

**HUMAN RIGHTS AND POVERTY REDUCTION:
EXPLORING THE RELEVANCE OF LEGAL
EMPOWERMENT OF THE POOR IN POVERTY
REDUCTION IN NIGERIA**

By

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ACRONYMS

CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act, 1990
CBO	Community Based Organization
CLE	Clinical Legal Education
CLEP	Committee of Legal Empowerment of the Poor
CSO	Civil Society Organization
DFID	Department for International Development
EFCC	Economic and Financial Crimes Commission
FCT	Federal Capital Territory
HIPC	Heavily Indebted Countries
ICPC	Independent Corrupt Practices Commission
IMF	International Monetary Fund
LEP	Legal Empowerment of The Poor
LGC	Local Government Councils
NEEDS	National Economic Empowerment Development Strategy
NGO	Non-governmental Organization
NYSC	National Youth Service Corps
PRSP	Poverty Reduction Strategy Papers
SMEDAN	Small and Medium Scale Development Agency Nigeria
UBE	Universal Basic Education
WDR	World Development Report

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ABSTRACT

This thesis rests on the premise that legal empowerment of the poor arms communities and individuals with the necessary power needed to challenge oppressive patterns of legal, social, political and economic organization which cause and perpetuate poverty. The thesis focuses on Nigeria a developing country in Africa which is faced with challenging complexities from bad governance, corruption, lack of infrastructure, geographical challenges, obsolete laws, oppressive social and political organization and 70% population living in poverty. With all the daunting complexities and the fact the Nigeria is at the brink of a failed state, this thesis makes a point that legal empowerment must be integrated widely in all aspect of policy and law making, as well as law enforcement and implementation. The thesis proves how relevant and crucial legal empowerment of the poor is in terms of its contribution to creating active participation of the rural communities in advocacy efforts, community organizing, accountability and monitoring of government projects, as well as in creating communities with deep rooted respect for human rights. All these put together ensures active and viable participation in economic life that would inevitably lead to reduction in poverty.

The thesis makes recommendations on how methodologies of legal empowerment can be integrated into various existing institutions such as integrating legal empowerment of the poor into rule of law reform at local court level- that is the Customary and Sharia Courts. It also offers recommendation on integrating legal empowerment of the poor into Legal Aid Council of Nigeria, and advocates for Law Clinic programs and establishment of the institution of paralegals.

INTRODUCTION

Project Title: Human Rights and Poverty Reduction: Exploring the relevance of legal empowerment of the poor in poverty reduction: Focus on a developing country- Nigeria.

This Thesis rests on the premise that legal empowerment of the poor arms communities and individuals with the necessary power needed to challenge oppressive patterns of legal, social, political and economic organization which cause and perpetuate poverty. This is a premise that is quickly gaining international currency, having been endorsed by the Committee of Legal Empowerment of the Poor and other prominent scholars in the field. It has led to arguments supporting a bottom-up approach to issues of development, access to justice and other national policies that greatly impact on the daily lives of those disadvantaged at the grassroots and rural communities.

Nigeria is a country beseeched by corruption, infrastructural collapse, marred electoral processes and abuses of power from the lowest police officer to the highest public officials. The legal aid program has been marred by the above deficiencies in addition to the often proclaimed limited resources. Communities lack the voice and power to utilize resources, run daily life and commerce without undue interference from police and informal organized community watch groups.

There is a pending Legal Aid Bill envisaged to help address legal services to the indigent. However, this bill is not armed to address nor bridge the huge gaps created by law's role in perpetuating poverty. Legal aid at its present stage does not offer strategies that give the communities and individuals' voice, power and access to reforms and policies needed to adjust causes and conditions of poverty.

The Nigerian National Economic Empowerment and Development Strategy (hereafter –NEEDS) has as part of its focus poverty reduction. However, its current course and approach is paternalistic. The policy needs to put as its central theme issues of social justice and concurrently factor in legal empowerment of the poor. Without this, there is a foreseeable widening of the gaps of inequality which will only reinforce the poverty status of the poor.

The central objective would be to find out if, taking into account the Nigerian conditions, diversities and structural challenges, whether legal empowerment can arm the poor enough to make a significant impact on their poverty status? Is legal empowerment irrelevant or will it only serve a secondary purpose? That is to say, in a developing country such as Nigeria facing all issues that might qualify it as a failed state, can we make an argument for legal empowerment of the poor, embracing a bottom-up approach as a necessity to achieving poverty reduction on a national scale?

This thesis emphasizes that legal empowerment of the poor is the missing link without which all poverty strategies and development policies have constantly failed the poor and will continue to fail them. It claims that legal empowerment of the poor is absolutely needed if Nigeria is to make any significant difference on poverty levels in the country.

This thesis will rely on primary and secondary scholarly sources, including case studies and reports on legal empowerment of the poor in developing countries such as Philippines, Bangladesh, South Africa and Sierra Leone. It would also utilize the Nigerian Constitution, Nigerian poverty reduction strategy paper and economic policy and reports of international organizations.

In order to put the concept of legal empowerment of the poor in proper perspective, one must examine the relationship between human rights and poverty reduction. The purpose of looking at poverty is not to analyze what poverty is but to be able to identify the poor, in order to establish how legal empowerment would benefit them. Hence Chapter 1 will highlight definitions of poverty, and look at human rights and poverty linkages and poverty in Nigeria. Importantly, there will be a brief overview on the role of the law in exploitation, land and resource appropriation, and impoverishment of the poor..

The central focus will be on the different dimensions of legal empowerment and its relationship with poverty reduction. Though there has been a recent shift towards bottom-up approach by international agencies, legal empowerment of the poor is still an area yet to be fully explored and supported institutionally by national governments. Most legal empowerment programs are carried out by non-governmental organizations. There will also be further investigation into legal empowerment strategies such as paralegal development, human rights education, public legal education, advocacy and community organizing. There will be a brief review of some case studies of developing countries such as the Philippine, Bangladesh, South Africa and Sierra Leona. This is to broaden the understanding of legal empowerment in practice and show a linkage to community empowerment.

Chapter 2 focuses on Nigeria. Analysis of Nigeria will focus on existing structures, the legal system and elements that perpetuate poverty. In Nigeria, the concept of legal empowerment is understood narrowly. It encompasses pockets of civic education and skills acquisition programs geared towards development. Legal aid and access to justice programs have provided only legal services such as representation to those accused or detained for crimes. There will be a brief introduction to existing structures in Nigeria, its poverty reduction policy (NEEDS) and how

poverty is perpetuated. We will also look at the current challenges such as, legal/illegal taxes, utilization of local government resources, illegal police oppression and other limiting factors at local level. It will be demonstrated how legal empowerment can meet these challenges and in addition offer solutions that contribute to individual and the community's abilities to reduce root causes of poverty.

The Chapter 3 and final chapter will review role of legal empowerment in different sectors within the country that impact on poverty levels, such as the legal system, the Legal Aid Council, specific laws, especially the Land Use Act, policies, other administrative and political issues currently posing challenges to the poor. Finally, we will examine measures that may improve legal empowerment of the poor, how it can be sustained institutionally, and who has a role to play in it. The chapter will also proffer recommendations on systematic institutionalization of legal empowerment into the center of community existence, and on the role of government, NGOs, lawyers, academia and community based organizations.

CHAPTER 1- THEORETICAL FRAMEWORK

In order to fully understand how legal empowerment of the poor could contribute vitally to poverty reduction, one need to see review the concept of poverty and its connection to the law, or investigate if there is any such relationship between the law and poverty.

This chapter is a brief overview of the concept of poverty, its causes and how the international community conceives poverty. It also goes on to review the linkages between human rights and poverty, and the role of law in perpetuating poverty. Finally on the issue of poverty, it discusses poverty in Nigeria, which is the country of focus for the thesis that legal empowerment of the poor can contribute immensely to poverty reduction.

Original approaches adopted in rule of law reform and legal aid assistance had mostly involved capacity building and case management at the judiciary, these have lacked the elements to contribute vitally to poverty reduction. It is my assertion that legal empowerment is vital to poverty reduction in Nigeria. This chapter after looking at the concept of poverty will review the concept of legal empowerment, its strategies, examples and challenges.

1.1 The Concept of Poverty and the Poor

The term poverty has been in international and national discussions for decades and has taken the forefront in developmental issues since the UN declared its Millennium Development Goals. Various civil society organizations and NGOs have made poverty eradication and reduction their theme. Countries have had to develop Poverty Reduction Strategy Papers as conditions for borrowing money from the World Bank and the International Monetary Fund (IMF). As a result of the broad spectrum of stakeholders involved, poverty has been approached from all perspectives possible. Thomas Pogge in his discussion on severe poverty as a human rights

violation emphasized the World Bank bench mark which conceptualizes poverty within the confines of economics, drawing a poverty line at living below \$2 per day¹. Economists such as Nicholas Stern, Jean-Jacques and Halsey Rogers, however, have conceded that poverty is much more than about income levels. They conceptualize poverty in terms of absolute levels of living, defining poor people as those who cannot attain certain elements of living standards and given consumption levels.² They contend that the relationship between growth and income poverty reduction is a complex one with average cross-sectional results concealing very important elements.³

These definitions of poverty have been broadened further by the recent work of World Bank, which also approaches the phenomenon from the perspective of those called the poor. The World Bank deploys a multidimensional, social, approach that defines poverty based on gender, age, culture, and other social and economic factors⁴. For the poor, poverty is not about income but instead about difficulties in securing food and a livelihood caused by dependency, lack of power and lack of voice. The poor tend to attach much more importance to assets than income⁵. This brings to the surface one of the fundamental reasons why much more than assistance or benevolence is needed for poverty reduction because it draws our attention to lack of empowerment as a root cause of why poverty remains and breeds more poverty. I will quote from *Voices of the Poor* some of the definitions and expression that Deepa Narayan et al captures:

¹ Thomas Pogge: *Severe Poverty as a Human Rights Violation: In Freedom from Poverty as a Human Right* (Oxford University Press Inc., New York 2007) page 11

² Nicholas Stern et al, *Growth and Empowerment, Making Development Hapageen- Munich Lectures in Economics* (The MIT Pres Cambridge, Massachusetts London, England 2005) page 45

³ Nicholas Stern et al, Id page48

⁴ Deepa Narayan et al, *Voices of the Poor: Can Anyone Hear Us?* (Oxford University Press Inc., 2000) page 32

⁵ Deepa Narayan et al, Id pages 64-65

For a poor person everything is terrible – illness, humiliation, shame. We are cripples; we are afraid of everything; we depend on everyone. No one needs us. We are like garbage that everyone wants to get rid of. _____ Blind woman from Tiraspol, Moldova 1997.

Poverty is humiliation, the sense of being dependent, and of being forced to accept rudeness, insults, and indifference when we seek help. _____ Latvia 1998

1.2 Human Rights and Poverty Reduction

The international and global discussion amongst development agents and scholars on human rights and poverty reduction has been a sustained one. Analysis of the World Development Report WDR points to an institutional definition of poverty as a lack of opportunity, security, and empowerment⁶. Poverty reduction is seen to promote objectives comparable to those of human rights, such as increased voice, participation and respect, which are some of the underlying purposes of civil and political rights⁷. In establishing this relationship, poverty reduction objectives have been promoted to include non-discrimination, liberty and security of the person, health and education. These overlapping objectives highlight the fact that both poverty reduction and human rights are based on shared norms and values⁸. Not all human rights have a direct relationship with poverty and poverty reduction, but this does not undermine the established linkages. Both human rights and poverty reduction need to be necessarily promoted together to achieve their objectives.

Human rights violations can either be the cause of poverty or an effect of poverty⁹. This is because violations can stem from the conditions of poverty, and in turn render the poor without

⁶ Gobin Nankani et al, *Human Rights and Poverty Reduction Strategies: In Human Rights and Development*, Edited by Philip Alston and Mary Robinson (Oxford University Press Inc., New York, 2005) page 478

⁷ Gobin Nankani et al, *Id* page 479

⁸ Nicholas Stern et al, *Supra*

⁹ Tom Campbell, *Poverty as a Violation of Human Rights: Inhumanity or Injustice?* (2003) available at <http://www.capagee.edu.au/PDF%20files/campbell4.pdf>

voice and power¹⁰. The international community recognizes that poverty is interlinked with human rights violations. The Vienna Declaration of 1993 World Conference on Human Rights observed that the existence of wide spread extreme poverty inhibits the full and effective enjoyment of human rights. Both the Vienna Declaration and World Development Report put poverty eradication as a development goal and a central challenge for human rights in the 21st century¹¹. Legal empowerment is a right-based approach because it uses legal services afforded the poor to help them learn and take actions which further poverty alleviation. More importantly, empowerment, freedom, and poverty alleviation typically equals enforcement of various human rights as rightly put by Stephen Golub.¹²

It is not possible to discuss human rights and poverty reduction without looking at Poverty Reduction Strategy Papers (PRSP). PRSPs were introduced in 1999 as condition of eligibility for debt relief among Heavily Indebted Countries (HIPC) of which Nigeria is one. PRSPs require that development be done through participatory mechanisms that cut across all actors within the country, reinforcing that its strategy is country-driven thereby promoting ownership¹³. PRSPs focus on country ownership in the wake of ineffective former programs directed by the IMF and World Bank. It was hoped that the PRSPs process would yield better policies, improve

¹⁰ Tom Campbell, Id

¹¹ Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Seen Through the Lens of the Millennium Development Goals*, 27 Hum. Rts Q. (2005) 755, at 786; In Henry J. Steiner et al, *International Rights in Context: Law, Politics, Morals 3rd Ed.* (Oxford University Press Inc., New York 2008)

¹² Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Number 41, Democracy and Rule of Law Project, Carnegie Endowment for International Peace (Washington: Carnegie Endowment for International Peace, 2003) page 29

¹³ Frances Stewart and Michael Wang: *Poverty Reduction Strategy Papers within the Human Rights Perspective: In Human Rights and Development*, Edited by Philip Alston and Mary Robinson (Oxford University Press Inc., New York, 2005) page 447

implementation, and empower the poor¹⁴. The question of local ownership is still much debated and current PRSPs have yet to promote poverty reduction especially in sub-Saharan Africa.

This brings to the fore the role of rule of law in development and poverty reduction, a much used rhetoric in development circles. Thomas Carothers in his analysis points out the two controlling axioms that underlines the value of rule of law work: one is that rule of law is necessary for economic development and necessary for democracy.¹⁵ He however criticizes this relationship as tenuous at best with linkages difficult to establish. His criticism is based mostly on lack of empirical evidence and knowledge in the field to establish causation. According to Carothers, this lack of knowledge is deeply rooted in programs which are driven by the West and lacks any local ownership.

The rule of law however is of utmost importance for respect of human rights. “Rule of law has been defined as a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century.”¹⁶

1.3 Role of Law in Perpetuating Poverty

Human development gaps reflect unequal opportunity. The extreme inequalities seen in most societies are perpetuated by structural forces rooted in power structures that deprive people of market opportunity, access to services and more fundamentally deny them a political voice¹⁷.

¹⁴ Frances Stewart and Michael Wang, Id page 448

¹⁵ Thomas Carothers, *Promoting The Rule of Law Abroad; The Problem of Knowledge*, Rule of Law Series, Number 34, Development and Rule of Law Project, Carnegie Endowment for International Peace (Washington: Carnegie Endowment for International Peace, 2003)page 6

¹⁶ Thomas Carothers, ed. *The Rule of Law Revival*, in *Promoting The Rule of Law Abroad: In Search of Knowledge* (Washington: Carnegie Endowment for International Peace, 2006)page 4, available at <http://www.carnegieendowment.org/files/carotherschapter11.pdf>

¹⁷ Henry J. Steiner et al, *International Rights in Context: Law, Politics, Morals* 3rd Ed. (Oxford University Press Inc., New York 2008)page 308-309

These gaps reinforce and recycle extreme poverty and are frequently maintained by the law. The law can either pose as an obstacle to change or a change promoting mechanism¹⁸. When the law is used as a defensive mechanism by powerful elites to protect the power imbalance, it hinders the poor from accessing the government institutions. Most land tenure laws that do not recognize customary title, for example, deny the poor within the rural communities' right to assets and property¹⁹.

Non-enforcement of the law for the protection of the poor builds on the existing status quo. Nevertheless, the law could serve as a powerful tool by making legal rights effective, reversing deprivation of capabilities and opportunities. If the rule of law were to prevail as defined above, inequalities created and maintained by law would be minimized. The major problems highlighted by Thomas and others such as Stephen Golub is that the rule of law reform so far embarks on institutional top-down government approach with a focus on judicial reforms which hardly trickles down to the populace.²⁰ A process that sees training of judges and case management as a crucial and often measurable change in rule of law promotion, considering the elitist social arrangement in most of Africa, this only broadens the gaps between the elites and the poor.

What has been lacking essentially is a bottom-up approach which is often more complex as it will have to deal with all the complex issues that are linked to law, politics, social and administrative issues. This is where a legal empowerment approach is vital as its strategies and

¹⁸ Omar E. Garcia-Bolivar, *"The Law as a Poverty Fighting Instrument: Reflections on Law Development and Empowerment of the Poor"*. Brazilian International Economic and Tax Law Review (2008) available at : http://works.bepress.com/omar_garcia_bolivar/4

¹⁹ Karol C. Boudreaux, *The Legal Empowerment of the Poor: Titling and poverty alleviation in post-apartheid South Africa* 5 Hastings Race & Poverty Law Journal 309 (2008)

²⁰ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Number 41, Democracy and Rule of Law Project, Carnegie Endowment for International Peace(Washington: Carnegie Endowment for International Peace, 2003)

approach are multi-dimensional. Legal empowerment is an important driver of rule of law reform to ensure that the law serves everyone and breaches the gaps of inequalities and power distribution. Why this is the case will be fully analyzed in the next chapter.

1.4 Poverty in Nigeria Context

Poverty in Nigeria is a flood whose flow no dam has been able to stem. According to the Nigerian government, in its poverty strategy policy paper-NEEDS, poverty is as a result of inadequate growth²¹. This lack of growth is made more difficult by the volatility of the oil sector. Other factors contributing to its level include increasing unemployment, problems in the productive sector, widening income inequality, weak governance, social conflict, gender inequality, and intersectoral and environmental issues²². It is unarguable that inadequate growth initiated the downward spiral, but the level of poverty now and its sustenance is attributable to corruption, accountability, and the suppression and poor state of human rights and the rule of law. This argument would be elaborated on in Chapter 3 which deals with elements that perpetuate poverty in Nigeria. Below is a table which tracks the spread and trend in poverty levels from the National Bureau of Statistics Nigeria.

²¹ National Economic Empowerment and Development Strategy NEEDS, *Meeting Everyone Needs* (Nigeria National Planning Commission Abuja 2004) page 30 available at; <http://www.npc.gov.ng/index1.html>

²² National Economic Empowerment and Development Strategy NEEDS, Id

TABLE 1: SPREAD AND TREND IN POVERTY LEVELS²³

Levels	1980	1985	1992	1996	2004
NATIONAL	27.2	46.3	42.7	65.6	54.4
Urban	17.2	37.8	37.5	58.2	43.2
Rural	28.3	51.4	46	69.3	63.3
ZONE					
South- South	13.2	45.7	40.8	58.2	35.1
South East	12.9	30.4	41	53.5	26.7
South West	13.4	38.6	43.1	60.9	43
North Central	32.2	50.8	46	64.7	67
North East	35.6	54.9	54	70.1	72.2
North West	37.7	52.1	36.5	77.2	71.2
SIZE OF HOUSEHOLD					
0-1	0.2	9.7	2.9	13.1	12.6
2 – 4	8.8	19.3	19.5	51.5	39.3
5 – 9	30	50.5	45.4	74.8	57.9
10 – 20	51	71.3	66.1	88.5	73.3
20+	80.9	74.9	93.3	93.6	90.7
EDUCATIONAL LEVEL					
HOUSEHOLD HEAD					
No Education	30.2	51.3	46.4	72.6	68.7
Primary	21.3	40.6	43.3	54.4	48.7
Secondary	7.6	27.2	30.3	52	44.3
Higher than Secondary	24.3	24.2	25.8	49.2	26.3

Source: National Bureau of Statistics

Table 1 above puts 54.4% of Nigerians to be below poverty levels as of 2004. The NEEDS document based on a 1999 population data of 120,000,000 million puts 70% percent of Nigerians living in poverty, compared to the 54.4% national figures in table 1 above and current 2006 Nigerian census population data of 140,003,542 million. These figures indicate a marked trend of increase in poverty rates. Life expectancy was placed at 54years, infant mortality at 77 per 1,000

²³ National Bureau of Statistics, *Facts and Figures 2007* page 9 available at: <http://www.nigerianstat.gov.ng/fact2007.zip>

and maternal mortality at 704 per 100,000 births²⁴. This may look bad on paper, it is even worse in reality. Both rural and urban communities are gradually becoming affected on an even scale.

TABLE 2: DISTRIBUTION OF STATES BY POVERTY HEADCOUNT USING SELF-RATED LINES – 2004

State	Poor	Non -	State	Poor	Non - Poor
Abia	82.46	17.54	Katsina	76.03	23.97
Adamawa	76.18	23.82	Kebbi	73.55	26.45
Akwa	65.36	34.64	Kogi	82.12	17.88
Ibom					
Anambra	71.07	28.93	Kwara	88.68	11.32
Bauchi	88.3	11.7	Lagos	70.24	29.76
Bayelsa	95.57	4.43	Nassarawa	77.48	22.52
Benue	80.85	19.15	Niger	75.28	24.72
Borno	87.81	12.19	Ogun	81.25	18.75
Cross	81.16	18.84	Ondo	80.13	19.87
River					
Delta	84.25	15.75	Osun	65.1	34.9
Ebonyi	87.22	12.78	Oyo	62.53	37.47
Edo	83.09	16.66	Plateau	81.42	18.58
Ekiti	96.53	3.47	Rivers	72.6	27.4
Enugu	80.77	19.23	Sokoto	75.66	24.34
Gombe	73.2	26.8	Taraba	80.47	19.53
Imo	77.78	22.22	Yobe	87.36	12.64
Jigawa	59.44	40.56	Zamfara	76.47	23.53
Kaduna	74.77	25.23	FCT/Abuja	82.32	17.68
Kano	73.11	26.89	Total	78.3	21.7

Source: National Bureau of Statistics

From Table 2 above, there is an average of 22.79% non-poor Nigerians. The above table shows the concentration of the Country's wealth in a few hands, mostly the elite and those wielding political power. This emphasizes the power imbalance attributed to poverty earlier on. As long as the greater population remains un-empowered, my prediction is that we would see more reactionary behaviours in the future as witnessed by the Niger-Delta conflict. Bayelsa State (located in the Niger-Delta region) reports 95.57% poverty and has seen the most prolonged conflict. Bayelsa State is also the base for Nigerian oil wealth. In fact, security situations have

²⁴ National Economic Empowerment and Development Strategy NEEDS, Supra page28

worsened with the current economic downturn coupled with Nigeria's weak governance and increasing poverty. We are witnessing kidnappings on a very high scale and more militant groups and criminal gangs evolving as more and more of the youth feel disenfranchised from participating in both government and economic life of the country. The situation calls for enlightened drastic actions, in which the law and legal empowerment could play a vital role. The important question is which approach is best?

1.5 Concept of Legal Empowerment for the Poor (LEP)

According to Seth Kreisberg "empowerment is a process through which people and/or communities increase their control or mastery of their own lives and the decisions that affect their lives".²⁵ Legal empowerment of the poor (Hereafter LEP) is both a process and a goal²⁶. It is a process via which the poor ensure for themselves both legal protection and advancement of their interest²⁷. It is a goal for the purposes of poverty reduction and development.

Legal empowerment has several components that make it broader than traditional legal aid. They include rights enhancement through law, rights awareness, rights enablement in assisting the poor to use rights, and rights enforcement²⁸. One of the agencies at the forefront of the concept of LEP is the Commission on Legal Empowerment of the Poor (hereafter CLEP²⁹). CLEP define

²⁵ Seth Kreisberg, *Transforming Power: Domination, Empowerment, and Education* (Albany: State University of New York Press, 1992), page 19

²⁶ Omar E. Garcia-Bolivar, *Supra*

²⁷ Report of the Commission on Legal Empowerment of the Poor CLEP, *Making the Law Work for Everyone: Vol.1*, (The Commission of Legal Empowerment of the Poor and UNDP, New York, 2008)page26 available at

<http://www.undp.org/LegalEmpowerment/reports/concept2action.html>

²⁸ Omar E. Garcia-Bolivar, *Supra*

²⁹ The Commission on Legal Empowerment of the poor (CLEP) is an independent international entity established in 2005 with support from a group of developed and industrialized countries – Canada, Denmark, Egypt, Finland, Guatemala, Iceland, India, Norway, Sweden, South Africa, Tanzania and the UK. The Commission was co-chaired by former US Secretary of State Madeliene Albright and renowned Peruvian economist Hernando de Soto with other members who had been in various capacities as former presidents, prime ministers, high Court jurist or

legal empowerment as “the process of systemic change through which the poor and excluded become able to use the law, the legal system and legal services, to protect and advance their rights and interest as citizens and economic actors”.³⁰ The Commission developed an underlying theme that legal exclusion is the causative agent in depriving people the ability to use the law to improve their livelihoods, this leads to advocating for livelihood-oriented rights and legal strategies that directly impact the poor.³¹ The CLEP report has placed great emphasis on legal empowerment and has given it international currency, which would help with restructuring top-down approaches adopted in the rule of law reforms otherwise favoured by the international community.³² However, as much as CLEP portrays its approach as bottom-up, it has been criticized for its extensive dependency on Hernando de Soto’s ideas which are predominantly focused on property rights and legal exclusion while downplaying other legal and non-legal factors that perpetuate poverty, also that its approach is essential top-down dressed as bottom-up and adopts inconsistent assumptions and recommendations.³³

A further clarification of the concept of legal empowerment is that “legal empowerment is the use of legal rights, services, systems, and reforms, by and for the disadvantaged populations and often in combination with other activities, to directly alleviate their poverty, improve their

other top governmental officials. They rounded their work with a report in 2008 called *Making the Law work for Everyone Vol. I& II* available at

<http://www.undp.org/LegalEmpowerment/reports/concept2action.html>

³⁰ Dan Banik, *Rights, Legal Empowerment and Poverty: An Overview of the Issues*. Rights and Legal Empowerment in Eradicating Poverty, (Ashgate Publishing Limited, London 2008) page 13

³¹ Stephen Golub, *The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice*: Hague Journal on Rule of Law, 1: 101-116 (@2009 T. M. C. Asser Press and Contributors): page 101 available at

<http://journals.cambridge.org>

³² Dan Banik, *Supra*

³³ Stephen Golub, *The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice*: *Supra*

influence on government actions and services, or otherwise increase their freedom”.³⁴ Legal services as defined by legal empowerment include such services often neglected such as counseling, mediation, negotiation, non-judicial representation, public interest litigation, enhancing peoples legal knowledge and skills, building poor peoples capacities to engage in advocacy regarding legal, regulatory and policy reforms.

Why do the poor need legal empowerment? They need to be able to make and contribute to change in a system which recycles injustice and poverty. Legal empowerment affords the poor the opportunity and ammunition needed to organize and strengthen their unit for various defensive mechanisms³⁵. People who are suppressed usually arm to defend against such oppression, what we see these days are a jump from such oppression to armed conflict. In Niger-Delta region of Nigeria, legal empowerment could have aided the community as a whole to pursue their interest and hold community leaders, the Nigerian government and multinationals, accountable.

The United Nations has laid down principles that would enable a human right approach to poverty reduction strategies. The Guidelines recognized that empowerment is a precondition to effective participation of the poor³⁶. Such participation transcends normal democratic process of elections; it serves as the only means to redress social injustice.

In some countries, legal aid programs may be working effectively but in most it is truncated, and typically lacks the ingredients to contribute to poverty reduction. Traditional legal aid services do

³⁴ Stephen Golub: *The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice*: Supra page 105

³⁵ Romeo Capulong, *Lawyering for the Poor – a social Responsibility of the Integrated Bar of the Philippine* (21/4/1999) available at: <http://publicinterestlawcenter.org/content/position-pageapers/lawyering-poor-a-social-responsibility-integrated-bar-philipageines>

³⁶ OHCHR Draft Guidelines, *A Human Rights Approach to Poverty Reduction*. Geneva OHCHR (2002), available at <http://www.ohchr.org/english/issues/poverty/docs/povertyE.pdf>

not give to the poor the necessary skills that translate into voice, or promote inclusion into governance and participation³⁷. In fact, legal aid without incorporating the full components of legal empowerment subjugates rather than elevates the poor. Legal empowerment of the poor is a comprehensive framework that addresses access to justice, enforcement of rights, rule of law, and participation³⁸.

Human rights in developing democracies are gradually becoming more and more ‘individual’ rights. Of course, the notion of human rights is theoretically accepted but in practice there is selective enforcement of rights due to power imbalances. These power imbalances can only be overcome when the poor becomes empowered to penetrate the spheres that determine the political and social landscape³⁹. As one of my favourite Professors-Wiktor Osiatynski always says, “those in power are not likely to freely give power and responsibility to the weak and poor unless they make demands”. Without such demands human rights become individual rights for a select few.

One cannot separate LEP from human rights because of the process involved and their expected outcome. Empowerment grants the poor the ability and opportunity to claim and exercise their rights.⁴⁰ When rights are recognized by law and exercised by the poor, they will be able to influence social arrangements and overcome inadequacies created by their poverty. LEP can help ensure that the laws can be in such a way as to produce fundamental values of an equitable

³⁷ Romeo Capulong, *Supra*

³⁸ Report of the Commission on Legal Empowerment of the Poor CLEP, *Supra* page 27

³⁹ Omar E. Garcia-Bolivar, “*The Law as a Poverty Fighting Instrument: Reflections on Law Development and Empowerment of the Poor*”. *Brazilian International Economic and Tax Law Review* (2008) available at : http://works.bepress.com/omar_garcia_bolivar/4

⁴⁰ Arjun Sengupta, *The Political Economy of Legal Empowerment of the Poor; Rights and Legal Empowerment in Eradicating Poverty*, edited by Dan Banik (Ashgate Publishing Limited, London 2008) page 32

society ‘while creating new rights, capacities and opportunities for the poor that give them new power to use law and legal tools to escape poverty and marginalization’.⁴¹

As can be deduced from above, legal empowerment gives voice to the poor. To acquire this voice, the poor needs information and education, as well as organization and representation. It has a more bottom-up focus on rights-based development at local levels that can influence national laws and institutions.⁴² The argument is that LEP affords the poor an opportunity to engage both in economic, development and political activities, it has a broader reach than the narrow rule of law reforms which focus is aligned towards courts reform and law enactment.

LEP can be directly linked to poverty alleviation because it directly addresses income poverty by improving material standards of living. For example, it can empower women to have more control over their lives by protecting rights to work, to participate in political life, and to inherit property.⁴³ As elaborated earlier with review of the broader concept of poverty, income poverty is only but a part of poverty; poverty also includes lack of power and invariably lack of empowerment to utilize opportunities. Viewed from this broader context, poverty reduction or its alleviation would entail building the capacities of the poor through skills training, use of law and legal knowledge to cause change. This means the poor become agents of change; such change is often sustainable and can be truly termed local ownership.

⁴¹ Arjun Sengupta, Id

⁴² Dan Banik; *Rights, Legal Empowerment and Poverty: An Overview of the Issues; Rights and Legal Empowerment in Eradicating Poverty*, edited by Dan Banik (Ashgate Publishing Limited, London 2008) page 14

⁴³ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Number 41, Democracy and Rule of Law Project, Carnegie Endowment for International Peace(Washington: Carnegie Endowment for International Peace, 2003)page 27

In addition, legal empowerment has been linked to enhanced project monitoring, accountability and performance of development projects at rural levels.⁴⁴ The truth is a community with enhanced capacities and understanding can enter into contracts with project implementers to ensure development contracts are truly executed to adequate standards that respect environmental rights and other cultural considerations. If services such as health care and provision of water can be directly monitored by the community, poverty levels would greatly be improved.

1.6 Legal Empowerment Strategies

The object of legal empowerment as noted above is to give voice, freedom and power to the poor. To achieve this, it's already been stated that legal aid services in form of representation lacks what it takes. Legal empowerment strategies must necessarily treat the recipients as partners not as clients and should be creative⁴⁵. The legal empowerment strategies include public interest litigation, human rights education, provision of legal services such as counseling, use of community paralegals and advocacy skills. The strategies are most often incorporated simultaneously for maximum results and local ownership of action. In fact legal empowerment is known to operate best when it integrates various activities such as integrating different kinds of legal services such as public education, community training, paralegal development, negotiation, mediation, legal advice, litigation and law reform to reinforce one another.⁴⁶ Other forms of integration include mainstreaming legal empowerment into development activities such as public health, reproduction health, environmental protection, and use of natural resources.

⁴⁴ Stephen Golub, *Id*

⁴⁵ Lucia E. White, *Facing South: Lawyering for Poor Communities in The Twenty-First Century*. 25 Fordham Urb. L.J 813 (Fordham University School of Law Fordham Urban Law Journal Summer, 1998)

⁴⁶ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, *Supra* page35

Through his personal experience, Garth Meintjes illustrates the issues at stake in relation to empowerment. He distinguishes human rights education as a form of empowerment which can be separated from other types of education because it affords the targeted or affected group the opportunity to acquire the knowledge needed and to enable them at the same time to be critically aware of oppressive patterns of social, political and economic organization⁴⁷. The institution of paralegals faces challenges that mandate careful planning. They are often NGO initiatives, which can be questioned on the grounds of sustainability and ability to scale up, hence there is need for civil society to work in cohesion with the government.

1.6.i Law Clinics and Paralegals

Law clinics and paralegal programs are predominantly better situated to provide legal empowerment for communities. In developing countries paralegals are generally laypersons with specialized legal training. Paralegal training is usually provided by law clinics and NGOs. Paralegals are crucial to communities. They are trained to acquire critical awareness about rights and laws, and the capacity to mobilize their community for change⁴⁸. Through paralegals, the disadvantaged have often been able to deal with power imbalances such as abusive husbands, repressive police and exploitative landlords⁴⁹. In Sierra Leone, with a legal resource draught, TIMAP for Justice trains and deploys paralegals to work in and with rural communities. The TIMAP paralegals not only provide legal services but also educate the communities and schools on fundamental rights⁵⁰.

⁴⁷ Garth Meintjes: *Human Rights Education as Empowerment: Reflections on Pedagogy: In Human Rights Education for the Twenty-First Century* Edited by George J. Andreopoulos and Richard Pierre Claude (University of Pennsylvania Press, Philadelphia, 1997) page 66

⁴⁸ Stephen Golub, *Nonlawyers as Legal Resources for Their Communities*. In Mary McClymont and Stephen Golub, eds., *Many Roads to Justice* (New York: Ford Foundation, 2000)page297

⁴⁹ Stephen Golub, *Nonlawyers as Legal Resources for Their Communities*, Id page 298

⁵⁰ Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, *Yale Journal of International Law* Vol. 31, pages 427-476 (2006) page469

The concept of the paralegal in the field of legal empowerment is different from that seen in the professional legal fields such as legal assistants in law offices. The paralegal in the development field has various dimensions and often fits the context and need of specific societies. We will adopt the concise summary given by Vivek Maru⁵¹ where he states that paralegals are laypeople working directly with the poor or otherwise disadvantaged to address issues of justice and human rights, and who have undergone some sort of substantive training in formal law applications and skills training in mediation, investigation, negotiation, advocacy, organizing and community education.⁵² There are characteristics which set paralegals apart from the legal aid often given to disadvantaged groups. Where legal aid approach is often paternalistic and delivered for clients; paralegals work with and not for the people. They often ‘strive to achieve concrete solutions to people’s justice problems’, they are from or close to the community they serve with a great understanding of cultural issues and traditional justice system, and they are able to combine the use of traditional or informal justice and formal legal system for an equitable solution in conformity with human rights standards.⁵³ Their ability to be flexible in their approach enables more input and outcome for the community they serve. This is equally the case with community organizing to engage the government as with community organizing to monitor the government.⁵⁴ These characteristics make paralegals a veritable tool of legal empowerment as their ultimate goal is to the communities and disadvantaged in areas of their lives often not covered by rule of law/judiciary reforms.

⁵¹ Vivek Maru is Co-Founder and Co-director of TIMAP for Justice; co-supervisor, Fourah Bay College Human Rights Clinic; and Fellow Open Society Justice Initiative. Sierra Leone.

⁵² Vivek Maru, *Supra*

⁵³ Vivek Maru, *Supra*

⁵⁴ Vivek Maru, *Supra*

One of the broad definitions of clinical legal education (CLE) have been any kind of experiential, practical or active training for legal professional to impact such skills as the ability to solve legal problems through use of various dispute resolution mechanisms, providing legal representation, the recognition and resolution of ethical dilemmas, promoting justice, fairness and morality.⁵⁵ The important point to note is that clinical legal education is about the methodologies adopted to impact these professional lawyering skills. In most schools in United States where this concept has a long history, methodologies range from role plays, class-room simulations, externships and use of law clinics where live-clients are involved.⁵⁶ Clinical legal education programs have evolved from a focus on legal education adopting skills training for lawyers to focus more on both legal education and provision of cost effective legal aid and access to justice in developing countries. The various CLE methodologies are what sets it apart, where such methodologies involve use of live-clients, issues of legal empowerment are engaged. These have been of great value to developing countries with often poor legal aid systems due to resource constraints, bad governance, conflict or post-conflict infrastructural decay, few lawyers as the case in Sierra Leone, exclusion of rural population from access to justice and social justice, poverty, centralization and geographical location of formal justice systems.

In Bangladesh, for example, the Madaripur Legal Aid Association (MLAA) had trained village-level paralegals who work with mediation committees to settle intra-village disputes as well as

⁵⁵ **Richard J. Wilson**, *Clinical Legal Education As A Means To Improve Access To Justice In Developing And Newly Democratic Countries*; (A Paper Presented at the Human Rights Seminar of the Human Rights Institute, International Bar Association Berlin, (Germany Oct. 17, 1996)

⁵⁶ Richard J. Wilson, Id

family disputes⁵⁷. Law clinics facilitate the use of law in the pursuit of broad social justice goals⁵⁸. In South Africa, the law clinics aided the struggle against apartheid in fighting violations of fundamental freedoms⁵⁹. Public interest litigation has been a tool used not just within the legal context but also to effect policy and social change. In the Philippines, the Public Interest Law Center uses public interest litigation to promote causes in need of social change. They have been able to empower peasant farmers, who have learned to organize and rely on their own strength, unity and militancy to defend themselves⁶⁰. In Nigeria, during the military dictatorship public interest litigation of gross human rights abuses were the only way to expose such crimes to the international community⁶¹.

Other examples of various forms of legal empowerment strategies include Karnataka Women's Legal Education Program in India. Through its provision of legal training to *sanghas*(collectives) and its emphasis on attitudinal changes, this Program has helped women band together to fight domestic violence and negotiate better wages from local landlords'.⁶² In South Africa, the NGO Black Sash Trust uses professional paralegals to assist citizens in obtaining their legal entitlement from government and detecting illegal conduct by government officials. They also

⁵⁷ Stephen Golub, *From Village to the University: Legal Activism in Bangladesh*; In Mary McClymont and Stephen Golub, eds., *Many Roads to Justice* (New York: Ford Foundation, 2000)page137-138

⁵⁸ Aubrey McCutcheon, *University Legal Ai Clinics: A Growing International Presence with Manifold Benefits*; In Mary McClymont and Stephen Golub, eds., *Many Roads to Justice* (New York: Ford Foundation, 2000)page273

⁵⁹ Aubrey McCutcheon, Id

⁶⁰ Romeo Capulong, *Lawyering for the Poor – a social Responsibility of the Integrated Bar of the Philippines* (21/4/1999), available at: <http://publicinterestlawcenter.org/content/position-papers/lawyering-poor-a-social-responsibility-integrated-bar-philippageines>

⁶¹ Helen Hershkoff & Aubrey McCutcheon, *Public Interest Litigation: An International Perspective*; In Mary McClymont and Stephen Golub, eds., *Many Roads to Justice* (New York: Ford Foundation, 2000)page288

⁶² Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Number 41, Democracy and Rule of Law Project, Carnegie Endowment for International Peace(Washington: Carnegie Endowment for International Peace, 2003)page34

pursue policy advocacy and press for government accountability on national and state levels.⁶³ In Kenya, a recent review of access to justice projects supported by DFID states that paralegal networks are an important component of community empowerment due to their ability to set up local resource-bases of knowledge and facilitate action by local communities in resolving own problems in a sustainable manner.⁶⁴ The review also recognized the importance of informal legal system of local chiefs and the empowering influence of rights awareness as a catalyst for social organization and community driven development.⁶⁵

It can be said that LEP in various regions have brought fundamental change that contributed to emancipation of the poor. Some of the strategies may work slowly while others may be quicker but strategies developed depending on the country-specific context would invariably make an immense contribution. On the other hand, without LEP there is a faster decline in poverty situations.

1.6.ii Major Challenges of Legal Empowerment

It would be ideal for government agencies to integrate legal empowerment strategies, however, from the government perspective, legal empowerment as illustrated above requires some creative planning and certain degree of flexibility that one often finds lacking in governments bedeviled by excessive bureaucracy, corruption, resource and infrastructural inadequacy. Government officials are also rigid to any idea of change and would oppose most innocuous propositions. On the other hand, civil society organizations have been the major drivers of legal empowerment across the globe - often in partnerships with CBOs and Law School programs. NGOs are often

⁶³ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Id page34

⁶⁴ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Id page34

⁶⁵ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Id page35

burdened with issues of funding, sustainability, institutionalization of projects and resources but unlike their government counterparts, they have an upper hand in terms of flexibility and ability to reach the crevices of communities. However NGOs should never be seen to replace government in providing for the basic needs of communities. The fact remains that for legal empowerment objectives to be reached, the pool of human and material resources should be expanded and all sectors must be encouraged to participate in resolving all the complex issues that perpetuate poverty.

Another major challenge to legal empowerment is that it often works outside the confines of formal legal system as strictly defined, this is a major set back because there is a need for policy makers and development agencies to recognize the role of informal legal systems or traditional judicial mechanism play in the day to day life of the poor. This would allow legal empowerment approaches to be more acceptable as means of intervention in both development and poverty circles. In fact legal empowerment should strive to debunk the myths and mysteries that surround the functions of formal legal systems thereby allowing the poor to participate in all aspects of their Country's life.

Stephen Golub captures it accurately when he emphasized that legal empowerment programs should take a long term perspective, both in producing impact and for effects of the impact to deepen. He reiterates the importance of building a public interest Bar through use of law students and exposure of other young professionals in development field to human rights and legal empowerment.⁶⁶

⁶⁶ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Supra page38

Finally legal empowerment facilitators should guide against wholesale transfer of strategies and approaches. All approaches should be country-tailored according to the present challenges and even may differ from region to region within the same country. They should however always prioritize the needs of the poor and disadvantaged and allow civil societies ample room and resources to work. Lawyers are also to allow non-lawyers play a great role, they should be supportive rather than leading in this field.

On that note the next chapter will look at the specific problems that plague Nigeria as a country and the final chapter will offer some theories and recommendations of a way out.

CHAPTER 2 – DEVELOPMENTS IN NIGERIA (COUNTRY OF FOCUS)

This chapter will briefly look into Nigeria's governing structures and legal systems, using the 1999 Nigerian Constitution as its main resource. This requires a brief historical review of the federal system and governance, in order to identify how the federalism currently practiced in Nigeria assists in creating more challenges to the poor especially at the rural level. What follows is a critical review of elements in law that perpetuate poverty, which includes looking at the legal system and access to justice in Nigeria, the laws such as property laws, women inheritance rights and administrative laws or issues which contribute to recycling poverty amongst the poor. In addition, I provide an analysis of legal aid as provided by law through the Legal Aid Council of Nigeria, and how its approach has been undermining instead of empowering the poor.

2.1 Existing Structures In Nigeria

Nigeria is currently a democratic state and operates a federal system of Government. Before independence, Nigeria was under colonial rule and gained independence in 1960 with a federal system that had stronger regional powers rather than a more powerful central government.⁶⁷ The democratic process and development was truncated following the 15 January 1966 military coup, this ushered in a reign of successive military era that spanned a period of about 30years.⁶⁸

The 30 years of military rule led the development process through degrees and edicts, suspension of constitution, centralization of power and weaker regions which were eventually broken up into

⁶⁷ Otiye Igbuzor & Ololade Bamidele, *Contentious Issues in the Review of the 1999 Constitution* (Citizens' Forum for Constitution Reform, Lagos 2002) pages 18-41

⁶⁸ J. Isawa Elaigwu, *Federalism in Nigeria's New Democratic Polity*: Publius, Vol. 32, No. 2, The Global Review of Federalism (Spring, 2002), page. 73-95 (Oxford University Press) available at <http://www.jstor.org/stable/3330946>

States.⁶⁹ The law making processes also were centralized through expansion of the exclusive legislative list. The military era continued to break up the regions into states leading to 36 states with very narrow resource bases.

On 29 May 1999, the military era came to an end with a new constitution called the 1999 constitution. Section 2(2) of the 1999 constitution establishes that Nigeria is a Federation consisting of States and a Federal Capital Territory (FCT). The precise nature of this federalism lies in the devolution of powers and resource allocation, or what is called fiscal federalism. Nigeria is often stated and seen by many to have a 3-tiered government, this is supported by the constitutional provisions in Section 2 stating that there are 768 Local Government Areas and Section 7 mandating States to make laws to enable a democratically elected Local Government Councils. This is somewhat subjective and ill-defined as Section 2 says States and FCT constitute the federation. This has also led to lots of problems with regards to powers of Local Government Councils (LGC) in practice. Under President Olusegun Obasanjo 1999-2007 government there was a lack of adherence to and respect for constitutional provisions with regards to State and local government powers, so in effect though a lot of inadequacies have been pointed out and amendments sought for more state and local government autonomy, there had been little practice of constitutional compliance by the previous democratic government. Some states are yet to make clear laws on the operation, structure, finance and others for local government, one example being Nasarawa State in North-central region.⁷⁰

⁶⁹ Otiye Igbuzor & Ololade Bamidele, *Supra* pages 20-25: and J. Isawa Elaigwu, *Federalism in Nigeria's New Democratic Polity*, *Supra*

⁷⁰ 1999 Nigerian Constitution, Chapter 1, Section 7 –“Government of every State shall..... ensure their existence under a law which provides for establishment, structure, composition, finance and functions of such councils.”

The vertical nature of Nigerian federalism can be seen as undermining and detrimental to development and contributory to poverty in a large scale. For development and resource sharing on the political platform, Nigeria is divided into 6-geopolitical zones, the North-west, North-central, North-east, South-south, South-east and South-west. Moreover, the unreal existence of local councils that appear completely cut off from both State and center ensures a lack of rural participation in policies, builds distrust for the system, and enhances the feeling of abandonment experienced by the rural poor.

2.1.i Legal System of Nigeria

The Nigerian constitution (Section 275-283) provides for three court systems , Federal, State and Local courts. The Federal Courts are made up of the Supreme Court of Nigeria- the apex court with exclusive jurisdiction over appeals from all inferior courts with exception of the magistrate and customary courts.⁷¹ Following in hierarchy is the Court of Appeal and the Federal high courts. Alongside is the State courts consisting of State High Courts, Sharia Court of Appeal, and Customary Court of Appeal. The Local Courts consist of Magistrate courts both having criminal and civil jurisdiction, the Customary Courts, Sharia Courts and Area Courts (customary courts) in the North. There is right of appeal from Customary Courts to Customary Court of Appeal and Sharia Courts to Sharia Court of Appeal in the State, from State level there is right of appeal to Court of Appeal which is a federal Court. For Magistrate Courts, there is a right of appeal to State High Court and subsequently to Court of Appeal and Supreme Court.⁷²

⁷¹ Jadesola Akande, *The Legal Order and the Administration of Federal and State Courts*, Publius, Vol. 21, No. 4, Federalism in Nigeria: Toward Federal Democracy (1991) pages 61-73 (Oxford University Press) available at <http://www.jstor.org/stable/3330311>; J. Isawa Elaigwu and Habu Galadima, *The Shadow of Sharia over Nigerian Federalism*, Publius, Vol. 33, No. 3, The State of American Federalism, (2003) pages 123-144 (Oxford University Press) available at <http://www.jstor.org/stable/3331167> pages 134-136

⁷² Jadesola Akande, Id

The structure of the judiciary provides for an elaborate appeal system from one level to the other reaching the final courts – the Court of Appeal and Supreme Courts which are secular courts⁷³ working with the mandate of the Nigerian Constitution. Each State, however, determines by constitutional mandate its own practice and procedural laws. Apart from this, the State High Courts apply both state and federal laws in cases within their jurisdiction.

2.1.ii Economic and Social Rights in Nigeria

Economic and social rights are provided for elaborately in the Nigerian Constitution under the Fundamentals Objectives and Directive Principles of State Policy.⁷⁴ These rights and provisions are, however, non-justiciable and cannot be claimed as rights. On the other hand, Nigeria has signed and ratified the African Charter on Human and Peoples Right into its domestic law. The African Charter provides expressly for economic and social rights. The only contention would be the supremacy of the Nigerian Constitution over all other laws and Nigeria's international obligations. However that is beyond the scope of this research.

Under the mandate of the Directive Principles, the Nigerian government has instituted several economic and social policies during the last eight years, such policies include: the National Poverty Eradication Programme (NAPEP), National Economic Empowerment Development Strategy (NEEDS), SMEDAN, and the Mass Literacy Programme- under which there is the Universal Basic Education (UBE). The impact of these policies on poverty would be investigated and analyzed later.

⁷³ J. Isawa Elaigwu and Habu Galadima, *The Shadow of Sharia over Nigerian Federalism*, Publius, Vol. 33, No. 3, The State of American Federalism, (2003) pages 123-144 (Oxford University Press) available at <http://www.jstor.org/stable/3331167> page135

⁷⁴ The Nigerian Constitution, Chapter II Sections 13-24

2.2 Elements That Perpetuate Poverty

2.2.i The Federal System vs. Local Government Councils and Double Taxation

Looking at the Nigeria federal structure and ill-defined powers of the LGC, one can easily draw conclusions as to which impacts more on the lives of Nigerian citizens. The communities are located within LGC and are affected first at that level. The fourth schedule of the Nigerian constitution list the functions of the LGCs to include the following:⁷⁵

(a) the consideration and the making of recommendations to a State commission on economic planning or any similar body on –

(i) the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and

(ii) proposals made by the said commission or body;

(b) collection of rates, radio and television licenses;

(c) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;

(d) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;

(e) establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;

(f) construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;

(g) naming of roads and streets and numbering of houses;

(h) provision and maintenance of public conveniences, sewage and refuse disposal;

(i) registration of all births, deaths and marriages;

(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and

(k) control and regulation of -

(i) out-door advertising and hoarding,

⁷⁵ The Nigerian Constitution, Fourth Schedule, Functions of Local Government Council, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm#Schedules>

- (ii) movement and keeping of pets of all description,*
- (iii) shops and kiosks,*
- (iv) restaurants, bakeries and other places for sale of food to the public,*
- (v) laundries, and*
- (vi) licensing, regulation and control of the sale of liquor.*

2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters -

- (a) the provision and maintenance of primary, adult and vocational education;*
- (b) the development of agriculture and natural resources, other than the exploitation of materials*
- (c) the provision and maintenance of health services; and*
- (d) such other functions as may be conferred on a local government council by the House of Assembly of the State.*

One problem associated with the above list is that State governments and State House of Assemblies are yet to enable most LGCs to carry out these functions, either through arbitrary budgetary allocations or exclusion. The LGCs do not participate in budget planning and economic planning for community development. All functions that contribute to the welfare of communities are neglected, whereas functions such as collection of rates, regulation of shops and kiosks are done without monitoring or accountability. This leads to incessant harassment of small enterprises, double taxation, where an individual is made to pay rates for a kiosk, rates for goods, rates for transportation of goods and everything else local authorities can come up with. This impoverishes communities, makes small businesses unprofitable, and causes severe hardships. There is the element of powerlessness as there seems to be no recourse against the LGCs and no channel to petition for accountability. The options and possible solutions would be dealt with in the next chapter under institutional and non-institutional actions.

2.2.ii The Court Structure, Legal System and Access to Justice for the Poor

The Courts closest to the poor at grassroots levels and most frequently used are the customary courts in the South and West and the Sharia Courts in the North. These Courts are run by non-lawyer civil servants who are hardly placed under any monitoring mechanism. The customary Courts have jurisdiction over civil matters that relates to customs such as property/land, marriages, divorces, and inheritance. The Constitution provides for appeals to a higher court but does not provide for a right to free legal representation or reduced cost for the very poor on such matters. What results is that a poor man who has been deprived of his property or land, inheritance or any other possession may be left helpless to pursue justice to the highest level.

The Customary courts are manned by non-lawyers except at the Customary Court of Appeal where lawyers can make formal appearances.⁷⁶ These courts are however within the jurisdictions of states and have different forms of law and custom governing them. They functions simultaneously with significant informal social controls and power structures infused with stereotypes often to the detriment of women. In-fact there are yet unknown any customary or sharia courts at local level to be headed by a woman. The concept itself is so alien that advocates for gender equality do not push such agendas because of the perceived tensions which may arise.

The Customary Courts are also not provided with the capacity to adjudicate at a local level. Their officers are not trained on fundamental human rights, gender rights or gender sensitivity.⁷⁷ Most of the customary adjudication does not take into account women's right. The customary courts are for civil disputes and are mostly concerned in land disputes, debt and family matters. These

⁷⁶ Joy Ezeilo, *Laws and Practices Relating to Women's Inheritance Rights in Nigeria: An Overview* (2007) available at

<http://www.muslimpersonallaw.co.za/inheritancedocs/lawandpractices%20in%20Nigeria.pdf>

⁷⁷ Jadesola Akande, *The Legal Order and the Administration of Federal and State Courts*, *Publius*, Vol. 21, No. 4, *Federalism in Nigeria: Toward Federal Democracy* (1991) page61-73 (Oxford University Press) available at <http://www.jstor.org/stable/3330311>

areas of disputes are fundamental to economic issues often faced by the poor. The greatest advantage of customary Courts continues to be their accessibility to the rural population and the fact that custom is not static, but the non-static nature of custom can be further detrimental if custom is only exposed to elements of oppression. On the other hand, if the custom is constantly exposed to principles of human rights, we would build a culture that furthers respect for human rights and rule of law.

The Sharia Courts in Nigeria before 1999 had jurisdiction over civil matters of personal Islamic law, but on 8 October 1999. As part of a political move and the bubbling agitation of a more autonomous States across the nation, the Zamfara State governor Alhaji Ahmed Sani signed a bill establishing Sharia Courts and another bill on the Sharia Penal code, expanding Sharia to include criminal matters.⁷⁸ What followed is a system of law enforcement that applies mostly to the marginalized poor. State officials, owing to the elitist reign in the North, can never have the courage to apprehend and arrest a rich man for drinking alcohol, committing adultery or fornication. Nor can the Sharia be applied to governors and politicians who steal public wealth and goods. The poor gets amputated for stealing, women and young girls mostly teenagers get flogged as much as 80 strokes of the cane for adultery and fornication. Men are never caught for such crimes whereas women can easily be proven guilty if they get pregnant.

The implementation of an expanded scope of Sharia law to criminal matters apart from touching on fundamental rights and freedoms enhances the state of powerlessness the poor feels and are left to endure. It has further subjugated women to more discrimination and abuse. In this instance, an unmarried pregnant girl is made to endure such indignities and physical abuse by

⁷⁸ J. Isawa Elaigwu and Habu Galadima, *The Shadow of Sharia over Nigerian Federalism: Publius*, Vol. 33, No. 3, *The State of American Federalism*, (2003) page.123-144 (Oxford University Press) Available at <http://www.jstor.org/stable/3331167> page136-138

State authorities while the man is left scot free. The men here are usually far older men who take advantage of the vulnerable young teens.

The Sharia, as been implemented in about 12 northern states, is supposed to implement the zakkat – collection of tax from the rich to benefit the poor. *Zakkat* has never been implemented in a systematic fashion as to benefit the very poor by the same States who condone the harsher treatment been meted out, nor are the rich held or punished for not meeting this obligation. Sharia is also supposed to help eliminate the issue of *almajiri* – these are street children under special Islamic education who are left to fend for themselves through street begging and sometimes stealing.⁷⁹ These children have not been taken care of nor removed from the streets under the sharia system.

In all this, access to justice has been a major challenge both to the Nigerian government and the Non-for-profit organizations. Section 35(2) and 36(6) of the 1999 Nigerian Constitution guarantees rights to personal liberties and fair trial, while Section 46(4) obligates the State to provide financial assistance to indigent citizens in enforcing Chapter IV rights or prosecuting claims. Nigeria is also under an international obligation to provide legal aid because it is a signatory to the International Covenant on Civil and Political Rights, Nigeria has also signed and ratified the African Human Rights Charter. One of the limiting factors to access to justice can be drawn from Section 46 which gives original jurisdiction to the High Court in determining issues of fundamental rights. The High Courts are very formalistic and intimidating; the procedures are very complex for a lay person, making it almost impossible to achieve any success without legal

⁷⁹ J. Isawa Elaigwu and Habu Galadima, *The Shadow of Sharia over Nigerian Federalism*, Publius, Vol. 33, No. 3, The State of American Federalism, (2003) page.123-144 (Oxford University Press) available at http://www.jstor.org/stable/3331167_page141

representation. There are many problems with obtaining legal representation, poverty taken the topmost position on the list.

Another major obstacle to access to justice remains drought of knowledge of the law for the ordinary citizens both educated and illiterates alike. Many of the Nigerian laws are outdated and can be traced back to the colonial period. A National Law Reform Commission was set up to ensure harmonization and abolition of some of these laws. But there is no strategy developed to inform citizens of the laws in Nigeria both criminal, civil and human rights. Even the Constitution is alien to most of the population that are outside the legal profession. There has been agitation and advocacy by various civil societies to have the Nigerian Constitution inculcated as part of educational curriculum both at primary and secondary schools. This has not been backed by any political will whatsoever. So in situations where laws are reformed or new laws are passed exemplified by the 2003 Child Rights Bill, it is still very inaccessible to those it is meant to serve.

There have been pockets of human rights outreaches carried out by few NGOs and Law Clinics in Nigeria yet these efforts have yet to yield any national impact. One should not neglect the fact that such efforts have made individual difference to those concerned. Nigeria has ratified in signed into Law the African Charter on Human Rights but even lawyers are not aware of these. Who should we hold accountable for this drought? The National Assembly should develop adequate mechanisms and oversight functions on how long it should take any Ministry concerned or Institution to disseminate information on any laws passed in the country. There should be an integrated strategy involving the Ministry of Education especially with regards to fundamental rights. This is very important because this drought of knowledge has yielded more

powerlessness and closed down avenues for the poor to utilize opportunity, raised incidents of police molestation, and been taken advantage of by local magistrates. We see situations where police charge money for police bail, institute illegal fines for minor offences and non-offences, insist on bribes to be provided to ensure security for local communities, and so on.

Also this drought of knowledge creates a huge block in administrative procedures, such as when women are frustrated in obtaining letters of administration and other government benefits, for example, shop allocations for market stalls and the like. Agencies that may be able to help the poor need to be known by the poor, such as the Social/child welfare department of the Ministry of Youth and Development that oversees issues of child abuse. Those affected need to know what are the reporting mechanism, how to access these procedures, and all such information should be made available at each local council and an adequate medium provided to reach the necessary agencies. The question remains how can these be effectively achieved?

2.2.iii Legal Aid Council Nigeria and Legal Aid in Nigeria

On the part of the government, there is a Legal Aid Council established by an act of parliament.⁸⁰ The Legal Aid Act⁸¹ as it stands provides legal aid for criminal offences such as murder, manslaughter, malicious and willful wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm, stealing, affray, rape and equivalent offences under the Penal Code in the Northern States of Nigeria. The Legal Aid was extended to include civil claims pertaining to accidents and damages for breach of fundamental human rights. However, there is no legal aid for armed robbery, which constitutes the highest cause of arrest and convictions in Nigeria. Owing to the lack of forensic investigation and the fact that convictions are based

⁸⁰ Legal Aid Act No. 56 of 1976, Chapter 205, Laws of the Federation of Nigeria, 1990 as amended

⁸¹ Legal Aid Act Chapter L9, Volume 8, Laws of the Federation of Nigeria, 2004

mostly on 100% confessions, a lot of the poor has been wrongfully accused, convicted or remanded for armed robbery without legal representation.

Even with the shortcomings of the Act, the Council itself has been faced with immense resource and infrastructural challenges associated with corruption, lack of political will and misplaced priorities. For example the Ministry of Justice spent **N42,000,000** for prison decongestion, working in isolation instead of collaboration with the Legal Aid Council. In 2009 budget, Legal Services got **N10,000,000** while there was allocated **N2,032,000,000** for expanded legal representation for awaiting trial persons.⁸² This project is awarded out as contracts most of the time to non-lawyers who look for lawyers that would do the Job at less than half the price. What have transpired is contractors getting paid 100% for zero release of prisoners. There is no outside monitoring nor any evaluation mechanism, no accountability, and no details of beneficiaries. The whole process shrouded in secrecy and deep in corrupt practices. What is even more amazing is that in both 2007 and 2008 **N8,000,000** was provided for “meals and refreshment”. This goes to the lack of political will and no priority given to human rights issues, the exclusion of the poor, and the indifferent attitude to access to justice by the Nigerian government.

The Legal Aid Council on the other hand has expended many resources in drafting a new Legal Aid Amendment Bill⁸³ that was envisaged to meet various challenges, yet this Bill went through its second reading stage at the parliament and was deferred on 13/5/08. In Nigeria this means the Bill can be pronounced dead, and it stands very little chance of been dusted off the shelves

⁸² Federal Ministry of Finance: *The approved 2009 Budget data*, available at <http://www.fmf.gov.ng/Budget2009Info/2009FBudgetMOJ.pdf>

⁸³ HB 36: Legal Aid Act (Amendment) Bill 2008, Sponsor(s): | 1st Reading: Hon Iorwase H. Hembe & 44 Others
2nd Reading / Debate on General Principles: 29/4/08, Committee(s) & Date of Referral: Order read, deferred 6/5/08; 13/5/08, available at http://www.nassnig.org/house/bills_progression.php?year=2008

except with great advocacy efforts of which is severely lacking with the Legal Aid Council. The new Amendment Bill sought to amend the minimum wage of beneficiaries; establish three legal service units, namely, a criminal litigation unit, a civil litigation unit and a community legal service unit. The Bill also sought to provide assistance to indigent persons with regard to claims against public authorities, private organizations and individuals. More importantly the Bill was going to introduce an Access to Justice Fund different from the General Funds of the Council. The Bill was also seeking a 1% of the oil revenue, this on the surface appears quite sound but was politically suicidal because resource sharing is the most contentious politically volatile area in Nigeria at present.

Even without these problems, Nigeria's population size and poverty percentages (see chapter 1 above) makes it impossible for a single approach to minimize access to justice challenges, especially given the fact that the approaches embarked so far has been paternalistic and an enablement to dependency. A legal empowerment approach that provides access to justice and incorporates public legal education that helps for preventative measures would prove more successful. The current President Umaru Musa Yar'Adua has approved the appointment of a Governing Board for the Nigerian Legal Aid Council. The 16-member board is headed by Justice Oseni Oyewo and includes four representatives of the Nigerian Bar Association as also members.⁸⁴ This we hope will give it the political impetus it needs to turn rhetoric into action.

⁸⁴ New boards for Legal Aid Council, Nigeria image project, Feb 24, 2009, 18:24
http://www.nigeriafirst.org/printer_8687.shtml

2.2.iv Land, Property Law and Poverty in Nigeria

2.2.iv.a) *Land and property;*⁸⁵

Section 1

Subject to the provisions of this act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act

2(a) All land in urban areas shall be under the control and management of the Governor of each state. And

(b) all other land, shall, subject to this Act, be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.

Property rights in Nigeria are governed by the Land Use Act enacted first as the Land Use Decree on 29th March, 1978 by the Military regime. It was later converted to an Act with no changes except to replace the word military government with their civilian counterpart. The Land Use Act imposes in the whole of Nigeria a common and uniform system of land titles and land control. Before 1978, Nigeria had 2 very different systems of Land law, which respected the cultural diversity of the nation. The Northern States had all title of all land vested in the government with no absolute titles held by natives or non-natives, while the Southern regions had a title system based partly on the customary practice and partly on English-type of land law together with Nigerian legislation that provided to a limited extent for registration of title.⁸⁶

In looking at the Land Use Act, I will focus more on customary land titles for lands in the rural areas than land titles in the urban areas. This is because the focus of this thesis is on Nigerian poor with predominant locality in the rural areas.

⁸⁵ Land Use Act Chapter 202 LFN 1990, available at <http://www.nigeria-law.org/Land%20Use%20Act.htm>

⁸⁶ A. N. Allott, *Nigeria Land Use Decree, 1978*, Journal of African Law, Vol. 22, No.2 (Autumn, 1978) (Cambridge University Press on behalf of the School of Oriental and African Studies, page. 136-160: Available at <http://www.jstor.org/stable/745083>

Article 6 (1)

It shall be lawful for a local government in respect of land not in an urban area

To grant customary rights of occupancy to any person or organization for the use of land in the local government areas for agricultural and residential and other purposes

To grant customary right of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned.

Section 36 allows for possession of developed and farm lands under customary law held before the commencement of the Act as if the holder of the land was the holder of a customary right of occupancy issued by the Local Government. This allows landed property which have been held by family groups and communities under customary law to continue existing as such but as an occupancy right instead.

2.2.iv.b) *Impact of Land Use Act to the rural communities*

Under the customary land law, traditional authorities such as the Obas, Onis, local chiefs and heads of families and their principal members exercise plenary and other dispositive rights on behalf of their communities or families. They can demand from tenants rent, tribute or other local services. The customary law is said to thrive and revolve generally around allodial ownership by corporate juristic entities such as family, the village or the community.⁸⁷ Section 1 of the Act removes such authorities and places it at the Local government. The Act has radically dismembered a whole traditional set-up that span ages, one which people trust, know and operate.

⁸⁷ L. K. Agbosu, *Extinction of Customary Tenancy in Nigeria by the Land Use Act: Akinloye v. Ogungbe*: Journal of African Law, Vol. 27, No.2 (autumn, 1983) Cambridge University Press on behalf of the School of Oriental and African Studies page. 188-195, available at <http://www.jstor.org/stable/745581>

Under customary law, customary tenancy allows a person who has the legal capacity permits, grants or is deemed to have granted to another, usually a stranger who is not a member of the land holding group such as the family or community, the right of possession or use of the land for a specified or an indefinite period of time with intention that use of the land shall revert to the grantor at a later period.⁸⁸ Also the Act affects land pledging similarly. Customary tenancy and land pledging is considered the most convenient, simplest, quickest and the cheapest means by which people in the rural communities get access to land or raise capital for land development. The Act has thus rendered it not legally feasible for one to acquire rural farm lands especially for agricultural purposes. It has rather provided a more complicated, cumbersome, burdensome, expensive and time consuming bureaucratic process that depends a lot on discretionary

The discretionary powers of the Land Use Act had enabled the state government and local councils to make allocations based on reasons that tend towards arbitrariness, and allocations are often characterized by nepotism. The former Minister of Federal Capital Territory Mallam Nasir el-Rufai is facing charges of corruption⁸⁹ and abuse of office in relation to missing monies and land allocation to relatives and political elites of which 2034 were revoked by the new Minister.⁹⁰ Also land allocation has been turned to a political tool used to enrich political supporters and to deal with opposition through demolishing or revocation of land titles. For many states, the State government places embargo on land allocation by the local government making it impossible for rural farm land owners to obtain any valid documentation for land

⁸⁸ L. K. Agbosu, Id

⁸⁹ BBC News: Nigeria ex-minister is wanted man (22/12/2008), available at <http://news.bbc.co.uk/2/hi/africa/7796203.stm>

⁹⁰ Thisday Newspapers Nigeria: Modibbo Returns 2000 Revoked Plots (10/03/2008) , available at <http://www.thisdayonline.com/nview.php?id=105488>

property. For example, in Nasarawa State, the 1999-2007 administration did not approve more than 10 land allocations – in a state with about 3 million population. For rural dwellers who apply for such right of occupancy, the process is confusing, bureaucratic, and lengthy - they may not hear any feedback on the process for one year and even then, there is no guarantee on positive feedback.

The local government cannot grant an area of land in excess of 500 hectares if granted for agricultural purposes or 5,000 hectares if granted for grazing purposes (Section6(2)). When this is viewed together with the political considerations involved, it is obvious that the rural farmer who may want to expand his farming capacities to build a more profitable venture would be adversely held back while those who politically support the governor would be more favourably placed. This has other ramifications on poverty such as creating an overwhelming lack of voice in government, a negative impact on pluralism, and the development of a democratic deficit – issues we will not delve into but which are important to note because they too contribute to the disempowerment of the poor.

In Section 47 of the Land Use Act, the right of the governor and local government with regards to giving right of occupancies cannot be questioned before the Courts. Also courts do not have jurisdiction over questions concerning amount or adequacy of any compensation paid or to be paid under the Act. One cannot challenge the government who refuses to grant allocations, or question the unequal distribution amongst population that is impacting negatively on the people. Lack of court jurisdiction means that as such decisions affect the right to food and sustainable development, such rights even if recognized as justiciable rights will not be able to cross the hurdle of jurisdictional consideration. An example is the situation in Niger-Delta where

government acquisition of rural land for oil exploration that deprives sustainable development without adequate compensation cannot be challenged. Also the people of Kwari, the original owners of Abuja the Federal Capital Territory, have been rendered practically without farm lands owing to the development of a federal capital. The compensations given are appalling, they are often relocated and a family given a 2 –or 1-bedroom apartment with no attached land. This does not take into consideration that culturally children expand the family household as they marry and bear children. This in Nigeria demands extra land space as offspring do not migrate out to build family homes.

The issue of rents also has an adverse impact which has not been seriously considered. The annual rent on lands goes from N10 to N1000 per sq meter depending on the location and value attributed to the land. When compared to what a poor farmer would pay if he succeeds to get his land registered, the bill becomes astronomical. How much does he make off the farm to be able to sustain such rent? One can see why they may never bother to get such lands. If as most argue that having the necessary legal instruments would enable to poor get mortgage and loans to build his business, considerations given to the land rents, interest rates on such loans would be highly dissuasive.

2.2.iv.c) Right to dispose Property

Section 21 and 22 make it impossible for alienation of customary right of occupancy either through assignment, mortgage, transfer of possession, sublease or otherwise without the consent of the governor or the Local Government.⁹¹ It is stipulated that the objective of this section was to ensure planned land development consistent with national policy and to achieve the equitable

⁹¹ Nigerian Land Use Act chapter 202, LFN 1990, available at <http://www.nigeria-law.org/land%20Use%20Act.htm>

redistribution of land, to avoid land accumulation or fragmentation.⁹² The Act does not make provisions for regulations on the exercise of discretionary powers that it accords. Nigeria in its present state of corruption has seen situations where lands are located to families of those in power, taken from owners without adequate compensation and the rural poor deprived of farm lands as can be seen in the constant relocation of the Kwari tribe in the Federal Capital Territory Abuja.

Nigeria has its own forms of extralegal economy as recognized by Hernando de Soto in his research of Tanzania's poor. People engage in all forms of land transactions such as security for private loans with drafted contracts and alienation of lands supported by such contracts without obtaining the consent of the government as stated above. These systems pose no undue burden hence are options more likely to be pursued, though they equally give powers to some elements such as loan sharks within the society who constantly exploit the powerless status of the poor. These elements are often outside the scope of State authority as these transactions are not done within the existing system.

2.2.iv.d) Inheritance rights and its part in women as the face of poverty

Inheritance is the concept of entry of living persons into the possession of a dead person's property.⁹³ In Nigeria inheritance laws are so complicated that they are inaccessible to ordinary citizens. This is even more complicated because of the multi-layered legal system in operation which has statutory laws and customary laws often unwritten and non-coded both applying. Situations of interstate inheritance are often especially adverse to women. Different states have

⁹² Gaius Ezejiofor, *The Consent Requirement of the Nigerian Land Use Act*, *Journal of African Law*, Vol. 42, No.1 (1998) page 101-109 Cambridge University Press on behalf of the School of Oriental and African Studies, available at <http://www.jstor.org/stable/7457000>

⁹³ Emiola A, *The Principles of African Customary Law* (Emiola Publishers, Ogbomoso, Nigeria, 1997)page 122

different laws for interstate inheritance if the marriage is contracted under the Marriage Act with regards to movable and immovable property, but most laws make exception to “real property which cannot by customary law be affected by testamentary disposition shall descent in accordance with customary law”.⁹⁴ Existing laws of interstate with regards to those married under the Act are hardly enforced, and guided by judicial discriminatory attitudes which would not even grant letters of Administration to a woman if unaccompanied by a husband or a male son or relative.⁹⁵ Women have been seen as a kind of overseer of husbands’ property and do not have the right to deal or dispose with property without consent of family. The legal interest of women is possessory and not participatory. The leading case by the Supreme Court establishing this customary doctrine was *Nezianya v. Okagbue*⁹⁶ under native law and custom of Onitsha in Eastern part of Nigeria of the Igbo tribes and reinforced 20 years later in *Nzekwu v Nzekwu*^{97,98}

The judiciary has, however, changed its attitude somewhat. In *Mojekwu v. Mojekwu*, it recognized that “any form of societal discrimination on ground of sex, apart from being unconstitutional, is antithetic to a civil society” It found that the Oli-Ekpe custom of Nnewi, where males and not females inherit their father’s property, to constitute discrimination on the basis of sex and to be repugnant to natural justice, equity and good conscience.⁹⁹

Outside the application of both statutory and customary laws is the predominance of lack of awareness of existing mechanisms that may enhance protection of women. The advantage of custom is its ability to evolve and I have seen situations where traditional marriages have been

⁹⁴ Section 49(5b) Administration of Estates Law (1959)

⁹⁵ Joy Ezeilo, Supra page 10

⁹⁶ [1963] All N.L.R 358 S.C

⁹⁷ [1989] 2 Nigerian Weekly Law Report 373

⁹⁸ Joy Ezeilo, Supra page13-14

⁹⁹ [1997] 7 NWLR p283 Judgment of Court of Appeal of Nigeria Enugu, (April 10,1997)

tailored to suit current trends of economy and logistics especially in inter-tribal marriages. Women are often ignorant of what protection a civil marriage under the Marriage Act may offer and the fact it can be done irrespective of whether a customary marriage have taken place. Ignorance coupled with the applications of laws often build the lethargy, disillusionment and disempowerment of women.

2.2.iv.e) Other forms of property

Hernando de Soto said that documents empower because they create property. He emphasized that titles, stocks and share certificates create property; guarantees create capital and credit; identity documents create identities; adjudication decisions create ownership; authorized signatures and fingerprints create levels of authority; statutes create companies; contracts materialize commitments; proxy forms create delegates which come into existence through the creation, signing and filing of appropriate documents.¹⁰⁰ The question is how relevant and to what extent does documentation count as empowerment for the rural poor in Nigeria, if it counts what are the obstacles and can it be overcome?

In Nigeria the registration of companies, business names and incorporated trustees is the sole responsibility of the Corporate Affairs commission (CAC). The CAC was established by the Companies and Allied Matters Act 1990 (CAMA) under exclusive executive list, hence states cannot be responsible for registration and dissolution of companies. The direct users of CAC services are lawyers, chartered accountants and chartered secretaries who receive CAC accreditation. The public are advised to employ their services to access CAC. The CAC has 19

¹⁰⁰ Hernando de Soto, *Are Africans culturally unsuited to property rights and the rule of law? Some reflections based on the Tanzanian Case- In Rights and Legal Empowerment in Eradicating Poverty*, , edited by Dan Banik (Ashgate Publishing Limited, London 2008) page 160

zonal offices in 19 out of 36 states of the federation, the zonal offices are only located at those States capital.

The lowest form of registration a business enterprise may have is business name registration, which does not offer limited liability. The total cost of such a registration in statutory fees amounts to N6,050.00 (50 USD). The advantage of having such registration includes the ability to open bank accounts in one's business name and build a relationship with the bank. Secondly it allows small and medium scale business enterprises to participate in the Nigeria Small and Medium Scale Development Agency SMEDAN micro-credit scheme. The ensuing problems include while the registration fees is cheap, the services of lawyers, chartered accountants and secretaries cost about 250-300 USD. The CAC offices are geographically out of reach for most rural communities. Small enterprises are actually unaware of any advantage such registration may pose; only the ones who may wish to engage in government contracts at their various local government may be compelled to seek out registration. Finally, the liability attached to business attaches to the proprietor and not limited to shares as can be the case with limited liability companies. It would be more empowering to have the registration process devolved to local government under the auspices of CAC so as to maintain the consistency and uniformity of the law. This would have a double effect in contributing to the national income through channeling government taxes appropriately. It would also enable more business to avoid double taxation faced through levies by local government. With a CAC registration, such enterprises would file annual returns directly to CAC. The limitation of those who have direct access to CAC services is a major drawback. Having small enterprise engage the services of a lawyer to effect a registration costing 50USD is excessive and unnecessary. This exposes the rural population to exploitation as they are often illiterate and ill-informed.

In concluding this chapter, it is obvious that Nigeria has established legal systems, with laws governing various parts of economic spheres. The laws have also been in existence for considerable time to allow impact analysis. Some of the problems analyzed above goes from accessibility to inadequacy hence would involve a broad spectrum of solutions. In the next chapter we will look into what legal empowerment of the poor will entail taken into considerations the problems analyzed here.

CHAPTER 3- IMPLEMENTING LEGAL EMPOWERMENT IN NIGERIA

Introduction: As can be summarized from Chapter 1, legal empowerment is how the poor and disadvantaged can use the law, legal system and legal services to protect and advance their rights and interest as citizens and economic actors. The poor need legal empowerment to be able to contribute to change in a system which recycles injustice and poverty, and to participate in actions to redress social injustice and uplift their status to those who can be able to emerge from current poverty situations. Human rights violations are interlinked with poverty, either as causative agents or as effects of poverty, hence having human rights as the underlining value in legal empowerment of the poor should be a guiding principle.

This chapter will explore how legal empowerment can mitigate the issues highlighted in previous chapters through interlinking the general principles of legal empowerment in chapter 1 with the specific context of Nigeria. On that note, we will look at Nigeria's National Economic Empowerment Strategy (NEEDS) because it is the major poverty policy document that aims to

provide economic and social rights guaranteed under Fundamental Objective and Directive Principles of State Policy of the Nigerian Constitution. There will be a brief review of NEEDS, whether it has been able to achieve its objectives, and, if not, why?

A legal empowerment strategy usually would involve an emphasis on strengthening the roles, capacities and power of disadvantaged groups, dealing with issues that can be directly linked to the needs and preferences of the poor, and looking at other forums available for the advancement of the poor's right such as administrative agencies, informal judicial systems, local governments and community organizing.¹⁰¹ The powerful elite have been a stumbling block to most rule of law programmes in their persistence to retain the status quo but as emphasized throughout this thesis, legal empowerment hinges on power redistribution and not just on issues of law. This point was acknowledged in the CLEP report and emphasized more eloquently by Stephen Golub. Strategies that look to sustainable models which can be adopted in Nigeria to ensure strengthened capacities and an empowered poor should be carefully analyzed, and where possible appropriate recommendations offered.

It follows that if legal empowerment addresses the use of law, legal systems and legal services, this chapter will seek to answer such questions as is the law adequate, accessible, available and affordable? One element of legal empowerment is the use of law but where the law is inadequate and contrary to rights of citizens, or have an arbitrary application, there may be a need to advocate for law reform, either in change or total abolition of the law. This chapter will seek to analyze how legal empowerment might be needed to achieve law reform even as law reform itself might be legal empowerment. After which there would follow a final conclusion and

¹⁰¹ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Number 41, Democracy and Rule of Law Project, Carnegie Endowment for International Peace (Washington: Carnegie Endowment for International Peace, 2003) page 26

summary of recommendations for legal empowerment of the poor in Nigeria if there is going to be any hope to reduce the poverty rate and the sense of powerlessness that exists.

3.1 Role of Legal empowerment in Nigerian laws

Law reform is paramount for legal empowerment of the poor. Nigeria has numerous laws that affect the day to day lives of ordinary citizens, as well as regulations that affect their economic activities, but they lack the requisite knowledge about its use. Legal empowerment that would contribute to poverty reduction cannot be limited to law reform but should involve rights education at grassroots. This is a fundamental need.

One should bear in mind that law reform is but an aspect of legal empowerment and may not lead to actual empowerment depending on what political and power dynamics are at play. To put it concisely, the CLEP reports states that “reforming the law on paper is not enough to change how the poor experience it day to day. Even the best laws are mere paper tigers if poor people cannot use the justice system to give them teeth. Even the best regulations do not help the poor if the institutions enforcing them are ineffective, corrupt, or captured by elites.”¹⁰²

I would add to this that the best laws are often useless to the poor if they lack knowledge of their existence or if only law professionals can understand what the law actually says. Having said that, so many laws need to be reformed in Nigeria but an important aspect of legal empowerment is its potential to educate the populace on laws that could adversely affect them, and help community organizing for effective advocacy to law makers and law enforcement agencies.

Without community participation and increase demand, law reform efforts will drag on. While

¹⁰²Report of the Commission on Legal Empowerment of the Poor , *Making the Law Work for Everyone*, Vol.1, (The Commission of Legal Empowerment of the Poor and UNDP, New York, 2008)page32-33 available at <http://www.undp.org/LegalEmpowerment/reports/concept2action.html>

Bills on financial remuneration of political officers and others get immediate passage Bills such as these below remains pending. However there is much hope as Oluwarotimi O. Akeredolu SAN, President Nigerian Bar Association (NBA) had made monitoring the passage of these Bills a primary focus area for the association.¹⁰³

- **Administrations of Criminal Justice Bill;** to harmonize and consolidate the criminal procedure laws, reduce delays and provide for more humane treatment of suspects.
- **Administration of Justice Commission Bill;** to ensure effective supervision and coordination of the administration of justice by all the relevant organs.
- **Community Service Bill,** to encourage the award of non-custodial sentences under the criminal justice system, particularly in minor offences and offences involving young persons.
- **Elimination of Violence in Society Bill** to control violence in society, especially violence directed at vulnerable groups like women and children.
- **Legal Aid Council Act [amendment] Bill,** to expand the powers of the Legal Aid Council to provide better legal assistance to indigent persons in coordination with other service providers.
- **National Human Rights Commission Act (Amendment) Bill,** to improve the autonomy of the National Human Rights Commission and give it more investigative powers.
- **Victims of Crime Remedies Bill,** to improve respect for the rights of victims of crime in the criminal justice system.

¹⁰³ Oluwarotimi O. Akeredolu SAN, President Agenda, *The Road Map—A Better Society through Courage and Consistency*, available at http://www.nigerianbar.org/index.php?option=com_content&task=view&id=8&Itemid=16

- **Legal Practitioners Act {Amendment} Bill**, to improve the standard of legal practice by, among other things, introducing continuing legal education requirements for practitioners.
- **Prison Act (Amendment) Bill**, to provide a more appropriate legal frame work for prisons administration and the treatment of offenders, consistent with constitutional and international standard as well as to make the prisons more corrective institutions.
- **Police Act (Amendment) Bill**, to introduce fundamental changes in the mission and operations of the police and improve its effectiveness in providing security services to communities.
- **Evidence Act Amendment Bill**, to bring evidence law up to date with current developments in IT.
- **The Freedom of Information Bill**, to provide access to government information on government dealings, policy, programs and ensure transparency in governance.
- **A Bill to domesticate The Convention Against Torture CAT**

An example of another law that needs reform to ensure legal empowerment of the poor is the Land Use Act. While there is need to reform the law and strip it of its executive discretionary powers, and allow for recognition of traditional titles as practiced before in the South and Eastern regions of Nigeria, farmers in the rural communities are oblivious of even available opportunities to apply for legal title as it is currently or the consequences of engaging in alienation that may render them economically strangled in the future. Also, calls for reform of Land Use Act have come mostly from legal scholars, who play a great role in the in academic discourse and sometimes in national debate but lack any form of coherent advocacy strategy. If civil society and NGOs working on legal empowerment would educate the poor and others affected on the

negatives of the law and inform them of Nigeria's commitment and promise of its reform as presented in the Social charter of NEEDS, then there may be citizens' advocacy built on such legal empowerment which would result in a change sooner than later. Hence the first option for the Land Use Act is to educate the populace especially the rural farmers, then build their capacity on community organizing and set out advocacy plans that can build up to have a national impact. This is one law that needs to be changed and the active participation of the poor and disadvantaged is crucial.

In addition, education on constitutional rights would go a long way to create empowerment, especially with law enforcement agencies such as police and other state agencies. The current view tends to assume that human rights are not protected in the constitution, but civil and political rights are all entrenched in the Nigerian constitution. What are then the underlying reasons why the police should arrest people without warrants, beat up people at places of detention, and arrest a voluntary witness without bail? The population does not need a lawyer to obtain police bail or release from police detention. Police attitudes can be seen to be different to certain individuals who appear to know their rights. From my personal experiences, encounters with police officers are always accompanied with courteous apologies for inconvenience such as stopping you, but for those disadvantaged and ignorant, they would be detained for reasons ranging from "wandering" to "bearing nonsense in mind". Communities who undergo legal empowerment and are able to organize themselves can function to deter police brutality and intimidation. As Stephen Golub puts it "a vibrant civil society is a valuable, even crucial, resource in promoting police accountability."¹⁰⁴ Having a Nigerian police force that respects human rights and adopts responsible and democratic policing values would be significant in

¹⁰⁴ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, *Supra*

terms of legal empowerment, but, in the meantime, especially in the rural communities, having an empowered and organized community would keep the police in check and ensure proper law enforcement.

3.2 National Economic Empowerment Development Strategy NEEDS and Legal empowerment

NEEDS is described as a response to the challenges of underdevelopment. It has as its main objective the creation of an enabling business environment. It is hoped to empower citizens and reduce poverty through providing an enabling business environment. Paramount is its recognition that the private sector is the engine of economic growth which will create employment opportunities and wealth creation. Invariably one can say that NEEDS is about creating and promoting a market economy for Nigeria. Is there is plausible link between NEEDS and legal empowerment?

First, NEEDS is the only tool that the government of Nigeria relies to help create certain economic rights for its citizens, such as welfare benefits, employment, health, food and shelter. Actually chapter 4 of NEEDS, on a social charter, comes across as a social contract between the government and the citizens in the delivery of economic rights. It promises to deliver basic necessities including potable water, food clothing, shelter, adequate nutrition, basic education, primary health care, productive assets, security and protection from shocks and risks.¹⁰⁵ The NEEDS document also attributes poverty to Nigeria's status as a rent-seeking state. This practice has led to an increase in corruption, combined with poor governance. Human rights violations and lack of rule of law have also compounded the issues of poverty and economic development.

¹⁰⁵ National Economic Empowerment and Development Strategy NEEDS, *Meeting Everyone Needs*, (Nigeria National Planning Commission Abuja 2004) page29, available at; <http://www.npc.gov.ng/index1.html>

It went further to recognize the need to empower people which would demand a human rights approach to development planning that places people at the center of development efforts.

In my view, the NEEDS document and its implementation strategy has so far served rhetorically to establish a semblance of some sort of linkage to issues of legal empowerment. This is so because its implementation to date has focused on a lot of economic issues, which on the surface has merit but which in fact overrides the rights of disadvantaged Nigerians. I also call it rhetoric because there is an obvious disconnect between the causes of poverty and human rights violations in Nigeria. To substantiate this claim, we need to look at its impact so far.

NEEDS has proceeded on the need for economic reform and creating enabling business environment for private sector, limiting the role of the state in business and market. On this note the initial phases of NEEDS focused on privatization projects. The aim was to embrace free trade, financial liberalization and deregulation, with removal of government subsidies from most services and goods presently delivered by government.

However these changes have so far only benefitted the elite, because its implementation has been constrained by corruption, poor management, lack of institutional capacity, a weak regulatory framework and internal opposition by special interest groups.¹⁰⁶ Even with the Public Enterprise Act 1993, the issues of privatization have been very political and arbitrary. There has been loss of jobs without adequate benefits or job creation as envisaged. In the Federal capital territory Abuja, over 33,000 persons lost their jobs in one fell swoop as part of reform process to reduce

¹⁰⁶ Paul Adogamhe, *The Nigerian National Economic Empowerment and Development Strategy (NEEDS): A Critical Assessment*. (A paper delivered at the 48th Annual Convention of International Studies Association, February 28th March, 2007, Chicago, IL USA), available at http://www.allacademic.com/meta/p178798_index.html>

redundancy in government establishment.¹⁰⁷ There was no safety net and the criteria for such selections were very vague.

Deregulation especially of the oil sector only serves to enrich the oil barons. Deregulation of the oil sector has proceeded without refurbishing the national refineries. This in turn means Nigerians buy petroleum products even at higher cost than countries without crude oil. Also deregulation means petroleum products costs more or are not available at rural areas owing to lack of transportation infrastructure. Most economic activities in the country are tied to power generated from petroleum products; this means small businesses at rural level are disenfranchised adversely by this policies.

A part of divesting government of subsidies involved the monetization of civil servants' benefits such as housing benefits instead of housing. This led to a period of immense hardships during the 2006/2007 process. Most civil servants could not afford under the present wage structure to purchase government houses in which they resided owing to the attached value, which was valued according to market dynamics. The process failed to provide a credit scheme convenient for those affected. What ensued were evictions, homelessness, and deaths from health complications such as heart attacks.

There are of-course some positives so far that would enhance legal empowerment, such as establishing anti-corruption agencies. Some of which are the Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices Commission (ICPC). This has made some inroads but is still held back by corruption and lack of transparency, in fact, the agencies crack down on corrupt officials has also brought to the fore the fact that justice and fair trial is

¹⁰⁷ Daily Trust Newspaper July 10th 2006

detected by wealth because the rich gets their rights fully enforced. In fact, the NEEDS document ought to have articulated the need for oversight with regards to consequences of its implementation. Unfortunately, this is State policy and cannot be challenged in court even when it results in adverse consequences that can be categorized as violations of economic and social rights.

It is obvious from the above that the NEEDS implementation so far does not have the concept of legal empowerment as its guiding principle. To do so, it needs to set up a mechanism to educate rural communities about its implementation and allow for some form of accountability. Especially there needs to be an avenue for petitions against its implementation. With such an avenue, communities adversely affected could be educated and organized to petition for changes. This would have the added value of providing a tracking mechanism and data for assessment. A human rights approach is one that on every turn affords the people some form of avenue to appeal oppressive or non-acceptable state conduct.

3.3 Accessibility of laws and legal services

The next issue on legal empowerment for the poor is that of accessibility. Accessibility in legal empowerment would involve the implementation of law, use of legal services, and enabling the legal system to be of benefit to the poor. It has already been considered in chapter 2 how inadequate and unavailable legal aid has been, and how truncated law implementation has underserved the poor and disadvantaged. Here we will consider how different strategies and mediums serve legal empowerment in the context of Nigeria. These will include the use of legal aid, law clinics, use of paralegals, and the civil society legal empowerment projects.

The drought of legal knowledge with regards to the law, its application, and the use of administrative regulations is a huge dilemma which seems to fall through the cracks, with no systematic ways developed by the Nigerian government to tackle it. As illustrated in chapter 2, the problems of knowledge on how to use existing laws and the legal systems contributes even much more than inadequate laws to the perpetuation of poverty. This has led to the growing use of extralegal structures been developed for simple issues even when those are adequately protected under the law. For example, people rely on brutal force and hired thugs to reclaim debts or traditional arbitration and mediation channels that may be more biased to the poor and less influential within the community, especially on issues of contract. A legal empowerment model needs to be developed in a cohesive and sustainable manner to provide public legal education, especially on fundamental rights, administrative laws and the use of administrative systems or other government agencies. People need to understand the legal system and how it is meant to serve them.

Legal aid service providers as discussed in previous chapters have been paternalistic in their approach, with the lawyers working not in partnership with clients to enable them understand how the legal system benefits them. Instead, users often come out of the process overwhelmed and disempowered. Legal aid as provided by the Nigerian Legal Aid should endeavor to incorporate elements of legal empowerment. Such services should educate clients on their rights and entitlements, and on different avenues available for meeting their legal needs. Unfortunately, the scope of the Legal Aid services is mostly focused on legal representation and covers only criminal cases and fundamental rights linked to the criminal law because social and economic rights are not included in the constitutional provisions as fundamental rights.

The importance of Nigerian Legal Aid cannot be underestimated even with its inadequate resources and limited reach as elaborated in chapter 2. The question is what ways can legal empowerment strategies be of use to the agency? A lack of awareness about the services of the Agency and the non-involvement of the population has contributed to the lack of political will exhibited by the Nigerian government. So far advocacy for change and reform of the Agency has been led by international aid agencies. If the outcry for better and proficient legal services and legal representation came from the poor putting pressure on their elected representatives, the Legal Aid Amendment Bill would have made a more successful journey through the parliament. There was total lack of awareness about the Bill. Even staff of the Assembly took 4 weeks to locate a copy for me. This brings us to the crucial element of legal empowerment strategies, the ability and power of the poor to be able to organize and contribute to such reforms.

3.4 Legal empowerment at grassroots and its impact on legal systems, laws and policies

Legal empowerment projects in Nigeria have been localized and thinly spread out. In fact, they have often not been projected as legal empowerment projects but as community empowerment campaigns involving activities that can be linked to legal empowerment. They include empowerment programs for women, often combined with rights and socioeconomic activities to reduce their dependency and poverty. Other NGOs offering legal services have focused a lot on legal representation rather than legal empowerment as broadly construed. This means legal empowerment as a currency is still at its very infancy and so far has had individual and community impact but no national impact. This however does not detract from its immense potential. Drawing from comparative research as illustrated by Stephen Golub, legal empowerment of farmers in Philippines has led to the ability of community associations to understand and participate in local budgeting, and the expertise of legal empowerment NGOs has

figured prominently in developing national regulations and laws.¹⁰⁸ Also, in Senegal, village women were able to mobilize against Female Genital Mutilation, after learning their rights and its health implications, leading to legislation banning the practice.¹⁰⁹ Other examples abound which are of great relevance to the Nigerian society.

Presently, the establishment of law clinics in Nigeria commenced in 2005, led by the Network of University Legal Aid Institutions, Nigeria (NULAI-Nigeria), a project I was personally involved in from its inception. The aim was to use clinical legal education as a tool to reform legal education, and to develop and build future public interest lawyers whose perspective are much more pro-poor and social justice oriented. The law clinics also have a legal service component which is not only focused on legal representation but will offer other legal services such as counseling, writing letters and applications, securing police bail, mediation, conciliation, legal advice and community outreach. They also have a community or street law component which involves rights education of various disadvantaged groups. By 2008, 30% of the undergraduate law faculties have adopted clinical legal education program including the Nigerian Law School. A major component, which is also at its infancy and fundraising stage, is the Street Law Clinics.

Street law is literally defined as “telling people about laws that affect them in everyday life on the street, it helps one understand how the law works and how it can protect one. It also explains what the law expects one to do in certain cases, about different legal problems to watch out for and how to solve such problems”.¹¹⁰ It recognizes that the law affects people in their daily lives and it is therefore necessary for everyone to understand the law. With street law, ordinary people

¹⁰⁸ Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Supra page30

¹⁰⁹ Stephen Golub, Id page31

¹¹⁰ David McQuoid-Mason et al, *Practical law for South Africans* 2nd ed. (Juta Law Co. Ltd. Street Law South Africa, 2004) page5

are able to make day –to-day decisions such as how to prevent legal problems from happening, what they need to know when legal problems arise, what are their rights and in developing their appreciation of the rule of law.

The law clinics have great potential if effectively coordinated to encourage effective citizen participation, to bring about a greater sense of justice, tolerance and fairness, to develop a willingness and an ability to resolve disputes through informal and where necessary formal resolution mechanisms, to provide a practical understanding of law and the legal system; and to effect economic participation of the poor and improve the understanding of the fundamental principles and values underlying a democracy. Another advantage of the law clinics in Nigeria are their locations. Universities are mostly located in the rural communities, so the law clinics are situated where day to day interactions with the poor and disadvantaged population are guaranteed.

3.5 Legal empowerment and use of administrative agencies

An example of administrative regulation that impacts adversely on the poor can be seen in chapter 3 with the Corporate Affairs Commission (CAC). Registration of business names and companies is almost outside the reach of the poor. There are two approaches to meeting the needs of the poor in this regard. First, such administrative agencies should be accessible to the poor. In the Nigerian context this would require geographical accessibility as most communities are actually cut of the very life of the nation. Second, accessibility with regards to persons who can access such services should be configured to accommodate the illiterate and poor. Regulation tends to be exclusionary as the CAC further disempowers poor people and hits at the core of

economic participation. This would be a good ground to introduce the concept of paralegals, a concept which is alien to Nigeria.

Paralegals are lay-persons working directly with the poor or otherwise disadvantaged persons to address issues of justice and human rights, and who have undergone some sort of substantive training in formal law applications and skills training in mediation, investigation, negotiation, advocacy, organizing and community education.¹¹¹ If the Institution of paralegals is introduced, paralegals could be the bridge between the poor and administrative agencies in relation to such matters such as organizing implementation of government benefits and compensations for rural communities, business name registration, land registration or application for allocation, and other forms of applications needed to ease the burden of government bureaucracy. They would also serve as a medium to various agencies created to serve the poor but have so far been inaccessible.

There is however a major challenge to establishing the institution of paralegals in Nigeria. The question remains whether it should be a professional venture where training is provided and an officially recognized diploma awarded. In that case how would their role conflict with role of lawyers in matters of legal representation? Other problems include funding matters: would paralegals be free to charge for services or would they be paid by government. Issues of funding are crucial because if they are allowed to charge for services, one would expect their rates to be fairly high, in which case the situation would revert to status quo- unaffordable legal services. On the other hand if they are integrated as government staff, issues of accountability, fairness and transparency comes to play. Considering the present state of bad governance and corruption,

¹¹¹ Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, The Yale Journal of International Law Vol. 31, pages 427-476 (2006) page469

paralegals would most probably feed into the same system and may be badly affected. On the other hand, their duties require that they assist citizens, which may lead to a need to oppose the government at some point. Will they have the independence to do so?

The last option is to deliver paralegal services through CSOs and NGOs, a method which has been used in South Africa, the Philippines, Sierra Leona and other countries. This so far has been the most viable because of the independence, fairness and complexities associated with the Institution of paralegals. Yet the NGOs are equally affected by sustainability because of restricted funding. Stephen Golub is of the view that international aid agencies should equally invest in legal empowerment through NGOs as they do for National Institutions in their various rule of law reform programs. There is nothing wrong with long term NGO funding to sustain paralegals. If the international community finds it viable to give out development aid to governments for long periods as seen in rule of law reform programs, they should also do same for NGOs known to contribute to same objectives of development, legal empowerment, freedom and poverty alleviation.

CONCLUSION AND RECOMMENDATIONS

Nigeria is shrouded in a whirlpool of complexities which involves political and legal issues relating to federalism and cultural contextualization. What this thesis has highlighted is how wide and diverse the issues that perpetuate poverty are and how imperative it is that legal empowerment must be integrated widely in all aspect of policy and law making, as well as enforcement and implementation. In fact, without legal empowerment, what Nigeria faces is a future as a failed state. A broadly construed and integrated legal empowerment of the poor is a vitally important element in alleviating poverty, this is because it will cut across various sectors.

Legal empowerment of the poor in Nigeria will arm communities and individuals with the necessary power needed to question oppressive patterns of social, political and economic organization which causes and perpetuate poverty due to its great potential to improve governance through active participation of the population. The poor would be empowered with advocacy and community organizing skills, thereby becoming part of an active driving force for power redistribution and neutralization of power imbalances within our communities and the larger society. One has to understand the risk and challenges such a comprehensive legal empowerment strategy would pose, because the status quo of power imbalances serves the elite and ruling class, hence there would be obvious tensions to be anticipated by legal empowerment programs.

The model and medium of legal empowerment would have to be diversified and approached from different angles to ensure independence, and minimize government control. It goes to say that in Nigeria civil society has a very prominent role to play in developing an empowered grassroots population. But to leave this burden on the shoulders of civil society is risky considering that Nigeria constitutes a population of over 140million. Any adopted strategy must include government or other institutions to integrate legal empowerment programmes in a way the programme would have a life of its own. Importantly for all actors, a long term strategy needs to be the focus if we are truly going to experience both immediate and future positive impact. All actors must include donors, government, civil society and beneficiaries who would work simultaneously and in synergy if there has to be any impact or significant in road to reducing poverty.

In light of the above considerations, here are some recommendations on approaches that could be sustainable and acceptable but still have the ability to offer to the poor exactly what is needed.

Use of Clinical Legal Education CLE

Clinical Legal Education as a concept had been briefly explained in chapter 2, and the history of its establishment in Nigeria also stated above. Its proposal as a vehicle for legal empowerment for the poor, are based on the following considerations.

What CLE offers: CLE offers to the indigent and the poor neutral grounds for mediation and conciliation. It offers services including counseling, public legal education, legal representation, legal aid, and it assists individuals and communities by serving as networking medium for bridging the gaps between the communities and State agencies. The CLE program offers a

standard curriculum that would grant opportunity in Nigeria for community service and the use of law for social development.

The street law component when fully implemented would help educate the public and especially rural communities on existing laws, new laws, and its applicability. This would differ from a normal public enlightenment campaign because street law is structured systematically to teach through role plays, simulations, language of participants and other mediums rather than just offering information.

The law clinics could also adopt strategic litigation by identifying social and economic rights that could be litigated using African Charter which Nigeria has domesticated in conjunction with the Nigerian constitution. The problem of locus standing could easily be addressed in this instance because of the ability of the law clinics to work together with the community and empower them to organize and file class action suits.

The short term impact on a community's standard of living especially of those empowered to organize, question police intimidation, question the legality of government through class action law suits and assess government benefits such as compensation benefits would be huge. Suppose 30 Law Faculties adopt the program resulting in approximate total number of 1,500-3000 or more students serving as resource base to reach communities across all region of the country. Not to mention how many public interest lawyers are been nurtured for future social justice sector in Nigeria. The long term impact would be national.

Sustainability: using the medium of Law Clinics serves as a sustainable approach both in short and long term objectives. It is an inexpensive instrument because its resource base is students. In

Nigerian universities, the students offer clinical courses for credits as opposed to the UK system where it is purely voluntary. Its credit based scheme ensures student commitment and means the program remains as long as the faculty maintains it. It is also a curriculum based program, hence ensuring standards of information disseminated to the public or services provided. This means the students are constantly assessed and supervised for projects carried out. Students are easily acceptable to communities they approach because they are usually seen as non-agents of government promoting government interest.

Integrating Legal Empowerment into rule of Law reform at Customary and Sharia/Area Courts level:

The Customary and Sharia/Area Courts are the lowest level of the Nigerian legal system where legal representation is not needed for adjudication of matters. It is however based on native law and custom which is not codified or written and is often open to different forms of religious interpretation. To integrate legal empowerment for the poor, rule of law reform in terms of legal empowerment for the poor should proceed from these lower rungs of the legal system. The major component would not necessary follow the same pattern as of higher courts which usually involve the development of case management systems to decongest the dock. In this instance it should proceed from the point of offering human rights education for Court appointees on how to mainstream respect of human rights into the use of native laws and customs. This education could be carried out by law school students thereby interlinking the approach with the CLE programme. This would also save cost for the government, which can offer incentives or certain other considerations/recognition for schools that would get involved.

The lower courts could also be trained on dispute resolution mechanisms to improve their mediation skills. Emphasis should be placed on mediation because of the role it plays in cultural

context of Nigeria. Training in mediation skills would improve fairness especially for vulnerable groups such as women and children when resolving family and domestic matters. Also the government of Nigeria needs to appoint women to the Customary and Sharia Courts, and women should also be allowed to serve in mediation panels constituted by the Court. While women appointment to Sharia Court may not be viable now owing to strong Islamic opposition, there ought to be roles women could play within the Sharia court system. This should be for a later and broader research.

A third point, staff of the Courts could be further trained as paralegals and have their mandates expanded or serve on a voluntary basis in assisting communities with advocacy and community organizing needed to activate and advance community development. Due to their role as government officials, issues of conflict of interest may arise, hence working on a voluntary basis may be the best. These court officials are also part of the community they serve and would most certainly volunteer towards their community's economic advancement. There remains however a constant risk/threat of pressures from government that may adversely affect their serving as paralegals.

Institution of Paralegals:

The institution of paralegals with all its positive attributes remains a challenge with regards to implementation and sustainability. Who can serve as a paralegal in Nigeria and who will pay for such services? There have been several proposals to use government agencies such as local government council staff, or the institution of traditional rulers. For the case of government staff, there is the challenge of independence when issues involved may oppose government policies while that of traditional chiefs is faced with the underlying power imbalance structure that maybe

enhanced if they are granted more leverage over others. This leaves the option of NGOs as the most suitable vehicles to build this Institution until certain attitudinal changes within the society such as respect for rule of law and human rights have gotten to an acceptable democratic level.

NGOs have succeeded in building paralegal programmes as exemplified by projects in South Africa, Philippines, Sierra Leone and others as discussed in earlier chapters. The Institution is however needed to augment the CLE programme for strategic and cohesive impact. If the two concepts work together within the same time frame, legal empowerment of the poor and its anticipated impact would be easier to measure. This leads to Stephen Golub's point of making funds available for such NGOs on a long term basis, discarding the lack of sustainability argument that is constantly thrown at NGO projects. Hence for legal empowerment of the poor to be adequately secured, international cooperation with CSOs and NGOs must have a prominent feature if not on the same level as development aid granted to national governments.

NGOs role are crucial because legal empowerment will enhance communities' capacities to become organized and enlighten pressure groups on how to work within the confines of the law. It would be counter-productive to expect a government which abhors pressure groups demanding transparency, accountability and human rights to participate in the initial development of paralegals in Nigeria because legal empowerment would create an enlightened population and increase the pool of such groups. However, civil society advocates need to be watchdogs who seek to penetrate socio-economic development projects of governments to mainstream and integrate legal empowerment, in communities where such projects are ongoing thereby enhancing accountability and responsibility as suggested by Stephen Golub.

Integrating Legal empowerment into the Legal Aid Council of Nigeria:

The Legal Aid Council first concern remains that of inadequate funding to meet its mandate in providing legal representation and other forms of legal services. The first approach to integrating legal empowerment would be for the Council, to see itself as serving the poor in obtaining all that the law can provide, that way the approach of the Council would shift its focus from sole dependence on lawyers to paralegals, law students and others in executing its mandate. These of course cannot be achieved just by a change in policy because the Council takes its mandate from law. The Legal Aid Bill hopefully will get through this parliament so as to enable adoption of subsequent recommendations.

Based on the above assumptions, Legal Aid Council needs to have outreach offices in all Local government councils and such outreach offices should not be manned by lawyers. The Council needs to look beyond the services of only lawyers because of the realistic context that these offices would be situated in rural communities where no lawyer hopes to end up. As an alternative, Lawyers serving in zonal offices should train paralegals that need have only secondary school certificate to man these offices. The Institution of paralegals could have an opportunity to function properly especially if the new Bill granting the Council certain level of independence is passed. However, it should be noted that this does not totally tackle the challenges noted above with regards to government interference.

The paralegals could be directly supervised by National Youth Service Corps (NYSC) lawyers who cannot serve the functions of paralegals owing to the fact they are often foreign to cultures of where they are posted to serve. NYSC is a national programme for all graduates to serve the country for one year immediately after graduation. It is comparable to compulsory military

service obtainable in certain parts of Europe. But in this instance they work in government institutions. As its major objective is to integrate the nation, corps members are posted away from their state of origin. NYSC lawyers could however serve in cases of litigation, arbitration and mediation to ensure fairness and objectivity. Their role in mediation should be monitoring and not commandeering.

The Legal Aid Council had set up mediation centers to assist in ongoing Court decongestion and other issues of delayed court hearings. These centers are still however elitist and lawyer centered. The mediation centers should be formed by different sectors of the community in which they serve and should include women. It should not be another purview of lawyers or intellectuals, but instead involve other sectors of the community to create a sustainable pool of empowered locals. These empowered locals would in the long run be of immense benefit to their communities in circumstances of conflict resolution and disputes.

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