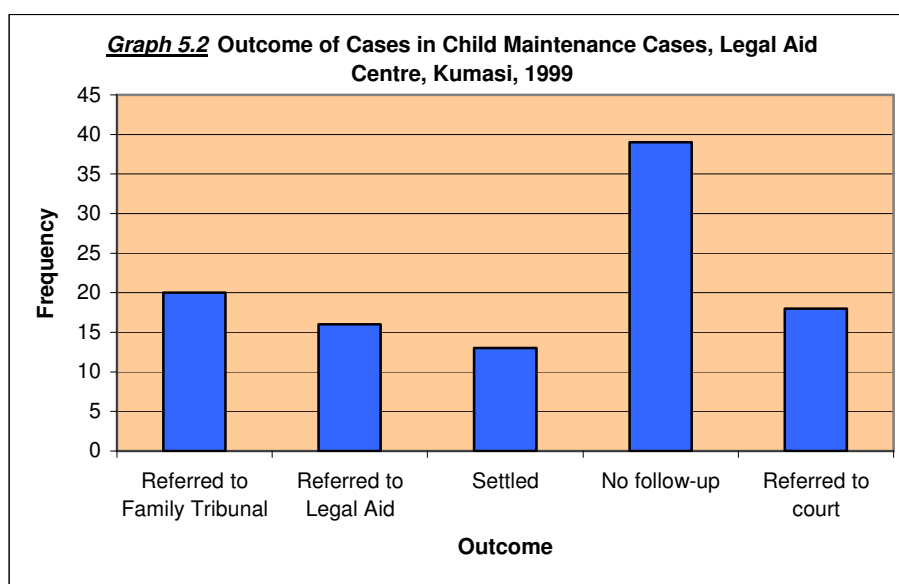
The examination of the outcomes of the 106 child maintenance cases showed that FIDA-Ghana's Legal Aid Centre in Kumasi successfully settled 12.3% of the cases. It is also significant to note that the clients who reported the cases discontinued almost 40% of the cases presented on account of the lack of follow-up. As discussed the reasons for the discontinuation of cases include lack of funds for transportation to and from the Centre, frustration or inability to locate the invitee and pressure and intimidation from family members to drop the case. Almost 19% of the cases reported to the Centre were referred to the Family Tribunal for resolution, while 15% were referred to the Legal Aid Board.

The table below provides an overview of the outcomes of the child maintenance cases examined for 1999.

Table 5.5: Outcome of Cases in Child Maintenance Cases, Legal Aid Centre, Kumasi, 1999

| Outcome | Frequency | Percentage |
|-----------------------------|------------|--------------|
| Referred to Family Tribunal | 20 | 18.9 |
| Referred to Legal Aid | 16 | 15.1 |
| Settled | 13 | 12.3 |
| No follow-up | 39 | 36.7 |
| Referred to court | 18 | 17.0 |
| Total | 106 | 100.0 |

Source: FIDA, Kumasi (2003)



5.2 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY FIDA-GHANA LEGAL AID CENTRE, KUMASI (2000)

Overall, a total of 135 records on child maintenance cases reported to the FIDA-Ghana Legal Aid Centre in Kumasi in the year 2000 were examined. The results are presented below.

5.2.1 Gender of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi 2000

Of the 135 records on child maintenance cases examined, females had reported all but 3 of the cases. Women therefore constituted 97.8% of the total number of clients in child maintenance cases in the year 2000.

5.2.2 Age of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2000

An overview of the ages of the women who reported child maintenance cases to the Legal Aid Centre in Kumasi in 2000 showed that about 78% of them were aged between 21 and 40 years. Clients aged over 40 years constituted about 15% of the total. The table below shows the age distribution of the clients in the child maintenance cases examined for the year 2000.

Table 5.6: Age of clients in Child Maintenance Cases, FIDA-Kumasi (2000)

| Age | Frequency | Percentage |
|--------------|------------|--------------|
| 10 – 20 | 9 | 6.8 |
| 21 – 30 | 52 | 39.1 |
| 31 – 40 | 52 | 39.1 |
| 41 – 50 | 18 | 13.5 |
| 51 – 60 | 2 | 1.5 |
| 61 and above | 0 | 0 |
| Total | 133 | 100.0 |

Source: FIDA, Kumasi (2003)

5.2.3 Number of Children of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2000

The records showed that about 87% of the women who reported child maintenance cases to the Centre in Kumasi in 2000 had up to three children. 10.4% of the women had more than three children. The trend was similar to what was observed in 1999 and at the Legal Aid Centre in Accra for the period under review.

5.2.4 Occupations of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2000

The records on child maintenance cases examined for the year 2000 also showed a significant percentage of the clients were self-employed women in the informal sector. About 60% of the clients were found to be traders, seamstresses, hairdressers, farmers etc. It was also noted that 30.4% of the

women who reported child maintenance cases to the Centre in Kumasi in 2000 were unemployed. Only 3.7% were employed in the formal sector. The table below shows the details of the occupations of the women in the child maintenance cases examined for the year 2000.

Table 5.7: Occupations of clients in Child Maintenance Cases, FIDA-Kumasi (2000)

| Occupation | Frequency | Percentage |
|--------------|------------|--------------|
| Farmer | 10 | 7.4 |
| Hair dresser | 8 | 5.9 |
| Seamstress | 9 | 6.7 |
| Student | 4 | 3.0 |
| Teacher | 5 | 3.7 |
| Trader | 54 | 40.0 |
| Unemployed | 41 | 30.4 |
| Others | 4 | 2.9 |
| Total | 135 | 100.0 |

Source: FIDA, Kumasi (2003)

5.2.5 Marital Status of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2000

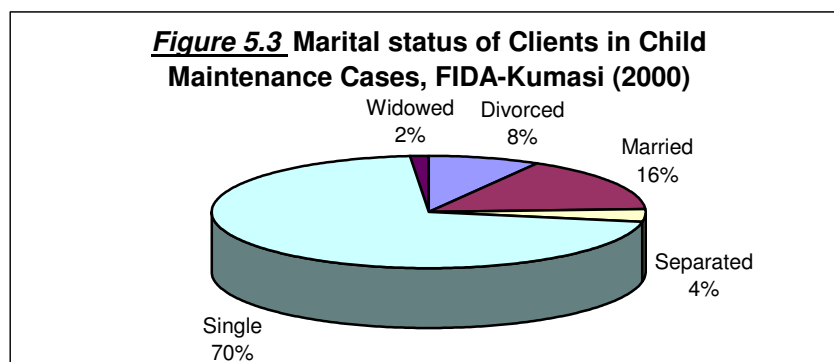
An examination of the records on child maintenance cases reported to the Legal Aid Centre in Kumasi in 2000 showed that 70.6% of the women were single; 15.8% were married and 12% were either divorced or separated from their spouses. The trends observed were quite similar to what was observed from the records of the Legal Aid Centre in Accra.

The table below provides an overview of the marital status of the clients who reported child maintenance cases to the Legal Aid Centre in Kumasi in 2000.

Table 5.8: Marital status of Clients in Child Maintenance Cases, FIDA-Kumasi (2000)

| Marital status | Frequency | Percentage |
|----------------|------------|--------------|
| Divorced | 11 | 8.3 |
| Married | 21 | 15.8 |
| Separated | 5 | 3.8 |
| Single | 94 | 70.6 |
| Widowed | 2 | 1.5 |
| Total | 133 | 100.0 |

Source: FIDA, Kumasi (2003)



5.2.6 Outcomes of Child Maintenance Cases Reported to the Legal Aid Centre, Kumasi, 2000

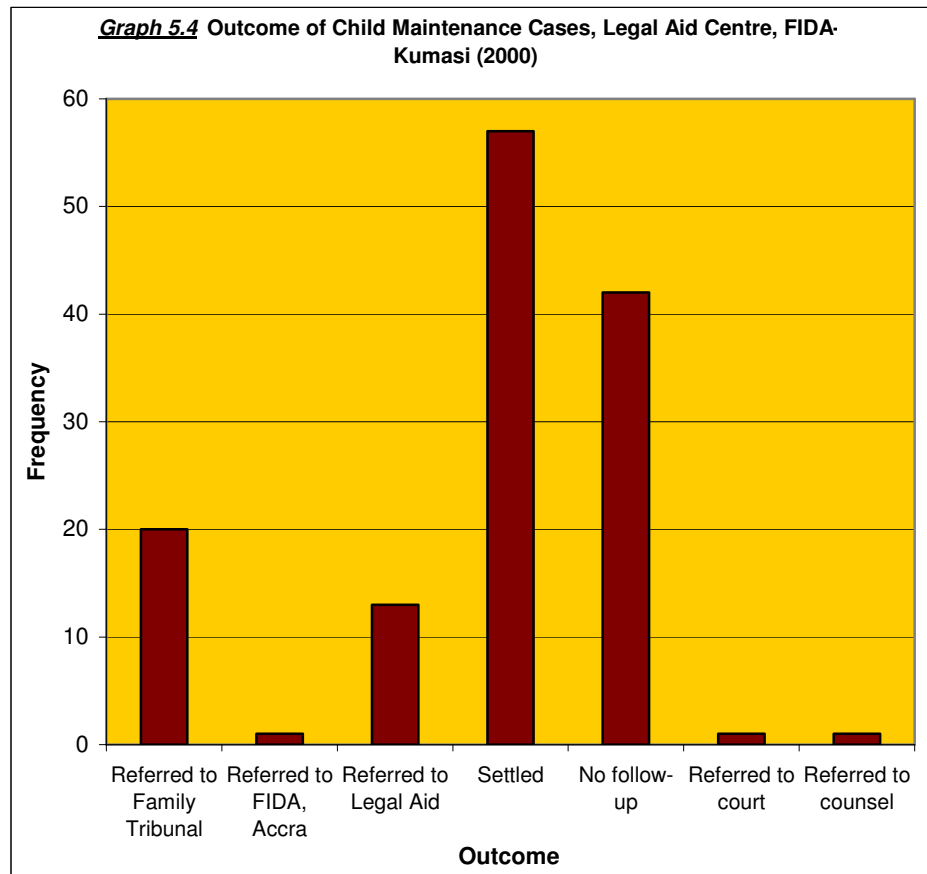
A review of the outcomes of the 135 child maintenance cases examined showed that FIDA-Ghana's Legal Aid Centre in Kumasi successfully settled 42.3% of the cases. The figures also reveal that the clients who reported the cases discontinued 31.2% of the cases presented on account of the lack of follow-up. Almost 15% of the child maintenance cases were referred to the Family Tribunal and 9.6% were referred to the Legal Aid Board.

The table below provides an overview of the outcomes of the child maintenance cases examined for 2000.

Table 5.9: Outcome of Child Maintenance Cases, Legal Aid Centre, FIDA-Kumasi (2000)

| Outcome | Frequency | Percentage |
|-----------------------------|------------|--------------|
| Referred to Family Tribunal | 20 | 14.8 |
| Referred to FIDA, Accra | 1 | 0.7 |
| Referred to Legal Aid | 13 | 9.6 |
| Settled | 57 | 42.3 |
| No follow-up | 42 | 31.2 |
| Referred to court | 1 | 0.7 |
| Referred to counsel | 1 | 0.7 |
| Total | 135 | 100.0 |

Source: FIDA, Kumasi (2003)



5.3 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY FIDA-GHANA LEGAL AID CENTRE (2001)

Overall, a total of 71 records on child maintenance cases reported to the FIDA-Ghana Legal Aid Centre in Kumasi in the year 2001 were examined. The results are presented below.

5.3.1 Gender of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi 2001

Of the 71 records on child maintenance cases examined, females had reported all but one of the cases. Women therefore constituted 98.6% of the total number of clients in child maintenance cases in the year 2001.

5.3.2 Age of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2001

An overview of the ages of the women who reported child maintenance cases to the Legal Aid Centre in Kumasi in 2001 showed that about 75% of them were aged between 21 and 40 years. Clients aged over 40 years constituted 25% of the total, a percentage which was higher than that recorded for 1999 and 2000 at the Kumasi Centre. The table below shows the age distribution of the clients in the child maintenance cases examined for the year 2001.

Table 5.10: Age of clients in Child Maintenance Cases, Legal Aid Centre, FIDA-Kumasi (2001)

| Age | Frequency | Percentage |
|--------------|-----------|--------------|
| 10 – 20 | 0 | 0.0 |
| 21 – 30 | 29 | 40.8 |
| 31 – 40 | 24 | 33.8 |
| 41 – 50 | 14 | 19.8 |
| 51 – 60 | 4 | 5.6 |
| 61 and above | 0 | 0.0 |
| Total | 71 | 100.0 |

Source: FIDA, Kumasi (2003)

5.3.3 Number of Children of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2001

The records showed that 86% of the women who reported child maintenance cases to the Centre in Kumasi in 2001 had up to three children. 14% of the women had more than three children. The trend was quite similar to what was observed in 1999 and 2000 and at the Legal Aid Centre in Accra for the period under review.

5.3.4 Occupations of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2001

A significant percentage of the clients were once again found to be self-employed women in the informal sector. In 2001, about 68% of the clients were found to be traders, seamstresses, hairdressers, farmers etc. The figures showed that about 23% of the women who reported child maintenance cases to the Centre in Kumasi in 2001 were unemployed. Only 4.2% were employed in the formal sector. The table below shows the details of the occupations of the women in the child maintenance cases examined for the year 2001.

Table 5.11: Occupation of clients in Child Maintenance Cases, Legal Aid Centre, FIDA-Kumasi (2001)

| Occupation | Frequency | Percentage |
|--------------|-----------|--------------|
| Farmer | 7 | 9.9 |
| Hair dresser | 3 | 4.2 |
| Seamstress | 4 | 5.6 |
| Student | 0 | 0.0 |
| Teacher | 3 | 4.2 |
| Trader | 34 | 47.9 |
| Unemployed | 16 | 22.6 |
| Others | 4 | 5.6 |
| Total | 71 | 100.0 |

Source: FIDA, Kumasi (2003)

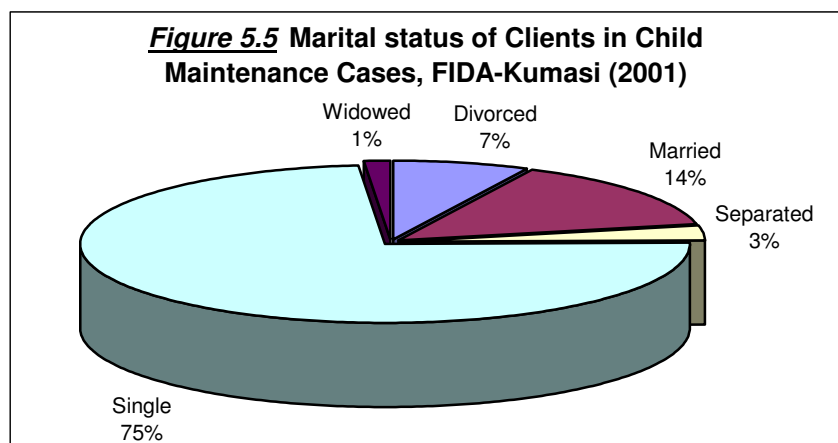
5.3.5 Marital Status of Clients in Child Maintenance Cases, Legal Aid Centre, Kumasi, 2001

The records of child maintenance cases reported in 2001, which were examined, showed that overall; almost 74% of the women who presented such cases were single. About 14.5% of the clients were married, while 10.2% were either divorced or separated from their spouses. The table below provides the details of the marital status of clients for the year.

Table 5.12: Marital status of clients in Child Maintenance Cases, Legal Aid Centre, Kumasi (2001)

| Marital status | Frequency | Percentage |
|----------------|-----------|--------------|
| Divorced | 5 | 7.3 |
| Married | 10 | 14.5 |
| Separated | 2 | 2.9 |
| Single | 51 | 73.9 |
| Widowed | 1 | 1.4 |
| Total | 69 | 100.0 |

Source: FIDA, Kumasi (2003)



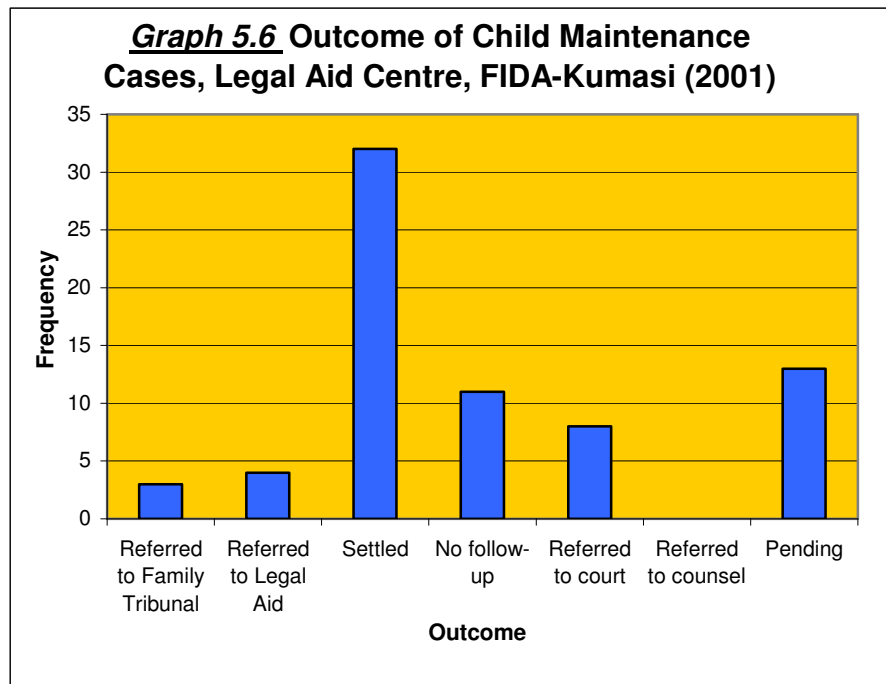
5.3.6 Outcomes of Child Maintenance Case Reported to the Legal Aid Centre, Kumasi in 2001

The figures showed that of the 71 child maintenance cases examined, FIDA-Ghana's Legal Aid Centre in Kumasi successfully settled 45% of the cases. It was noted that the clients who reported the cases discontinued 15.5% of the cases presented on account of the lack of follow-up. 11% of the child maintenance cases were referred to the courts and 4.2% were referred to the Family Tribunal. The table below provides an overview of the outcomes of the child maintenance cases examined for 2001.

Table 5.13: Outcome of Child Maintenance cases, Legal Aid Centre, Kumasi (2001)

| Outcome | Frequency | Percentage |
|-----------------------------|-----------|--------------|
| Referred to Family Tribunal | 3 | 4.2 |
| Referred to Legal Aid | 4 | 5.6 |
| Settled | 32 | 45.1 |
| No follow-up | 11 | 15.5 |
| Referred to court | 8 | 11.3 |
| Referred to counsel | 0 | 0.0 |
| Pending | 13 | 18.3 |
| Total | 71 | 100.0 |

Source: FIDA, Kumasi (2003)



The review of child maintenance cases from the Legal Aid Centre in Kumasi generally revealed similar trends as those observed at the Legal Aid Centre in Accra. The statistics shows that the Centre recorded a reasonably high rate of settlement of child maintenance cases. However clients who reported the cases discontinued a significant percentage of the cases on account of lack of follow up. As discussed, financial limitations of the clients were largely responsible for this trend. The Legal Aid Centre also referred a number of cases to other agencies including the courts, Family Tribunals and the Legal Aid Board.

CHAPTER SIX

SUMMARY OF RESEARCH FINDINGS AND RECOMMENDATIONS

6.0 GENERAL FINDINGS

The study revealed that there is a rising incidence of failure by parents, mostly men, to maintain their children. FIDA-Ghana, over the three-year period under review has recorded an increasing number of reports on child maintenance by women who are single, married or divorced or separated from their spouses. Child maintenance cases handled by FIDA-Ghana typically involve the failure of a parent, usually a male partner to provide or contribute towards the provision of basic necessities of life for their children. Claims made are often for money for the payment of school fees, medical expenses, feeding, clothing and general upkeep of the children.

In the three-year period under review, almost 100% of the complainants in child maintenance cases were found to be women. This trend clearly confirms the general perception that women tend to bear a disproportionate burden of the maintenance of children, especially where the children are born in non-marital or informal unions or in the event of death of a spouse, divorce or separation. Most of the women who registered complaints in child maintenance cases were women who were left with custody of children born out of non-marital relationships. Some of the clients in child maintenance cases were also women who had been left with custody and sole responsibility of children upon divorce or separation from their spouses. Especially with regard to indigent women and women from low-income groups, this places an intolerable burden on them.

In marital relationships, problems of maintenance were found to arise mainly where there were marital problems between the spouses. In many cases, men refused to maintain their children as a form of punishment for their wives. Many of the claims for child maintenance were therefore found to be coupled with applications for assistance with the solution of marital problems.

A sizeable proportion of the child maintenance cases reviewed were also found to arise within the context of intestate succession. Some of the applicants were women who had been ejected with their children out of their matrimonial homes by relatives of the man upon the death of the man. Very often relatives were reported to have taken over the properties of the man entirely, leaving the surviving spouse and her children with no means of maintaining themselves. This trend shows clearly that there is still formidable resistance to the implementation of the provisions of the Intestate Suc-

cession Law, 1985 (P.N.D.C. Law 111) that was passed to alleviate the positions of widows and children of people who died intestate.

The study noted a general trend of an increasing number of men unwilling to or incapable of maintaining their children. As a result, an increasing number of children are being compelled to discontinue their education in order to engage in petty trading so as to decrease the financial burden on their mothers, and to contribute to the running of the home. Others are forced to stay at home because of the lack of funds to enable them to further their education. This eventually drives them to the streets to fend for themselves. The cumulative effect of this trend is an influx of street children, high crime rates and general social decadence.

The persistent refusal or failure by parents to provide maintenance for children is a gross violation of the rights of the child. Another trend, which has been observed, is a significant increase in the number of women whose husbands have either thrown them out of their marital homes or have threatened to throw them out when they proceed on retirement. This often includes the children as well. With the harsh economic conditions prevailing in the country such men seem to find it expedient to discard women they have been married to for years, in order to rent out the rooms for economic gains.

The study found that most of the cases of default in the maintenance of children and in complying with settlement agreements or maintenance orders stem from the poor financial conditions of the men against whom such orders are given. Others simply refused to maintain their children for a variety of reasons. The practice of multiple fathering and procreation outside marriage accounts significantly for the failure of most men to maintain their children.

6.1 FINDINGS ON ENFORCEMENT PROBLEMS

The greatest challenges faced by FIDA-Ghana in the practice on child maintenance stem from the limitations of the existing enforcement procedures available under the law. The study noted that in the event of non-compliance with the settlement agreements reached at the Legal Aid Centres, FIDA's ability to compel compliance is very limited. Since settlement agreements are essentially voluntary, there are currently no legally backed procedures for the enforcement of such agreements reached out of mediation. Settlement agreements arrived at between the parties upon mediation by FIDA are not legally enforceable as contractual agreements. It is hoped however that the enactment of the Alternative Dispute Resolution Bill will empower FIDA-Ghana to assist clients and invitees to reduce their settle-

Summary of research findings and recommendations

ment agreements into written agreements, which would be legally binding on both parties as advocated by the draft bill.

The study also noted that existing enforcement procedures such as the attaching of the incomes of defaulters by the court are of limited practical value in respect of the majority of persons that FIDA-Ghana deals with. This is because as noted, majority of the persons against whom claims are made tend to be self-employed persons within the informal sector, and it is almost impossible to ascertain the precise level of their incomes, let alone attach their salaries.

One of the most significant problems hindering the enforcement of court orders on child maintenance is the inability of most clients of FIDA-Ghana to pay the costs involved in the process of enforcement of such orders. In many cases, clients are unable to pay court bailiffs for the service of hearing notices. In cases where Respondents fail to attend court, many clients are unable to afford the costs involved in getting the court to issue a subpoena to compel the Respondent to attend court for the case to continue. Many women tend to abandon the case when they are faced with such formidable financial obstacles and frustrations.

To a large extent, parties against whom a maintenance order has been made tend to make an effort to comply for fear of being held in contempt of court. In some instances however, compliance is not consistent and in such cases, the applicant, if she can afford to pay the costs involved, may opt to go back to court by way of a summons to show cause, to comply or be imprisoned. In cases where a bench warrant is issued and the defaulting party is taken into custody until he complies, it is the applicant who is responsible for the upkeep of the defaulting party in the period when he is in custody. This adds to the costs of the applicant and serves to deter many women from pursuing the case further.

Experience also has shown that in many cases, women are reluctant to go this far in compelling their partners or spouses to contribute to the maintenance of their children. Women tend to be reluctant because of the repercussions from relatives of the men as well as their own relatives, who tend to berate such women for getting the father of their children arrested and humiliated on account of the maintenance of their children.

6.2 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY FIDA-GHANA'S LEGAL AID CENTRE, ACCRA (1999-2001)

The following observations were made from the review of the records of the child maintenance cases handled by the Legal Aid Centre in Accra in the period under review (1999-2001):

- In the three-year period under review, about 96% of the clients in child maintenance cases were female.
- Over 80% of the women who reported child maintenance cases to the Legal Aid Centre in Accra were resident in the Greater Accra Region.
- A predominant percentage of the women who reported child maintenance cases to the Centre in Accra were aged between 21 and 40 years. In 1999, 2000 and 2001, 78%, 78% and 80% of the clients respectively were aged between 20 and 40 years. On average between 13 and 15% of the women were aged above 40 years.
- The review showed that on average, between 73 and 85% of the women who presented child maintenance claims to the Centre had up to three children. Women who had more than three children constituted only about 10% of the total number in the 3-year period.
- The analysis showed that in each of the three years under review, the percentage of women clients in child maintenance cases who were gainfully employed ranged between 80% and 85%. This showed that in many cases, even where women were employed, their low earnings made it difficult for them to solely undertake the responsibility of maintenance.
- It was further noted that in each of the three years under review, about 70% of the women who presented child maintenance cases were self-employed women within the informal sector, and were mainly hairdressers, traders, bakers, seamstresses, farmers, restaurant operators etc. Only between 3-5% of the women clients were employed within the formal sector.
- Between 12-17% of the women who reported child maintenance cases in the period were found to be unemployed.
- With regard to the marital status of the women in the child maintenance cases handled by the Legal Aid Centre in Accra, it was noted that in each of the three years studied, an overwhelming percentage of the women were single. The data showed that between 69% and 73% of the women were single. Clients who were married constituted 17% in 1999 and 2001 and 20% in the year 2000. It was fur-

ther noted that between 8% and 10% of the women were divorced or separated from their spouses.

- The rate of settlement of disputes by the Legal Aid Centre in Accra was found to be quite high. The review showed that in the 3-year period, a significantly high percentage of the cases reported to the Centre were successfully settled by mediation.

6.3 SUMMARY OF FINDINGS ON CHILD MAINTENANCE CASES HANDLED BY FIDA-GHANA'S LEGAL AID CENTRE, KUMASI (1999-2001)

The following observations were made with regard to the gender, age, marital status, occupations and number of children of clients who reported child maintenance cases to the Legal Aid Centre in Kumasi in the period under review (1999-2001)

- In the three-year period, over 98% of the persons who reported child maintenance cases to the Centre were female.
- An overwhelming majority of the clients who submitted child maintenance claims to the Legal Aid Centre in Kumasi were found to be resident in Kumasi. In the 3-year period under review, the records showed that about 80% of women who presented child maintenance claims to the Centre were resident in Kumasi, while 19% of them were resident in other parts of the Ashanti Region. Only about 2% of the clients were found to be resident outside the Ashanti Region.
- Between 75% and 82% of the clients who reported child maintenance cases in the 3-year period under review were aged between 21 and 40 years. A relatively smaller percentage of the clients were aged 40 and above.
- It was noted that on average about 86% of the women who presented child maintenance claims to the Centre had up to three children, while women who had more than three children represented only 10% in 1999 and 2000 and 14% in the year 2000.
- With regard to the occupations of the women who reported child maintenance claims, the analysis showed that in each of the three years under review, between 70% and 80% were gainfully employed. Majority of those employed were found to be self-employed women in the informal sector, and were mainly seamstresses, hairdressers, farmers, traders etc. Between 22 and 30% of the total number of clients were found to be unemployed in the years under review.
- The trends with regard to the marital status of the clients in child maintenance cases for the three-year period showed that an over-

whelming proportion of the women who reported such cases were single. This confirms the perception that majority of the maintenance disputes handled by FIDA-Ghana arise from non-marital or informal unions.

- With regard to the outcomes of child maintenance cases handled by the Centre in Kumasi over the three-year period, the data showed in 2000 and 2001, 42% and 45% of the cases were successfully settled in the respective years. The data showed however, that in 1999, the Centre settled only 12% of the cases. It was unclear what accounted for the low rate of settlement for that particular year.

6.4 RECOMMENDATIONS FOR THE IMPROVEMENT OF THE PRACTICE OF CHILD MAINTENANCE IN GHANA

In view of the problems revealed by the study, the following recommendations are made for the improvement of the delivery of child maintenance services by FIDA-Ghana and for the overall enhancement of child maintenance practice in Ghana:

6.4.1 Provision of Financial Assistance to Indigent Clients

It is recommended that FIDA-Ghana be empowered to assist indigent Clients residing outside Accra with some form of financial assistance to cover their transportation costs in order to enable them pursue justice. This situation calls for some form of victims support fund, where contributions from the funds could be used to assist indigent clients so as to enhance their access to FIDA-Ghana's services. This would encourage many women to pursue their cases to its logical conclusion and actually enforce the maintenance rights of children. Lawyers who represent such clients in Court could access the same fund to also cover their transport costs. It is recommended that the Legal Aid Board should be strengthened to take up more legal aid cases, and measures should be put in place to enable the courts grant waivers of filing fees to indigent women and children.

6.4.2 Enactment of Alternative Dispute Resolution Law

The Alternate Dispute Resolution (ADR) process should be institutionalised and the Law passed to enable the courts as well as non-governmental agencies such as FIDA-Ghana and individuals resolve more cases out of court. As compared to litigation, using ADR to resolve dispute has been proved to be less expensive, faster and the agreements last longer whilst relationships are also maintained. In child maintenance cases especially, ADR mechanisms have been found to be more useful and effective as compared to the adversarial process, which often results in the further souring of relations between the parents of the child. It is therefore important that support be

given for training in alternative dispute resolution for all persons involved in mediation on child welfare issues. Parliament must give priority to the enactment of the ADR law to enable FIDA-Ghana adopt the procedures proposed by the Bill, for the enforcement of agreements reached out of mediation. This would greatly enhance the effectiveness of the efforts of FIDA-Ghana in ensuring compliance with settlement agreements arrived at its Legal Aid Centres.

6.4.3 Establishment of Paralegal Aid Service Centres

It is recommended that FIDA- Ghana be supported by its development partners to train more paralegals and in future set up more Paralegal Aid Service Centres in the regions, to be supervised by the FIDA Head Office in Accra. This would help reduce the number of visits by clients residing in the rural areas to Accra, and enhance their access to legal services, while reducing the costs involved. It is also recommended that FIDA-Ghana's legal literacy programmes should be intensified and sustained nationwide through the support of development partners.

6.4.4 Gender Training and Sensitisation for Judiciary

It is proposed that extensive training programmes be instituted for members of the judiciary, especially magistrates and panel members of the family Tribunals, to make them more sensitive to gender and children issues. This calls for sensitisation workshops with members of the judiciary as well as the police service. The views of the judiciary should be solicited on ways of improving the practice of child maintenance, especially the enforcement of maintenance orders.

6.4.5 Review of Enforcement Procedures

It is proposed that the enforcement procedures in the current law be reviewed to make them more relevant to the circumstances of the majority of women who need assistance with child maintenance. It is critical that such women are financially supported to comply with court procedures for the enforcement of court orders when they obtain them. Further, the courts must enforce more strictly the existing enforcement methods such as the attaching of salaries of defaulting parties, where this is possible.

6.4.6 Strengthening of the Social Welfare System

The Social Welfare system should be strengthened as a matter of urgency to play a more effective role in the protection of the rights of children in Ghana. Currently, the Department of Social Welfare is grossly under funded and as a result social workers are unable to provide effective, efficient services to the public in cases of child maintenance and child welfare. Government and policy makers must set up institutions and supporting structures

which can provide refuge for street children and abandoned children. Such children are susceptible to prostitution, unwanted pregnancies, abortion and HIV/AIDS. There is also a strong need for developing indicators and mechanisms for monitoring and ensuring the enforcement of the laws relating to the rights of children.

6.4.7 Economic Empowerment and Education of Women on their Rights

The study showed that poverty and lack of family planning contribute significantly to the lack of maintenance for many children. Women must be empowered through advocacy on their rights and legal literacy programs as well economically. Government must ensure that the poverty alleviation fund is fairly and equally distributed. Poverty reduction programmes must be designed in such a way as to improve the livelihood of parents and provide income-generating opportunities for women and men to ensure better maintenance for children. Women must be given the necessary assistance to enhance their businesses to empower them economically and help them maintain their children. Government must recognise the link between child maintenance and other cultural and socio-economic issues and address them holistically.

6.4.8 Education on Child Maintenance Laws

Intensive educational programmes must be instituted at the community level on child maintenance laws, especially the Children's Act. State institutions such as the NCCE and the Non Formal Educational Department of the Ministry of Education must be supported to assist with education on child maintenance laws. Community based groups should also be support to carry out education on these laws at the grassroots level. FIDA-Ghana could also be supported to embark on the simplification and translation of the provisions of the Children's Act into local languages to enhance and facilitate access of the law.

6.4.9 Support for FIDA-Ghana

FIDA-Ghana must be supported to enable the organisation play an effective role in the area of advocacy, legal literacy and sensitisation programs as well as good governance. The organisation should also be supported to expand its legal aid services to the regions to enhance access for more women. Further financial support would enable FIDA-Ghana enhance its service delivery in child maintenance by attracting more volunteer lawyers by providing better motivation for them.