

# Paralegal Training Manual for Nigeria

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## **List of Acronyms**

BCC	Behaviour Change Communication
CIRDDOC	Civil Resource Development and Documentation Centre
CWSI	Centre for Women's Studies and Intervention
ICJ	International Court of Justice
IEC	Information Education and Communication
LRRDC	Legal Research and Resource Development Centre
NGO	Non Governmental Organisation
WACOL	Women Aid Collective
WARDC	Women Advocates Research and Documentation Centre

## **ACKNOWLEDGMENT**

Our profound gratitude goes to all the organizations whose manuals were consulted extensively in the process of harmonizing paralegal manuals in Nigeria. The organizations include but are not limited to the Civil Resource Development and Documentation Centre (CIRDDOC); Legal Research and Resource Development Centre (LRRDC); Women Aid Collective (WACOL); Women Advocates Research and Documentation Centre (WARDC) and Baobab for Women's Human Rights.

## **Introduction**

This training manual is a harmonization of major manuals in Nigeria and is designed to assist organizations and trainers in designing, conducting, and evaluating paralegal trainings across Nigeria. It provides high quality training, empowerment and capacity building for trainers who will train paralegals in addressing various issues of human abuses in Nigeria.

This was developed following the review and harmonization of existing paralegal training manuals being used by various organizations in Nigeria and it charts the course for the standardization of paralegal training in Nigeria. It is both a step by step guide for training as well as a reference material on different issues.

## **How to Use this Training Manual**

The manual is organized to assist the user/facilitator in teaching each module. Each module addresses different issues that are very important for a paralegal to understand to enable him/her effectively carry out his/her job as a paralegal. There are 19 modules in the manual. Each module outlines key issues which will be encountered during the paralegals work. Information on some of such issues is extensive and not necessarily designed for verbal delivery to participants but as a guide for the development of presentations by the facilitator. The manual provides discussion guides, role plays, and other learning guidelines that can be used or adapted for training a paralegal. The tools can be found within each module.

There are various activities/exercises within each module that will help during the training session to pass the message across easily. The trainer may not want to work through the exercises from beginning to end, but should decide first what he/she wants the trainees to learn about and then choose a suitable exercise given the time available and the equipment at hand. Facilitators can adapt and adjust the modules to suit their needs.

In order to deepen learning experience, different methods of training have been suggested in each of the modules. The facilitator should select any method(s) that is most suitable for the module being taught. Methods include: lectures, power point

presentations, brainstorming, participatory and interactive discussions, group and individual exercises, use of documentaries, case studies, games and role-playing etc.

Facilitators should avoid lengthy lecture or large group discussions, always remembering that individual participants learn through different methods. Some of the modules are designed to last as long as 3 hours, therefore facilitators are encouraged to assess participant's level of involvement and determine intervals at which energizers can be introduced in order to sustain their interest and concentration.

The facilitator will need an array of materials to conduct his/her sessions. The following materials may be required and should be prepared ahead of the training session: Flip Chart – board and paper, Power point Projector and screen (Optional), DVD player, Television, coloured markers, name identification cardboards, tape, markers, pens, paper etc.

### **Starting the Training**

In starting the training proper, the facilitator will follow the general pattern stated below or adapt to suit the target group. The following steps should be taken.

- **Introductions** – Introductions should be between 15 and 20 minutes. Begin the workshop by greeting participants. Introduce yourself and any other workshop staff working with you. If the workshop is being hosted by an organization, someone from that organization should make a few remarks to open the workshop and welcome participants. Conduct some type of introduction activity so that all participants are aware of who is in the room—names, organizations, work sites, and general information about each other.
- **Expectations (10 – 15 mins)** - Participants need to share their own expectations for the workshop
  1. Ask participants to take 2 minutes to think of the expectations they have for the workshop.
  2. In an anti-clockwise direction, ask participants to mention their expectations
  3. Write the expectations up on flipchart paper and keep them on the wall for everyone to refer to during the workshop

4. Explain whether or not this workshop will address each of the shared expectations. If it will not, explain why and how interested participants can gain access to such knowledge.
- ***Presentation of workshop objectives (5 – 10mins)*** – The facilitator can either write out the objectives on flip chart or print it out and hand each participant a copy. Immediately following the expectations facilitator should read out the objectives of the workshop and check them with the expectations. Ensure that participants understand the workshop purposes, objectives, and intended outcomes. Facilitate a question and answer session to clarify any questions or concerns.
  - ***Set ground rules (5 – 10 mins)*** – Participants should come up with a list of rules that will guide the training sessions. These are a set of basic rules for the group at the beginning of the workshop. For example, give everyone a chance to speak and participate, switch your mobile phones to vibrate or silent mode etc.

### **Procedure**

1. Explain that in order for the training to go smoothly without any hitch; participants will have to follow certain rules.
2. Let participants generate a list of do's and don'ts. Write on the flipchart the list of rules generated and explain each as you write it. Examples of ground rules maybe as follows:
  - Switch off cell phones or turn them on silent/vibrate
  - Do not receive calls during the training
  - Respect time—start on time, end on time
  - Be respectful of other participants and the facilitators
  - When contributing, talk loud enough for all to hear
  - Talk one at a time
  - No side talks etc.
3. Discuss and agree on the rules that will guide the training sessions.  
Write these on another flip chart.
4. Ask participants if they agree to abide by these ground rules.
5. Post the ground rules list on the wall in the training room.

- *Closing the training and Evaluation (15 – 20mins)* - Closing this training workshop involves reviewing the workshop content and outcomes. When you evaluate the workshop, you can read out the expectations and ask participants if their expectations were met in the workshop. You also need to check if the workshop achieved its set objectives. You might want to develop a questionnaire/evaluation form and provide copies for each participant at the end or have an interactive session and just ask leading questions to evaluate the project. The facilitator should choose which option suits him/her best.

# MODULE 1

## UNDERSTANDING THE CONCEPT OF PARALEGAL

Duration 1 ½ hrs

**Learning Objectives:** By the end of this session participants will understand the

- concept of paralegal
- functions of a paralegal
- qualities and skills required of a good paralegal

### *Note to Facilitator*

*Take 10 minutes to introduce this module by stating that participants need to have a brief overview of the history of paralegals in Nigeria to enable them understand the concept of paralegals. This session will enable participants appreciate the paralegal and the role of the paralegal. Furthermore, participants will realize that paralegals are not lawyers and have a clear understanding of the functions of a paralegal.*

*Carry out a mini lecture on the history of paralegal training in Nigeria.*

### **1.1 History of Paralegal training in Nigeria**

Paralegal training was introduced into the work of Non Governmental Organizations (NGOs) in Nigeria in the year 1993 by the Legal Research and Resource Development Centre (LRRDC). The training manual developed by LRRDC was modelled after the manual of the International Commission of Jurists (ICJ), Geneva, Switzerland. The basis of the training was the need to bridge the gap between the law and those who need to use it. As at the time LRRDC started paralegal training, it was estimated that about 75% of the population was illiterate and poor and as such there was a great need for paralegals within the society.

The need for paralegals arose due to the fact that the number of existing trained lawyers in the country is grossly inadequate in relation to the size of the country and population therefore provision of legal services to the rural and urban poor was limited. The geographical distribution of existing lawyers is such that majority can only be found in the big cities and towns<sup>1</sup>. The training of paralegals was to ensure that there is access to justice within the rural and urban areas respectively. LRRDC started the paralegal training under its legal services to the rural and urban poor in the community. A pilot test of the paralegal training scheme was carried out on a sample of 50 members of Awolowo and Daleko Market women together with members of Community Development Agency, all in Mushin Local Government area of Lagos state.

Subsequently, other organizations like BAOBAB for Women's Human Rights, Civil Resource Development and Documentation Centre (CIRRDOC), Centre for Women's Studies and Intervention (CWSI), Women's Aid Collective (WACOL), Women's Advocate Research and Documentation Centre (WARDC) and a host of others started training paralegals in various states of the federation. The use of paralegals in Nigeria, from this period began to gain acceptance as its effectiveness has been highlighted in the outcome of different monitoring and evaluation exercises in Nigeria. The provision of legal services to rural and disadvantaged communities has been improved by the creative use of paralegals.

***Note to Facilitator***

*Use 15 minutes to engage participants in a brainstorming session on their understanding of the concept of a paralegal. Write their answers on a flip chart*

*The following can guide the effective running of the session:*

- 1. Ask participants to describe who they think a paralegal is.*
- 2. Discuss the differences between a paralegal and a lawyer*

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<sup>1</sup> Tokunbo Ige (Ed.), 1994, Paralegal Training Manual for Nigeria, Legal Research and Resource Development Centre (LRRDC).

## 1.2 Who is a Paralegal?

A paralegal is a community based person trained with basic knowledge of the law and the legal system. He/she is trained to understand different methods that can be used in dealing with disputes and legal matters to assist vulnerable and disadvantaged people to assert their rights without necessarily engaging the services of a lawyer or resorting to litigation which may be time consuming and expensive. A paralegal has a strong role to play in encouraging respect for human rights and the rule of law, and promoting peace and positive change in the community.

For effectiveness a paralegal should reside in the area in which he/she will be working, this will encourage acceptability by the people within the community and assist the paralegal to have a good understanding of the problems of the local people and their environment.

### *Note to facilitator*

*Remind participants of who a paralegal is. Engage participants for 15 minutes in a short discussion on who they think can become a paralegal. Based on their response ask each participant to state one quality s/he thinks a good paralegal must have.*

*Introduce participants to the qualities required of a good paralegal and the ethics of a paralegal.*

*Remember that the list of who can become a paralegal is in-exhaustive depending on the human resource available in a particular community however the person must be interested in being a paralegal and must be able to read and write.*

## 1.3 Who can become a Paralegal?

A paralegal may be selected from among respected community based leaders or groups. The paralegal can either be a full-time or part-time worker. The following persons may be trained as paralegals:

- Community leaders
- Retired teachers
- Retired civil servants
- Members of community based organizations

- Urban/rural youth leaders
- Social activists
- Retired policemen
- Market women
- Trade union leaders and members
- Religious leaders
- Representatives of groups and associations
- Student volunteers/Law students

***Note to Facilitator***

*For 15 minutes hold an interactive session on the do's and don'ts of a paralegal, the challenges that a paralegal might face and how such challenges can be tackled. This activity will help prepare the trainees for the possibility of challenges during the course of their work and how they can tackle same.*

#### **1.4 Ethics of Paralegals**

**Impersonation** – A paralegals must always remember that he/she is not a lawyer and as such cannot practice law. Impersonation is a criminal offence.

**Confidentiality** – A paralegal should be able to keep secrets and not divulge information about his/her clients. Never discuss client issues with a third party unless you are reporting to a referral agency from which you need assistance.

**Politeness** – Always treat clients with respect and courtesy

**Promptness** – Always provide prompt services. Do not keep people waiting unnecessarily

**Impartiality** – A paralegal must always be unbiased and impartial. Do not handle cases in which you have an interest so as not to run the risk of taking sides. Always refer such cases to another paralegal or legal aid clinic.

**Fairness and Justice** – Always be fair in your decisions. Do not let your culture, emotions or religion weigh heavily in the decisions you make or advice that you give, make sure you are just and fair.

***A Paralegal is not a Lawyer and Cannot Practice Law***

## 1.5 Qualities of a Good Paralegal

A good paralegal must be:

- Patient
- Disciplined
- Open
- Dedicated and committed to work
- A person of integrity
- Familiar with local customs
- Tactful
- Of good character and reputation
- Humble
- Trustworthy
- Courageous
- Sociable
- A good listener
- Able to read and write English language and effectively communicate in the local language of community

### *Note to facilitator*

*At this point, take 5 minutes to introduce an energizer to enable the participants relax and be alert to the session. Facilitator should use his/her discretion in selecting a short energizer.*

## 1.6 Functions of a Paralegal

The main duty of the paralegal is to bridge the gap in the legal system by acting as a legal first aid service provider. The paralegal assists community people to understand, demand for and access their rights. They help people resolve their disputes by enabling them to proffer options to resolving conflicts or to avert looming conflicts.

### *Note to Facilitator*

*Ask participants to form two groups and assign to each group the following issues: the role of paralegals and why it is important to have paralegals in different communities, have a plenary discussion on the roles of paralegals and what type of qualities paralegals should have. Use 15 minutes for this exercise.*

The following are specific functions of a paralegal.

- **Basic Counselling**

This involves enabling people discover for themselves solutions to their own challenges. Counselling can be used for solving specific personal or family problems. The role of the paralegal in counselling is to help the client resolve their differences and find an amicable solution to their problem.

- **Preliminary Investigation and Preparing of Facts (Information management):**

It is important that paralegals investigate the facts of a problem or complaint to enable them decide whether they can handle the case or they need to refer. A paralegal must be a good information manager, ensuring that only useful information is sought for and information received must be put to good use. In discharging this function, a paralegal must interview the people involved in a problem and take notes that can be used either by him/her or used as a fact sheet for a lawyer and other relevant institutions in the case of referral.

- **Preparation of Documents/ Record Keeping**

Paralegals assist the client fill out the information sheet that will enable the paralegal to determine whether the client is qualified for legal aid or not. The paralegal opens a file for each complaint once the client is found to be eligible for free services and records as much information about the client as possible in the case file. Paralegals also prepare petitions, affidavits and the text of sworn declarations for their clients if the need arises. Paralegals must ensure that every communication with the client including the nature of service provided, dates and times of meetings are recorded in the client's file. Information of actions taken and next appointments must also be clearly documented in the file.

- **Conducting Legal Clinics**

Based on the type of problem encountered, paralegals provide legal first aid to people by providing immediate and preliminary solutions in emergency situations like assault or any other form of violence or accidents.

- **Community Education/Community Capacity Building Sessions**

The paralegal also helps in educating community people about their rights and basic laws that affect them. They create awareness on services that paralegals provide and how to get in touch with the nearest paralegal and relevant

institutions when they have a problem. Capacity building and information sharing can be done through group meetings, awareness creation campaigns and the use of Information Education Communication (IEC) materials.

▪ **Alternative Dispute resolution**

Paralegals may help with resolving disputes through a variety of means – negotiation, mediation, arbitration and conciliation, etc.

▪ **Networking and Advocacy**

Paralegals need to establish contact with other relevant stakeholders e.g. co-paralegals, government institutions and Non Governmental Organizations (NGOs) etc. This is required to help them raise awareness about the opportunities that are available to community people through their services as well as to garner support for problem solving. A paralegal also advocates for positive change within the community by mobilizing people towards changing their attitudes and behaviour on societal ills that inhibit progress and development in the community and the country as a whole.

### 1.7 Skills Required of a Paralegal

The following skills are essential for efficiency and effectiveness in paralegal work:

- Communication Skills
- Writing and Drafting Skills
- Counselling Skills
- Conducting Interviews
- Record Keeping Skills
- Networking and Advocacy Skills
- Negotiating Skills
- Researching Skills
- Administrative Skills

**Note:** *These skills will be discussed in detail in module 2*

**Note to facilitator**

*In closing the module ask participants to carry out a role play on the legal implications of impersonating a lawyer or a role play on the implications of taking gratifications from client. De-brief the role play and ask the participants to highlight things they feel a paralegal must not do. Do this for 15 minutes*

**Things a Paralegal must never do:**

**Never** claim to be a lawyer. You could be charged with impersonation.

**Never** charge fees for your service. Do not accept any kind of payment from your client including presents. If you do, you may make the paralegal scheme to fail.

**Never** ask for or receive any form of gratification for services or counselling rendered by you. The services of a paralegal are free.

**Never** meddle in complex legal problems or issues. Always refer cases that you are not able to handle

**Never** take the position of a judge in any matter

**Never** lose your temper even when people are rude to you.

**Never** discuss a client's case with friends or relations. Confidentiality should be your watchword.

# MODULE 2

## COMMUNICATION SKILLS

Duration: 1 ½ hrs

**Learning Objectives:** By the end of this session participants will be able to

- state in their own words the meaning of communication
- identify the elements of effective communication
- discuss the importance of communication in their work as paralegals
- list some of the barriers to effective communication
- get practical knowledge of writing and drafting letters or petitions etc.
- write short reports and communicate effectively.

### *Note to facilitator (15 mins)*

*Introduce this module by asking participants to explain what they think communication means and state why they think paralegals need to be able to communicate effectively. Write out their responses on a flip chart.*

*Give a short lecture on what communication is and the different types of communication*

### **2.1 Communication Skills**

Paralegals must have the skill to communicate effectively in a common/proper language and manner. A paralegal should possess good and diverse communication skills (both verbal and written) to be able to effectively carry out his/her task.

#### **2.1.1 What is communication?**

Communication is an art of conveying and/or receiving a message from one party to another, and effectively understanding what is being said and what was intended to be said. It is also about receiving information that others are sending to you, with as little distortion as possible.

The communication process can be fraught with errors if care is not taken, with messages wrongly sent or misinterpreted by the recipient. Miscommunication can cause confusion and conflict if not detected and corrected promptly. Communication can only be said to be successful when both sender and receiver understand the same information being sent out. For communication to be complete, it must be understood and acted upon.

### 2.1.2 Types of Communication

There are two types of communication – verbal and non verbal

- **Verbal/Oral Communication**

Verbal communication involves speaking, crying, laughing etc (what is said out loud) and listening. Verbal channels include face-to-face meetings, telephone and video conferencing.

- **Non Verbal Communication**

Non verbal communication involves writing, arts, body language, facial expressions, postures, actions etc. Written communication is the art of putting down your thoughts and ideas on paper (writing). Often times you are not there to explain what you mean and as such have to communicate in a way that the person reading will understand clearly the message you are trying to convey. Writing channels include letters, emails, memos and reports.

#### *Note to Facilitator (15 mins)*

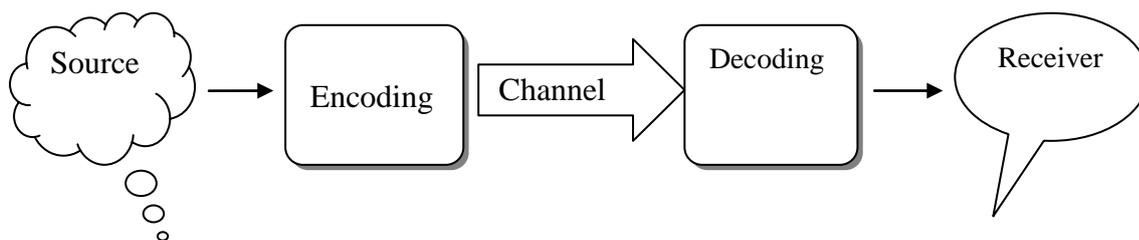
*To explain the process of communication and how information can get distorted whilst a message is being passed amongst different people, ask participants to carry out **the telephone game**. Participants will sit in a large semi-circle shape. Select any participant from the semi circle and take him/her outside the room. Ask him/her to think of a four or five sentence message that he/she would like to send to the person at the other end of the semi circle. Tell him/her to write the message on a sheet of paper so he/she remembers exactly what had been said and that when he/she gets into the room he/she should whisper the message into the ears of the person sitting next to him/her. The message should be whispered from one person to the other until the last person receives the message. Ask the last person and then, each person in the semi*

*circle to repeat the message aloud. Ask the first person to state the original message. Compare the various messages with the main message and reflect with the whole group what has happened. Ask the following questions: Was the message distorted? Why? How can we avoid distortion of information?*

*N.B.: If the group is too large, select between 8 and 10 participants for the activity. The facilitator should round off the activity with a mini lecture on the process of communication.*

To communicate effectively, you have to be clear, concise and accurate. Communication is done through the process outlined below<sup>2</sup>.

### 2.1.3 The Communication process



**Source:** As the source of the message, you need to be clear about why you're communicating, and what you want to communicate.

**Message:** The message is the information that you want to communicate.

**Encoding:** This is the process of transferring the information you want to communicate into a form that can be sent and correctly decoded at the other end. Your success in encoding depends partly on your ability to convey information clearly and simply, and also on your ability to anticipate and eliminate sources of confusion (For example, cultural issues, mistaken assumptions, and missing information).

**Channel:** Messages are conveyed through different channels, each of which has its own strengths and weaknesses. For example, it is not particularly effective to give a long list of directions verbally because the receiver may not remember everything.

<sup>2</sup> [http://www.mindtools.com/pages/article/newtmc\\_88.htm](http://www.mindtools.com/pages/article/newtmc_88.htm)

**Context:** The situation in which your message is delivered is the context. This may include the surrounding environment or broader culture (religious context, community culture etc).

**Decoding:** Just as successful encoding is a skill, so is successful decoding (involving, for example, taking the time to read a message carefully, or listen actively to it.) Just as confusion can arise from errors in encoding, it can also arise from decoding errors. This is particularly the case if the decoder doesn't have enough knowledge to understand the message.

**Receiver:** The receiver is the end point of the message being sent and it is important that the message sent is understood accurately.

**Feedback:** Your audience will provide you with a feedback, as verbal and nonverbal reactions to your communicated message. Pay close attention to the feedback you get from your audience, as it is the only thing that can give you confidence that your message has been well understood.

*Note to facilitator (10mins)*

*In an interactive session discuss what the barriers to effective communication are. Ask participants to discuss what they think might be the barriers to effective communication. Use the table below to discuss the barriers to effective communication.*

**2.1.4 Barriers to Effective Communication**

Barriers to communication can be located at any channel of communication and can be from any of the elements of effective communication i.e. sender, receiver, message or feedback. Some of the barriers that can be encountered are identified in the table below:

<b>SPEAKER BARRIERS</b>	<b>MESSAGE BARRIERS</b>	<b>RECEIVER BARRIERS</b>	<b>CHANNEL BARRIERS</b>	<b>FEEDBACK BARRIERS</b>
<ul style="list-style-type: none"> <li>▪ Age</li> <li>▪ Sex</li> <li>▪ Language/ Vocabulary</li> </ul>	<ul style="list-style-type: none"> <li>▪ Poor timing</li> <li>▪ Inappropriate for the situation</li> <li>▪ Complexity in</li> </ul>	<ul style="list-style-type: none"> <li>▪ Inadequate attention</li> <li>▪ Impatience</li> <li>▪ Know it all</li> </ul>	<ul style="list-style-type: none"> <li>▪ Environment i.e. interruptions noise,</li> </ul>	<ul style="list-style-type: none"> <li>▪ Poor` timing</li> <li>▪ Inappropriate</li> <li>▪ Complexity in the ideas,</li> </ul>

<ul style="list-style-type: none"> <li>▪ Manner of speech</li> <li>▪ Presentation</li> <li>▪ Attitude or values</li> <li>▪ Cultural differences</li> <li>▪ Emotional issues</li> <li>▪ Religious beliefs</li> <li>▪ Socio-Economic status</li> </ul>	<p>the ideas, thoughts or concepts being transferred</p>	<p>attitude or other forms of negative personality traits</p> <ul style="list-style-type: none"> <li>▪ Interruption</li> <li>▪ Anger</li> <li>▪ Sulking, yelling or talking loudly</li> <li>▪ Interpretation of message</li> </ul>	<p>distractions etc</p> <ul style="list-style-type: none"> <li>▪ Distance</li> </ul>	<p>thoughts or concepts being transferred</p>
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***Note to Facilitator (15 mins)***

*Brainstorm with the participants on skills that are necessary for effective speaking and listening. The skills should be listed on a flip chart board. Use keys to effective speaking and listening below to aid discussions. At the end of the discussions, participants should model both bad and good listening skills during role-play conversations. The conversations can be about the economy, what is going on at work, what people are going to do over the weekend or did last weekend, etc. At the end of the role play, the facilitator should give an overview on the importance of effective speaking and listening to the work of a paralegal.*

**2.2 Speaking and Listening Skills**

In life we probably use our speaking and listening skills more than any other kind of skill. We are always talking to someone or being spoken to, giving instructions or receiving instructions. Effectiveness in these skills takes practice. The art of speaking and listening is very crucial to effective communication. Information is an intangible substance that must be sent by the speaker and received by a listener as intended.

**2.2.1 Speaking Skills**

What is being said is as important as how it is being said. Therefore, before you start talking, it is vital that you really understand what you want to say, who you want to tell and why they might want to hear it. To do this, ask yourself: **Who? What? How? When? Where? Why?**

**Who** are you speaking to? What are their interests, presuppositions and values? What do they share in common with others? How are they unique?

**What** do you wish to communicate?

**How** can you best convey your message? Language is important here, as are the non-verbal signs. Choose your words and your nonverbal signs with your audience in mind.

**When?** Timing is important here. Develop a sense of timing, so that your contributions are seen and heard as relevant to the issue or matter at hand.

**Where?** What is the physical context of the communication in mind? You may have time to create an atmosphere void of distractions.

**Why?** In order to convert hearers into listeners, you need to know why they should listen to you – and tell them if necessary.

### **Tips for effective speaking**

- Use simple words. When it comes to wording your message, less is more.
- Know the receiver's background – by understanding where your audience is coming from you can tune your message to suit them
- Watch your manner of speech - Don't talk too fast.
- Comport yourself
- Choose your channel or medium wisely
- Use examples to bring your points to life

### **2.2.2 Listening Skills**

Real listening is an active process that has three basic steps<sup>3</sup>.

1. **Hearing** - Hearing just means listening enough to catch what the speaker is saying. For example, say you were listening to a report on thumb prints, and the speaker mentioned that no two are alike. If you can repeat the fact, then you have heard what has been said.
2. **Understanding** - The next part of listening happens when you take what you have heard and understand it in your own way. Let's go back to that report on thumbprints. When you hear that no two are alike, think about

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<sup>3</sup> <http://www.infoplease.com/homework/listeningskills1.html>

what that might mean. You might think, "Maybe this means that the pattern of stripes is different for each thumb."

3. **Judging** - After you are sure you understand what the speaker has said, think about whether it makes sense. Do you believe what you have heard? You might think, "How could the stripes be different for every thumb?"

#### 2.2.4 Keys to Effective Listening<sup>4</sup>

1. Give your full attention to the person who is speaking. Stop working, reading or watching TV. Don't look out the window or at what else is going on in the room.
2. Make sure your mind is focused, too. It can be easy to let your mind wander if you think you know what the person is going to say next, but you might be wrong!
3. Don't interrupt the speaker. Let the speaker finish before you begin to talk. Speakers appreciate having the chance to say everything they would like to say without being interrupted. When you interrupt, it looks like you aren't listening, even if you really are.
4. Listen for main ideas. The main ideas are the most important points the speaker wants to get across. Pay special attention to statements that begin with phrases such as "My point is..." or "The thing to remember is...".
5. Ask questions if you are not sure you understand what the speaker has said. Repeat phrases to clarify what the person is saying. It is a good idea to repeat in your own words what the speaker said so that you can be sure your understanding is correct. If you don't understand, let the person know that.
6. Give feedback. Sit up straight and look directly at the speaker. Now and then, nod your head and make statements such as "uh-uh," "I understand," and "I see what you mean" to show the speaker you truly understand what he/she is saying.

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<sup>4</sup> <http://www.workshopsinc.com/manual/Ch1H1.html>

**Note to facilitator (15 mins)**

Participants should role-play conversations using the skills of effective speaking and listening. Below is an activity that can be used to practice the skills learnt previously. The "gossip" game is an exercise in which a person tells one person a short story (three to four sentences that are written down), the listener then whispers the story to his neighbor, and this continues until the last person tells the story out loud. The object is to see how much the story is changed in the translation as well as demonstrate the benefits of effective speaking and listening.

1. Select 8 participants to form 2 groups and ask them to stand in front of the room.
2. Write down a short story of about 5 lines.
3. The facilitator will take one person out of the room or away from the group and tell the story. Once the story is told, the facilitator calls another participant away from the group and tells the same story to him/her.
4. Observe while the previous listener tells the members of the groups the story. The second person should also tell the members of the groups the same story. The story should then be told by members of the 2 groups to the entire class. The facilitator should read the original story so the class can compare. The complexity of the story should be altered depending on the cognitive abilities of the participants. Discuss whether the story is translated accurately without alterations.

**Note to facilitator (5 mins)**

Discuss with participants why writing and drafting skills are important for paralegals. Write out the tips for effective writing on a flip chart and explain each point to participants.

### **2.3 Writing and Drafting Skills**

Basic knowledge of reading and writing is indispensable in the paralegal's work. The skill to write down thoughts clearly and coherently for documentation and reporting purposes is very important to the paralegal's work. A paralegal should be able to take

statements from complainants in writing and also write reports and prepare other documents in very clear and legible English.

Whether you are writing a report to an organization or a memo to your co-worker or a statement at the police station, you should decide what information you want to convey. These tips can help:

1. List each item you need to discuss in your memo or report.
2. Put them in order — from most to least important
3. Write a brief summary of your entire memo — this will be your first paragraph.
4. Expand on each item listed in step 1.
5. If any action needs to be taken by the recipient, state that in your closing paragraph.

When writing you should have the following at the back of your mind:

- Avoid wordiness.
- Write for your audience.
- Use simple language as you don't want the reader to have to use a dictionary to decipher what you are trying to say.
- Make it concise and precise because most people juggle several tasks at the same time, and are interested in receiving only necessary information. Stay away from jargon that your reader may not understand.
- Proof read. Proofreading is one of the most important things you can do. When you have completed your first draft, take a break if time permits and then re-read.

Ask yourself:

- Is the writing clear?
- Do the ideas make sense?
- Are my ideas supported by evidence?
- Are all of my requirements fulfilled?
- Did I avoid repetition?
- Have I used proper grammar and spelling?
- How does it sound read out loud?

*Note to facilitator (15 mins)*

*Participants should be asked to draft a short complaint on any issue to the Chairperson of the Community Development Area in their community describing some hardships being faced by a complainant and requesting a meeting with the chairperson to resolve the issues raised.*

- 1. Ask participants to exchange their letters*
- 2. Randomly select 3 participants and ask them to comment on the letters written and if the message being sent is clearly understood.*
- 3. Ask the selected participants to explain what they understand by the contents of the letter, then ask the person who wrote the letter if that was the message she/he intended to send.*

*or*

*Divide participants into 3 groups. Ask each group to discuss issues that affect them in their community. Based on their discussions they should write a one page statement to the Chairman of their Community Development Association stating what their problems are and what they require the government to do.*

- 1. Ask a representative of each group to read out their statement*
- 2. Allow other participants to comment on the statements*

*Based on the comments, the facilitator should re-emphasize the need for clarity and precision in writing.*

# MODULE 3

## BASIC COUNSELLING

Duration: 1 ½ hrs

**Learning Objectives:** By the end of the session, participants will understand

- the process of counseling
- counseling skills and theory
- how to conduct interviews and take down salient issues in record keeping

### *Note to facilitator (20mins)*

*Introduce session by stating that as paralegals basic counselling is at the core of their work and participants must understand issues involved in basic counselling and be able to relate it to the communication skills learnt in the previous module. The facilitator should then carry out a brainstorming session, asking participants what they understand by counselling. List out all responses on a flip chart and discuss with participants what basic counselling is and what it entails – skills of a counsellor and counselling ethics.*

### **3.1 Basic Counseling**

#### **Definition of Counseling**

Counseling is the act of helping someone to recognize, face, accept and resolve problems. Counseling includes working with individuals in relationships that may be developmental, crisis support, educational therapy, occupational therapy, guiding or problem solving. It is a process based on a relationship that is built on empathy, acceptance and trust. Within this relationship, the counselor focuses on the client's feelings, thoughts and actions, and then empowers the client to:

- cope with their lives;

- explore options to solving their problems;
- make their own decisions; and
- take responsibility for those decisions.

### 3.2 Skills of a counselor

- **Listening** - verbal communication
- **Looking** - non-verbal communication
- **Analyzing** - why is the person asking for help? What does the person feel the problem is?
- **Reflecting** - allowing time and silence to think, showing empathy, encouraging interaction
- **Confronting** - keeping to main points when appropriate, handling conflict positively
- **Summarizing** - summing up points discussed at intervals
- **Sharing** - "emotions" not necessarily experience

### 3.3 Counseling Ethics

Counseling deals with the most intimate and intricate part of a client. This means some ethical principles and a code of conduct are essential.

1. It is important for the counselor to see everyone as individuals with unique qualities. This requires the counselor to be unbiased and free from prejudice, keep perspective and identify with feelings of the client.
2. The client should be able to express him/herself freely, especially negative feelings. This will serve as a therapy that helps to relieve tension and clarify understanding of the problem.
3. He/she (i.e. the counselor) needs to be sensitive to the client's feelings, and be purposeful in responding.
4. The counselor needs to give the client a sense of acceptance, by perceiving and dealing with the client as she/he really is, including their strengths and weaknesses, maintaining all the while a sense of their innate dignity and personal worth.
5. The counselor has to have a non judgmental attitude which involves making evaluative judgments about the attitudes, standards or actions of the client.

6. The counselor needs to give the client space and allow him/her make their own choices and decisions.
7. Confidentiality is fundamental in the counselor-client relationship. . This is based upon a basic right of the client and an ethical obligation of the practitioner. It is worthy to note however that the client's right is not absolute.

**3.4 Qualities of a good counselor** - A good counselor is: genuine; respectful; warm; appropriately serious; empathic, and moves at client's pace and shows interest

***Note to facilitator (30 mins)***

*Give a brief overview of the phases of a counseling session in a mini lecture. The following role play can be used to emphasize the processes and phases of counseling.*

***Role plays and feedback***

There are three different roles we will be using in the role plays.

***N.B Depending on time available, you might decide to have individual role plays or have one role play that will feature the three roles.***

**Counsellor:** To put into practice new communication and counseling skills. The participant should put him/herself into the role of the counselor.

*Remember: The purpose of the role play is to practice new skills, NOT to solve a problem.*

**Client:** The aim of this is to learn how to behave appropriately as a client.

This means that the client in a role play should use a real-life example. This could be a minor problem that may have already been resolved. You can also role play a problem with which you are familiar.

Ask yourself the following questions before putting yourself in the role of the client:

How would I feel?

How would I cope? What sorts of things would I do if I were experiencing this problem?

Who else is involved in this problem and how are they involved?

What is my general background and how will this affect my problem?

Respond as naturally as you can to the counselor. Share the things that seem appropriate to what the counselor says. Do not deliberately try to make it difficult, or easy, for the counselor.

**Observer:** To listen to what is said and how it is said, as well as to watch the non-verbal communication between client and counselor.

*During the role play, the observer should not say anything. After the role play is over, he/she will provide feedback to the counselor.*

The facilitator should debrief the role play and generate discussions amongst participants. Discussions should revolve around the phases of counselling.

### **3.5 Phases of a Counseling Session<sup>5</sup>**

There are five main stages or phases in the process of a counselling session:

- (i.) Establishing the Relationship (Greetings and Introduction)
- (ii.) Trust Building
- (iii.) Exploration (Understanding the Problem)
- (iv.) Resolution (Decision-Making)
- (v.) Termination

#### **1. Establishing the Relationship (Greeting and Introduction)**

You are setting the framework for the counselling relationship.

- **Introduction:** Introduce yourself and give a short explanation of your role and the length of time you have together (i.e. half an hour or 45 minutes).
- **Confidentiality:** Explain that what is discussed in counselling is confidential. However, there are two exceptions—two situations where what is said in counselling will not be kept in confidence:

**1. Supervision:** In order to improve the care a counsellor give clients, the counsellor will share details of the case with his/her supervisor and supervision group. However, the counsellor will not disclose the client's name and personal information.

**2. Harm:** The other situation in which the counsellor will break confidentiality is when the client is a danger to himself or someone else, i.e. if the client says he or she will kill himself or someone else.

#### **2. Trust Building (Building the Relationship)**

Trust building is the foundation for counselling. It is crucial in the beginning, but is something to always go back to during the course of the session. Remember that counselling is a relationship; building trust is part of developing a relationship. Building trust continues throughout the counselling relationship for as many sessions as a counsellor and client work together.

#### **3. Exploration (Understanding the Problem)**

This phase focuses on the expression and exploration of the pain or the problem that the client is presenting. This is where you will spend most of your time. Let the client talk about the thoughts, feelings and actions around the problem or problems he/she is

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<sup>5</sup> Community Counsellor Training Toolkit, Basic Counselling Skills: Participant Manual, September 2006

experiencing. Use empathic listening and reflecting skills during the beginning of the exploration phase. Often clients are so stuck in their own emotions, experiences and circular thought patterns that they are unable to find solutions for their problems or even to think straight to sort it out. During this stage, you can help the client to organize his/her thoughts and feelings as well as explore some options or choices.

#### **4. Resolution (Decision-Making)**

Towards the end of the counselling session, you move into the resolution phase. It is often important that the counselling process generates some kind of focus or plan for problem-solving or future action. Sometimes this plan or focus is simply a change in perspective or choosing to accept the situation. Remember to keep the focus on something that is realistic and obtainable. It is very important that the decision-making come from the client. The counsellor can help the client explore the options, but it is ultimately the client's decision to make. The client might not be ready to make a decision by the end of the counselling session. If that is the case, let the client leave with the resolution to make a decision before he/she returns. Do not force the client to make a decision prior to the end of the session.

#### **5. Termination (Ending the Session)**

Summarize what was discussed during the session; include the focus and any decisions or plans that were made. Reiterate the focus. This is important in order to make sure the client stays focused on what he/she has control over and ignores what he/she cannot change. Highlight any referrals that were provided to the client. Discuss any future counselling sessions and make necessary appointments.

#### ***Note to Facilitator (25mins)***

*Start by asking the participants what they know about conducting interviews, and write their answers on a flip chart, whiteboard or blackboard. The responses should be used by the participants in the exercise below.*

*Divide participants into 4 groups. Each group will be required to select 2 members to play the role of an interviewer and an interviewee, while the other members of the group watch and take notes. There should be a debriefing session after the role play during which members should be asked to identify what they think are crucial issues to note when conducting an interview.*

### 3.6 Conducting Interviews

As a paralegal, one skill required for effective work is the ability to conduct interviews effectively as a means of collecting information from clients. An interview is a conversation in which the paralegal asks questions of the client. The information gathered will be used for various purposes e.g. determining if the case needs to be referred, the next line of action for the paralegal etc. Interviews are particularly useful for getting the story behind a client's experience. Interviews may be useful as follow-ups to certain respondents to questionnaires, e.g., to further investigate their responses. Usually, open-ended questions are asked during interviews. An open-ended question is one in which respondents are free to choose how to answer the question, i.e., they don't select "yes" or "no" or provide a numeric rating, etc.

#### 3.6.1 Types of Interviews<sup>6</sup>

1. **Informal, conversational interview** - No predetermined questions are asked, in order to remain as open and adaptable as possible to the interviewee's nature and priorities. During the interview, the interviewer "goes with the flow".
2. **General interview guide approach** - The guide approach is intended to ensure that the same general areas of information are collected from each interviewee. This provides more focus than the conversational approach, but still allows a degree of freedom and adaptability in getting information from the interviewee.
3. **Standardized, open-ended interview** - Here, the same open-ended questions are asked of all interviewees. This approach facilitates faster interviews that can be more easily analyzed and compared.
4. **Closed, fixed-response interview** - Here all interviewees are asked the same questions and asked to choose answers from among the same set of alternatives. This format is useful for those not practiced in interviewing.

Paralegals need to note that conducting interviews is a very critical stage in the interrogation process, as the information collected at this stage will help determine the action to take. At the end of the interview the paralegal should read out written

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<sup>6</sup> Ibid.

information back to the complainant. This is to ensure that the details taken are accurate and there has been no deviation from the complainant's report.

**Note for Facilitator (15mins)**

*Ask participants what they understand by record keeping. Explain that accurate information is vital to their work as paralegals. Ask participants to identify some types and sources of records. Discuss with them how records may be kept depending on what type of record. Facilitator may look for different types of records to share with participants.*

### **3.7 Record Keeping Skills**

Accurate information is very vital to the work of paralegals. Every human organization needs written records of matters which the management needs to keep as guides to routine action, decision-making, formation and making of rules and policies, the legal validation of the organization's status, procedures and relationships with other organizations and individuals etc.

Records serve as a source of learning about what happens in organizations, systems, networks etc. It also gives information for effective decision making, assessing progress towards goal achievement and quality control. Since record keeping is very crucial to the paralegal's works, records kept should have the following characteristics:

- Be comprehensive and comprehensible
- Be precise and concise
- Be accessible
- Be simple and in appropriate language

#### **3.7.1 Types of records**

- Administrative records
- Financial records
- Policies
- Minutes of meetings

- Legal documents

### **3.7.2 Sources of Records**

- Mail
- Minutes of meetings
- Reports of interviews
- Activity reports
- Proposals
- Budgets
- Financial Transactions – receipts, payment vouchers, analysis of day to day transactions (bank and cash), petty cash etc.
- Financial Reports
- Income and Expenditure statements
- Registration

### **3.7.3 How records may be kept?**

Records may be kept by filing either alphabetically, numerically or topically. If you are filing hard copies of written information, it is important to provide storage facilities like cabinets or file holders for safekeeping. Records may also be kept as software on a computer or on a compact disk as backup in case something happens to the computer. In keeping records, it is safe to have both soft and hard copies.

# MODULE 4

## NETWORKING AND ADVOCACY SKILLS

Duration 1 hr

**Learning Objectives:** By the end of the session, participants will be able to:

1. Define networking and develop effective strategies for effective networking
2. Appreciate the importance of networking in legal programming and development work
3. Define “advocacy” and distinguish advocacy activities from Behaviour Change Communication (BCC) and Information, Education, and Communication (IEC) activities

### *Note to facilitator*

*Start this module with a brainstorming session on the meaning of networking. Note that some participants will come to the workshop with a solid understanding of networking. As a starting point, lead the participants in a brainstorm of words they associate with “networking.” Ask each participants to say one or two words that comes to his/her mind when he/she thinks of networking. Record their comments on a flip chart. Add a tick mark next to the phrases that are repeated.*

*Once the group has generated a list of words associated with networking, share with them the networking definition in the manual. Ask for volunteers to read aloud the different activities that constitute networking.*

*Review the definition of “networking,” Ask participants to identify the terms that appear on the initial brainstorm list with these definitions. Use a different colored marker to circle the words or concepts that the participants came up with on their own. Ask the group: What are the key differences and similarities among all the definitions? Use 15 minutes for this exercise*

## 4.1 Networking

Networking is a very common word amongst the NGO community. However, networking seems to mean different things to different people depending on the individual or organization. Networking can be a very useful strategy in legal and development programming. Networking can help to overcome any sense of isolation and provide useful means for learning skills and exchanging techniques.

There are various forms of networking, here are some examples below:

1. **Information Sharing (Passive)** – One of the most common forms of networking and probably the easiest is sharing of information. Sharing of information helps to disseminate information to a wider audience and aids sharing of experiences and best practices. It promotes a better understanding of what different groups and organizations are doing. This creates a pool of resources (information and expertise) that various groups and organizations can tap into or benefit from. As a paralegal, it will be useful for you to link up with other paralegals around you so that you can support and learn from one another.
2. **Information Sharing (Proactive)** – This is slightly different from the one above as it involves sharing of information with an intention to convince individuals or groups receiving the information to react to the content of the information shared. The information shared is expected to impact on what the person is doing or about to do. This kind of networking is issue oriented. It gives room for dialogue and closer interaction among individuals and groups
3. **Joint Implementation of activities** – This is a more complex form of networking where individuals, groups or organizations decide to plan and implement programmes or activities together. Joint efforts is a more effective way to meet a wider audience or confront a strong opposition e.g. women's rights groups can network with the aim of tackling issues of gender based violence

### *Note to facilitator (10mins)*

*Spend about 10 minutes in a short presentation or lecture to explain the strategies of networking. Explain carefully each step.*

## 4.2 Strategies of Networking

Networking strategies are the tools used to achieve networking goals and there are various strategies of networking. There is the need for you to develop and understand the most appropriate means of achieving your networking goals and foster good working relationship and collaboration with your network members or partners.

### Five Step Networking Strategies<sup>7</sup>

#### Step 1: Identify your purpose

The purpose of networking is always going to be driven by your organization's core business (or your personal professional development needs). In the development sector those needs may be:

- (a) Improving women's access to emergency obstetric care services
- (b) Reduction of incidences of gender based violence
- (c) Promoting good governance and the rule of law etc,

#### Step 2: Identify your goal

Simply stated, networking goals are what you need to achieve. Goals give you long-term vision and provide short-term motivation. Goal setting helps you organize your time and your resources effectively. They provide the means by which you can track and evaluate whether the desired outcomes have been achieved.

To set your networking goals you need to:

- identify the issue that you intend to tackle
- identify whether there are already existing groups or networks working on the issue
- identify the person(s) or the type of groups you need to make contact with
- identify exactly what you want from them or what you want to give them
- list suitable questions or networking strategies to achieve your desired goal(s).

#### Step 3: Determine the most appropriate network

The most appropriate network to use is determined by your goals. In most cases you'll need to use one, two or all three of your networking groups (personal, existing or professional) to achieve your goals.

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<sup>7</sup> [www.htd.holmesglen.vic.edu.au/...networking/.../page\\_001.htm](http://www.htd.holmesglen.vic.edu.au/...networking/.../page_001.htm)

#### **Step 4: Method of contact**

Once the networking goals have been determined the next step is to decide how to make contact with the prospects within the chosen network. This usually means determining the most appropriate communication device to use (e.g. letter, face to face meeting, email, or telephone call to name a few).

#### **Step 5: Choose your approach**

Your approach is how you ask individuals or groups to join your campaign. The most appropriate approach will depend on the networking situation, method of contact (telephone or email) and the desired outcomes (goals). If it is an emergency you might want to call a face to face meeting raising the issues that requires tackling and requesting groups and individuals to collaborate with you on the way forward.

#### ***Note to facilitator (15mins)***

*Group Work – Participants should be divided into three groups. The task for each group is to decide on a key issue within their community that they want to deal with. The issue should be one that will require the voices of so many to tackle. Based on their knowledge of what networking is, each group should form a network determining (1) what the aim and purpose of their network will be (2) how they intend to contact themselves and carry out their activities and (3) the mode of operations of their network.*

*Each group should select a rapporteur who will report back their processes and decisions to the entire group. At the end of the report back, the facilitator should emphasize the strategies of networking and have a general discussion with participants on the importance of networking and the various forms of networking.*

### **Note to Facilitator (15mins)**

*Carry out a brainstorming/discussion on advocacy and types of advocacy. During this session, the facilitator should ask participants to define advocacy in their own words. Take note of definitions and terms used by participants and write them down on a flip chart.*

*In a mini lecture let participants know what advocacy really is and the various types of advocacy. A lot of people confuse advocacy with Behaviour Change Communications (BCC). Ask the group if they have heard the term behaviour change communication (BCC) or Information, Education and Communication (IEC). Ask them how they think BCC or IEC and advocacy are different or similar to each other. Supplement or clarify as needed, the difference between advocacy and BCC or IEC, using the discussion points below.*

**Essential points for discussion:** *Advocacy and BCC or IEC initiatives are similar in that they all are focused on raising awareness about a particular issue. However, BCC or IEC initiatives are aimed at changing behaviour at the individual level, whereas advocacy activities are aimed at mobilizing collective action and promoting social or legislative changes at the community, state, national, or global levels.*

## **4.3 Advocacy**

### **4.3.1 What is advocacy?**

Advocacy is speaking out about a person's rights. When you advocate you speak out in a way that represents your own or other people's best interests.

### **4.3.2 Advocacy is problem solving used<sup>8</sup>:**

1. To protect rights or change unfair discriminatory or abusive treatment to fair, equal, and humane treatment
2. To improve services, gain eligibility for services or change the amount or quality of services to better meet the needs of an individual

<sup>8</sup> [http://www.wpas-rights.org/What%20is%20Advocacy/what\\_advocacy.htm](http://www.wpas-rights.org/What%20is%20Advocacy/what_advocacy.htm)

3. To remove barriers which prevent full access to full participation in community life

**Advocacy** is also an action directed at changing the policies, position, or programmes of any type of institution.

It also includes:

- Building support for an issue or cause and influencing others to take action.
- Persuading government officials to prioritize particular programme approaches or services.
- Informing the general public and opinion leaders about a particular issue or problem and mobilizing them to apply pressure to those in the position to take action.
- Creating support among community members and generating demand for the implementation of particular programme approaches or services.

#### **4.3.3 Types of Advocacy<sup>910</sup>**

There are different types of advocacy. Here we will refer to five types of advocacy.

1. **Self-advocacy** - Self advocacy is undertaken by a person or group that shares the same characteristics or interests on behalf of the same person or group. The difficulty with this form of advocacy is that sometimes those undertaking advocacy and speaking up for themselves are likely to be further exposed and be more vulnerable to abuse, discrimination and ridicule as a result of speaking up for themselves
2. **Informal advocacy** - Informal advocacy occurs when someone stands up for a family member, friend or neighbour. Parents, brothers and sisters, relatives, friends who take on advocacy roles are all examples of informal individual advocacy. Many different people, with a range of relationships to people with disability, have spoken out and persistently advocated for those who are vulnerable. They may have some experience in the issue and are able to clearly explain it to other people.

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<sup>9</sup> [www.carersaustralia.com.au/?/national/article/pdf/157](http://www.carersaustralia.com.au/?/national/article/pdf/157)

<sup>10</sup> [www.qai.org.au/documents/doc\\_156.doc](http://www.qai.org.au/documents/doc_156.doc)

3. **Formal advocacy** - Formal advocacy occurs when a staff member or staff members of a service or organization advocates for someone or a group of people. Legal advocacy may be available from community legal services or legal services that support people that are vulnerable and have their rights trampled upon.
4. **Group advocacy** - Group advocacy involves a group of people with similar issues getting together and taking action as a group.
5. **Systemic advocacy** - Systemic advocacy is advocacy provided by associations with a specific interest who represent the rights and interests of a group of people with similar concerns and issues. This form of advocacy is primarily concerned with influencing and changing the system (legislation, policy and practices) in ways that will benefit people within society. Systemic advocates will encourage changes to the law, government and service policies and community attitudes. Systemic advocacy influences social and political systems to bring about changes for the benefit of groups of people.

***Note to facilitator***

*If possible, have a guest speaker share a personal account or local success story illustrating how an advocacy campaign they conducted effectively benefited the community.*

# MODULE 5

## SEX AND GENDER CONCEPTS

Duration: 2 hrs

**Learning Objectives:** By the end of this session participants will

1. Understand the difference between gender and sex
2. Understand how gender and gender roles affect the status of women
3. Explore social and cultural expectations for males and females, and illustrate the difference between those based on sex and those based on gender
4. Understand the various gender concepts
5. Understand the strategies to achieve gender equality

**Note to facilitator (15mins)**

*Facilitator should carry out a brainstorming/interactive discussion session.*

1. *On a flip chart, write the word “sex” on one side and “gender” on the other.*
2. *Ask participants to explain the meaning of these two words. Write their responses under the appropriate heading.*
4. *Explain the definitions of sex and gender, using the definitions below.*

### 5.1 What is Gender?

Gender can be seen as the full range of personality traits, attitudes, feelings, values, behaviours and activities that society ascribes to the two sexes on a differential basis.

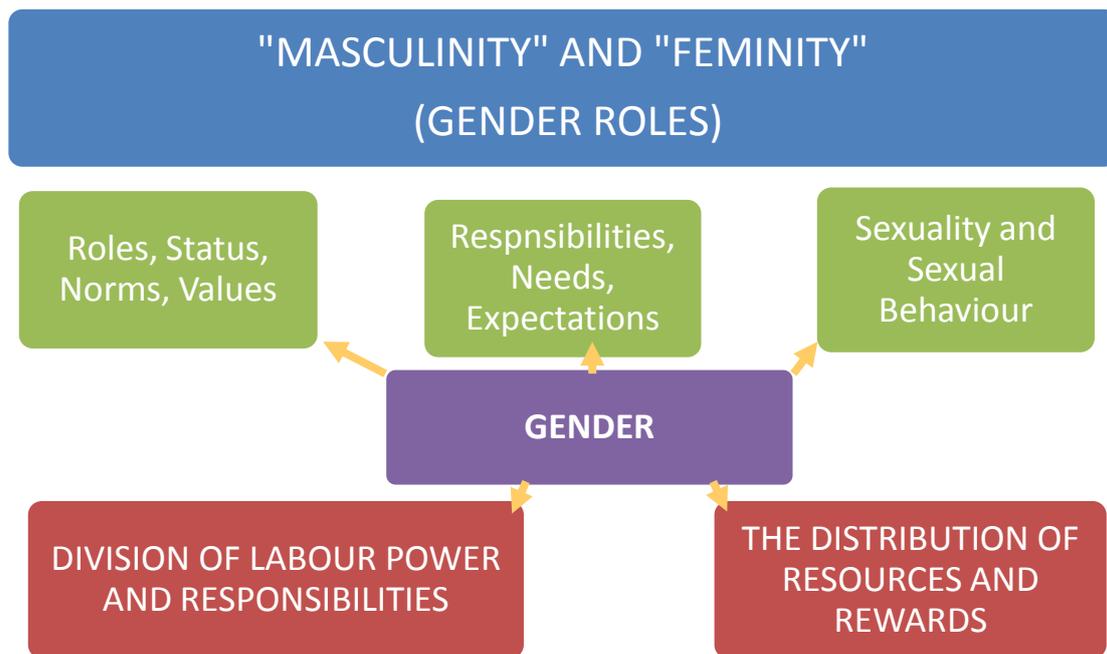
Gender refers to:

- the socially constructed and learned economic, social and cultural attributes, characteristics and opportunities associated with being male or female.
- roles that men and women play and the expectations placed upon them. These vary widely among societies and change over time.

- widely shared ideas and expectations concerning men and women. These include ideas about feminine/female and masculine/male characteristics abilities and commonly shared expectations about how women and men should behave in various situations. These ideas and expectations are learned from: family, friends, opinion leaders, religious and cultural institutions, schools, the workplace, advertising and the media. They reflect and influence the different roles, social status, economic and political power of women and men in society.

Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies, there are differences in activities undertaken by men and women, their access to and control over resources, as well as the decision-making opportunities that they have.

#### **GENDER DETERMINES ...**



#### **What is sex?**

**Sex** refers to the biological/physiological differences between women and men that are universal and fixed. Sex and gender are often seen as same but they are not. **Sex** is a biological description, which is determined by biology.

*Note to facilitator (15mins)*

- 1. Write on a blank flip chart “biological and physiological functions” and divide the sheet into two columns: one for Men/Boys and one for Women/Girls*
- 2. Ask participants to tell you some biological and physiological functions for men and boys in their society and repeat for women and girls*
- 3. For each function noted, discuss with participants that these are God given attributes. For example, a woman’s ability to give birth and breast feed is based on sex and cannot be changed*
- 4. Write on another blank flipchart “Social/cultural expectations” and divide the sheet into two columns: one for Men/Boys and one for Women/Girls.*
- 5. Ask participants to tell you some social/cultural expectations for men and boys in their society and repeat for women and girls.*
- 6. For each expectation noted, discuss with participants if this expectation is based on sex or gender. For example, the expectation for women to have children and breastfeed them is based on sex whereas the expectation for women to do the cooking for a family is based on gender.*

## **5.2 Distinguishing between Gender and Sex Roles**

**Sex roles** are defined by biological differences between men and women. For instance, pregnancy and child-bearing are female sex roles that men cannot assume

**Gender roles** are not the same as biological roles of men and women. These are the roles both sexes carry out in a society as defined by the virtue of being male or female. The roles that men and women play are influenced by the cultural and sometimes religious norms of the society, their social status in that society, other people’s expectations and the image the individual wants to develop for him/herself. A person’s role can change from time to time depending on economic, social and cultural changes in the community.

**Note to facilitator:** depending on time available for the training you may decide to carry out the gender game in the box below or carry out the activity below it. If time permits you may be able to do the two. These activities help to reinforce participants understanding of sex and gender roles.

**Gender Game: Establishing the difference between sex and gender (25mins)**

1. Ask the group if they understand the difference between 'sex' and 'gender'.
2. Explain the difference quickly and simply (i.e. sex is a biological construct while gender is a social construct)
3. Divide the participants into small groups, and distribute the Gender Game handout to each group.
4. Ask them to read the statements one by one in their groups, and to discuss among themselves whether they think the statements refer to sex or to gender, writing a 'G' for those they think refer to gender, and 'S' for those they think refer to sex. If there is disagreement or uncertainty among the group, they may make note of that.
5. Read the answers aloud and discuss them with the whole group.
  - Women give birth to babies, men do not. (S)
  - Little girls are gentle, boys are tough. (G)
  - Amongst Nigerian agricultural workers, women are paid fewer wages than men. (G)
  - Women can breastfeed babies, men can bottle-feed babies. (S)
  - Most building site workers in Lagos are men. (G)
  - In the South Eastern region of the country women can inherit property and men cannot. (G)
  - Men's voices break at puberty, women's do not. (S)
  - In one study of 224 cultures, there were 5 in which men did all the cooking, and 36 in which women did all the house-building. (G)
  - At adolescence young girls begin to menstruate but young boys do not (S)

Focus on these questions and key ideas:

- a. Do the statements indicate that gender is inborn or learned?
- b. Gender roles vary greatly in different societies, cultures and historical periods.

c. Age, race and class are also major factors, which determine our gender roles.

**Brainstorming session on role of males and females in the society (15mins)**

Steps:

- Facilitator should ask participants to brainstorm on what the roles of males and females are in the society
- Facilitator will ask questions to elicit more information and make inputs where necessary to the list on the flipchart
- From the list ask participants to pick which roles are for males and which are for females and explain why
- Discuss which are stereotyped roles and ask participants to either agree or disagree

**5.2.1 Differences between Gender and Sex**

<b>GENDER</b>	<b>SEX</b>
<ul style="list-style-type: none"> <li>▪ Socially created ideas and practices of what it is considered to be female or male.</li> <li>▪ The social roles and relationships between men and women, they are context-specific and can change according to circumstances, and from generation to generation.</li> <li>▪ Gender is influenced by other factors as wealth, class, age, education, race, ethnicity, religion and ideology</li> <li>▪ Gender is imposed by human society, which generates some deep and far-reaching sense of inequality between the sexes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Universal, biological differences between men and women</li> <li>▪ Characteristics that categorize someone as either female or male</li> <li>▪ Biological sex differences are very few and are unimportant in terms of determining gender inequality.</li> <li>▪ sex is a basic fact of nature and does not unfairly assign its biological roles</li> </ul>

**5.3 Gender Concepts**

<b>Gender Analysis</b>	The study of differences in the conditions, needs, participation rates, access to resources and development, control of assets, decision making powers etc. between women and men and their assigned gender roles (European Commission, 1998)
<b>Gender Awareness</b>	The understanding that there are socially determined differences between men and women based on learned behaviour, which affect ability to access and control

	resources.
<b>Gender Based Violence</b>	This is the violence that occurs based on gender roles, expectations, limitations etc. Gender-based violence includes any physical, mental or social abuse which is directed against a person on the basis of gender or sex and has its roots in gender inequality. This refers to violence meted out to women and men mainly because of the roles assigned to them by the society.
<b>Gender Blindness</b>	This is the failure to recognize that gender is an essential determinant of social outcomes, including health.
<b>Gender Budgeting</b>	This is a gender-based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality
<b>Gender Discrimination</b>	This means that individuals are treated differently on the basis of their sex. In many societies, this is maintained by structural discrimination against women in the distribution of income, access to resources and participation in decision-making. Discrimination based on gender affects both women and men adversely. Women are disproportionately represented among the poor, the less educated, the underpaid, the assaulted and the powerless.
<b>Gender Division of Labour</b>	The division of paid and unpaid work between women and men in private and public sphere (European Commission, 1998)
<b>Gender Equality</b>	This is the absence of discrimination on the basis of a person's sex in decision making, opportunities, allocation of resources or benefits, access to services. It is therefore, the equal valuing by society of both the similarities and differences between men and women, and the varying roles that they play. It refers to the equal rights, responsibilities and opportunities of women and men and girls and boys
<b>Gender Equity</b>	It means fairness and justice in men and women's access to socio-economic resources. It also means fairness in the distribution of benefits and responsibilities <b>Equity leads to equality.</b>
<b>Gender Gap</b>	The gap in any area between men and women in terms of their levels of participation, access, rights, remuneration or benefits (European Commission, 1998)
<b>Gender Inequality</b>	This refers to the obvious or hidden disparity between individuals due to gender. Gender inequality affects women more adversely than men.
<b>Gender Mainstreaming</b>	A strategy for integrating gender considerations and perspectives into legislation, policy formulation, planning, programming and allocation at all levels.
<b>Gender Needs</b>	These are requirements that arise from people's positioning in society, determined by the socially constructed characteristics. <ul style="list-style-type: none"> <li>▪ <b>Practical Gender Needs</b> are those needs of women and men that can be met without challenging gender</li> </ul>

	<p>inequalities. They relate to the areas in which women or men have primary responsibilities and include the need for access to health care, water and sanitation, education for children, etc.</p> <ul style="list-style-type: none"> <li>▪ <b>Strategic Gender Needs</b> are defined based on an understanding and analysis of women's subordinate position in society. Strategic needs may include the need for constitutional equality of women, reproductive rights, a political voice, or the protection of women from violence</li> </ul>
<b>Gender Roles</b>	These are the particular economic, social roles and responsibilities considered appropriate for women and men in a given society. Gender roles and characteristics do not exist in isolation, but are defined in relation to one another and through the relationship between women and men, girls and boys.
<b>Gender Sensitivity</b>	This is the ability to perceive existing gender differences, issues and inequalities, and incorporate these into strategies and actions.
<b>Gender Stereotyping</b>	This occurs when men or women are persistently attributed certain characteristics or roles, thereby creating the belief that these are invariably linked to gender. Gender stereotyping reinforces gender inequality by portraying assumptions and conditions that maintain the inequality as biologically or culturally fixed
<b>Patriarchy</b>	This is the male domination of ownership and of the control of resources that maintain gender discrimination. Patriarchy is maintained by an assertion of male superiority that claims to be based on biological differences between women and men, on cultural values, or on religious doctrines

### **Note to facilitator (15mins)**

*In explaining some of the gender concepts, facilitator can carry out the activity below on exploring gender stereotypes and assumptions.*

- 1. Place 4 flip chart size sheets of paper on the floor and give each one a heading; 1) 'women should', 2) 'women shouldn't', 3) 'men should', and 4) men shouldn't.*
- 2. Divide the participants into four groups and give each group one of the flip charts, with one of the four headings. Ask them to write down anything they have ever heard from any source about their heading. Then have each group read aloud what they have written down under their heading.*
- 3. Discuss the lists by comparing the women/men should/ and the women/men shouldn't lists. Discuss how participants relate to these messages. How are these*

*ideas generated and sustained in a particular society? How does this lead to gender inequality?*

#### **5.4 Gender Equality and the obstacles to achieving Gender Equality**

Gender equality connotes the elimination of differences which ascribe lower value to choices and perpetuate unequal power and resources. It also refers to an equal presentation, rights, responsibility and participation of women and men in all spheres of private and public life. Gender equality does NOT mean that women and men will become the same BUT that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. It implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men.

##### ***Note to facilitator (15mins)***

*The Facilitator should print out copies of the story below “The story of the Fox and the Crane”<sup>11</sup> and distribute among participants. Ask each participant to read. Start an interactive session on gender equality based on the story read:*

- *What is gender equality?*
- *What are the challenges to ensuring equality?*
- *How can these challenges be overcome?*

*Note: Use notes below to explain the challenges of ensuring gender equality. Ask participants to proffer solutions. Ask participants to generate what can be done by specific groups e.g. governments, civil society organizations, individuals etc.*

##### ***Equality of Outcome – The Fox and the Crane (equal treatment does not mean the same treatment)***

*The Fox invited the Crane to dinner, he served the food on a large flat dish.  
The Crane with her long narrow beak could not eat*

*The Crane invited the fox to dinner, she served the food in a deep vase, and  
so the Fox with his short, wide face could not eat.*

*Both friends had an equal opportunity for nourishment, but each time one of  
them could not take advantage of this opportunity*

<sup>11</sup> Adapted from the Training Manual on Gender Responsive Budgeting. Source, UNDP: Gender in Development Programmes, Learning and Information Pack, Gender Analysis, P. 109

*The development challenge in every case is to identify barriers to the opportunities that exist and the custom design the adjusted interventions that will lead to equality of outcomes*

The main obstacle to gender equality is unequal power relations between women and men. Patriarchy is entrenched in the Nigerian society and is based on male dominance and precedence. Gender discrimination is manifested in various degrees and forms, although it is seen basically as discrimination against women in all spheres of life – social, political, cultural and economic.

In Nigeria it is manifested in different ways including:

- Harmful traditional practices
- Gender based violence
- Low value for women
- Gender stereotypes
- Double standards for men and women especially with regards to moral and other issues

## **5.5 Strategies to Achieve Gender Equality**

Achieving gender equality involves implementing a range of strategies, including:

1. Initiatives to increase women's visibility within the country, for example through using quotas or affirmative action should be pursued.
2. Capacity building activities should be carried out including gender training at various levels focusing on gender concerns within the country, and making gender issues an integral part of national planning processes.
3. Advocacy for increased gender budgeting.
4. Gender mainstreaming is a very good strategy for addressing gender inequality. It will assist in integrating gender considerations and perspectives into policy formulation, planning, programming and allocation at all levels.

# MODULE 6

## GENDER AND SEXUAL BASED VIOLENCE

Duration 2 hrs

**Learning Objectives:** By the end of this session participants will understand the

1. forms of gender based violence, including sexual exploitation and abuse.
2. the causes and consequences of gender-based violence.
3. that gender-inequality is the root cause of gender-based violence

### *Note to the Facilitator (15 mins)*

*Facilitators should*

1. *Ask participants for the meaning of violence? Participants individually answer the question: "Violence is...." and write it out on the flip chart. Participants are asked to review the definitions.*

*Group discussion can follow in which they agree with personal statements and are given time to add or subtract.*

2. *Use posters depicting acts of violence or a documentary or a newspaper article on violence to get the group to address the same question. These tools can be used to get them to answer the question... Violence is....*

3. *Facilitator then summarizes and does a presentation on the U.N. definition of violence, highlighting the various forms of violence*

## 6.1 Definition of Violence

### United Nations Definition

The official Definition of violence against women comes from the Declaration on the Elimination of Violence against Women adopted by the General Assembly of the United Nations in 1993.

“The term violence against women means any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivations of liberty, whether occurring in public or private life”.

Other details in the Declaration stipulate that violence encompasses but is not limited to:

-Physical, sexual, psychological violence occurring in the family, including battering, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

-Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

-Physical, sexual and psychological violence perpetrated or condoned by the state wherever it occurs.

#### ***Note to facilitator (10 mins)***

- 1) *Ask participants what we mean when we say “Gender-Based Violence”? Explain that gender-based violence is physical, mental or social abuse which is directed against a person on the basis of gender or sex.*
- 2) *Ask participants to identify some forms of gender-based violence. Draw a simple tree on the flip chart. Ask participants to identify the different forms of gender-based violence list each example at the trunk of the tree.*

## 6.2 Gender-Based Violence (GBV)

Gender-based violence includes any physical, mental or social abuse which is directed against a person on the basis of gender or sex and has its roots in gender inequality. GBV largely affects females in most societies; males are also victims/survivors of GBV, but most gender discrimination occurs against females because they are disempowered in most societies when compared to their male counterparts. GBV involves the abuse of power.

Gender based violence includes – domestic violence/violence against women, battery, sexual harassment, manipulation within the home, the workplace or schools, sexual assault, exploitation and trafficking, rape, attempted rape, emotional abuse, pornography, harmful traditional practices, (i.e. Female Genital mutilation (FGM)/female circumcision), early/forced marriage, dowry abuse, widow ceremonies, punishments directed at women for defying cultural norms, denial of education, food and clothing to girls/women by virtue of their sex etc. The impact of gender-based violence is far-reaching both for the victim, and for society at large.

### *Note to Facilitator (20mins)*

*At this point the facilitator should introduce an energizer to enable s/he is carrying participants along.*

*Facilitator should have a mini lecture recapping what GBV entails.*

*Facilitator should divide participants into 3 or 4 groups depending on the size of the class and ask the participants in their groups to:*

- *Review the various forms of GBV*
- *Identify what is perceived to be the causes of GBV*
- *List and discuss the consequences of GBV. Include individual consequences to the victim, and also for others – community, family, government, etc.*
- *Prepare a flipchart paper with your group's list of consequences.*
- *As each group reads their lists aloud, the facilitator writes the example of consequences at the top of the tree, forming the branches and the causes at the bottom of the tree, forming the root.*

### **6.2.1 Causes of GBV**

#### **Potential causes/contributing factors include:**

- Gender Inequality, power imbalances between men and women
- Male attitudes of disrespect towards women including lack of respect for the human rights of women and girls
- Unquestioned assumptions about appropriate male and female behaviour
- Desire for power and control
- Political motives, including as a weapon of war, for power/control e.g the violence going on in the Niger Delta Region
- Traditional tensions, feuds
- Collapse of traditional society and family supports
- Cultural and traditional practices
- Religious beliefs
- Poverty
- Alcohol/drug abuse
- Loss of male power/role in family and community; seeking to regain and/or assert power
- Legal/justice system/laws silently condone violence against women and girls, insufficient laws against GBV
- Impunity for perpetrators.

### **6.2.2 Consequences of GBV**

Some consequences of gender-based violence:

#### **Health:**

- Individual consequences to the victim:
  - Injury, disability, or death.
  - STDs and AIDS.
  - Injury to the reproductive system including menstrual disorders, childbearing problems, infections, miscarriages, unwanted pregnancies, unsafe abortions. Depression, leading to chronic physical complaints and illnesses.

- FGM, resulting in shock, infection, excessive bleeding or death, and longer-term effects such as emotional damage, including anger, fear, resentment, self-hate and confusion.
  - Loss of desire for sex and painful sexual intercourse.
  - Difficult pregnancy and labour, chronic pain and infection, infertility.
- Impact on wider society:
- Strain on medical system

### **Emotional/Psychological:**

- Individual consequences to the victim:
- Emotional damage including anger, fear, resentment and self-hate.
  - Shame, insecurity, loss of ability to function and carry out daily activities.
  - Feelings of depression and isolation.
  - Problems sleeping and eating.
  - Mental illness and thoughts of hopelessness and suicide.
  - Gossip, judgments made about the victim, blaming the victim, treating the victim as a social outcast.
- Impact on wider society
- Expensive, drain on community resources; family, neighbours, friends, schools, community leaders, social service agencies, etc.
  - Victim unable to continue as contributing member of society; unable to keep up with child care, unable to earn an income.
  - If perpetrators not apprehended or arrested, this sends a strong message that the behaviour is somehow acceptable, leading to further incidents of violence.

### **Legal/Justice System**

- Lack of access to legal system
- Lack of knowledge of existing law
- Confusion regarding the most appropriate channels of seeking redress i.e. criminal, traditional etc.
- Victim reluctant to report due to heavy stigma attached to sexual abuse.
- Strain on police/court resources already challenged and overburdened.
- Costs incurred by the victim.

## Security, Physical Environment of the Community

- Victim feels insecure, threatened, afraid
- Climate of fear and insecurity impacting women's freedom and perception of personal safety
- Lack of female participation in the community life
- Fear of traveling to school and work.

### **Note to Facilitator (15 mins)**

*Facilitator should make use of the following case studies to explain Violence against women and the role of power and control in VAW*

*Steps:*

- 1. Case studies: Ask participants to role-play any of the two case studies below.*
- 2. Discussion of issues raised in the role-play*
- 3. Facilitator should ask questions on the how gender stereotypes and power distribution contributes to VAW*

### **Scenario 1**

*A couple is seen engaged in what appears to be a discussion. The discussion is quiet in the beginning. However, as it progresses, the man gets agitated and raises his voice. The woman gets angry with the man's response and also raises her voice. The discussion turns into an argument. The man gets very angry that the woman responds to him. He starts to get physical by pushing the woman around and ends up slapping her, the woman then holds his shirt and screams at him. The man ends up beating the woman.*

### **Scenario 2**

*A woman has three children and they come back from school with a memo requesting them to pay for a school event. The woman waits for her husband to get back from work and gives him the memo. The woman is heard begging the man for money for the children and other household expenses. The man shouts at the woman that he does not have money that she is wasteful and lazy and does not add to the income in the house but that she is always asking for more money. He then slams the door and goes out. He is later seen with a young girl, buying her gifts and taking her to the cinemas.*

### 6.3 Violence against Women (VAW)

According to the United Nations, VAW refers to any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether in private or public life. VAW is a form of GBV

Types of Violence against women can be classified loosely into three, namely;

- **Physical Violence:** all forms of physical abuse such as punching, kicking, shoving, slapping, assault with objects, acid baths, stabbing etc.
- **Psychological Violence:** all forms of emotional abuse including verbal attacks (name calling), threats of violence, humiliation etc.
- **Sexual Violence:** all forms of sexual attack or abuse such as defilement of the girl child, rape, indecent assault, forced marriage, forced pregnancy and forced prostitution/sexual slavery.

#### 6.3.1 Causes of Violence against women

- Power and Control
- Cultural and social attitudes about women
- Learned behavior

#### ***Note to Facilitator (15 mins)***

*Facilitator should ask participants if they have ever heard of or met anyone that had been raped. Discussions should be held around responses given by participants. Facilitator should then describe the scene below.*

*Facilitator should give mini lecture on rape and the fallacies that surround it. The lecture should include what to do if someone is raped.*

#### **Scenario**

*A young girl goes out with her boyfriend to an eatery where they have some drinks. They are on intimate terms, holding hands and touching each other. The girl then withdraws and asks the man to stop as he was taking it too far. The man ignores her, saying, “all you women are the same. You want it but you pretend you don’t”. The girl tells him that she was not leading him on but he would not listen. They end up in a struggle and ends with the man pushing her down on the floor, obviously with the intention of forcing himself on her.*

## 6.4. Rape and Other Sexual Offences

### 6.4.1 Rape

According to Amnesty International, rape “consists in the forced or non-consensual penetration of the human body with the penis, or with an object, such as a truncheon, stick or bottle”.

Under section 357 of the Criminal Code, the offence of rape is defined thus;

*“any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by in personating her husband, is guilty of an offence which is called rape”.*

The offence of rape is punishable with **life imprisonment** while an attempt to commit the offence of rape is punishable with **fourteen years** imprisonment. To prove the offence of rape, the slightest penetration is sufficient and it is not necessary to prove an injury or the rapture of the hymen to establish the offence.

#### Common fallacies about rape

**Fallacy:** Good mannered girls do not get raped

**Fact:** The truth is that any woman can be raped.

**Fallacy:** Prostitutes cannot be raped

**Fact:** Prostitutes like other women can be raped. The important factor is the absence of consent.

**Fallacy:** Husband cannot rape their wives

**Fact:** Women have the right to say no to sex when they do not want it.

**Fallacy:** Women attract rapists to themselves by dressing provocatively

**Fact:** Women just as men have the right to dress the way they want Women who cover themselves with veil are also raped

**Fallacy:** Rapists are usually strangers

**Fact:** Rapists are often people you know-your friend, family friend, husband or some one you have met before.

**Fallacy:** Rapists are men who cannot control themselves when they get excited

**Fact:** This is false. Rapists are men who chose not to control themselves.

**Fallacy:** A woman can always fight to prevent being raped by the man.

**Fact:** Men are generally stronger than women.

### **Self-defence against Rapists**

- Make efforts to escape.
- Try to deceive the attacker by saying you have AIDS.
- Bite, kick and pull the attacker's hair and try to shout to scare him away.
- If you feel your life is in danger, do not fight, try to talk to him, he might change his mind.

### **Steps to Take When Raped**

- Report to the police and they will give you medical police report for you to take to the hospital for treatment.
- Consult a doctor and narrate your experiences so that the doctor will know how to treat you.
- Give the medical police report to the doctor, as he will document his observations and diagnosis on the paper.
- Do not destroy or wash the clothes and underwear you had on during the attack as they are pieces of evidence
- Ask the doctor for Post Exposure Prophylaxis (PEP).within 72 hours to cut your risk of contracting HIV to the barest minimum level

#### ***Note to facilitator (10 mins)***

*Facilitator should prepare newspaper or magazine clippings of reports on incest, defilement or indecent assault. Distribute copies amongst participants.*

*Facilitator should have a brainstorming session on other sexual offenses.*

- 1. Ask participants to identify other sexual offenses they know or have read about*
- 2. List on a flip chart board*
- 3. Discuss the sexual offenses below with participants and ask for any experiences that might have had in relation to any of the offenses mentioned. Relate discussions to newspaper clipping handed out earlier*

### 6.4.2 Other Sexual Offences

Apart from rape, there are other sexual offences contained in Nigeria's penal laws. These include;

- **Defilement:** This refers to the unlawful carnal knowledge of a girl under the age of sixteen years. The offence attracts life imprisonment if the girl defiled is under the age of thirteen years but two years imprisonment if she is above thirteen years but below sixteen years.
- **Indecent Assault:** This covers all forms of abuse of a women's body such as forcing a woman to perform a sexual act which she is uncomfortable with; touching a woman's sensitive parts or forcefully exposing her nakedness
- **Procuration:** This refers to the use of tricks, fraud or drugs (e.g. sedatives) to procure a woman for the purpose of having an unlawful carnal knowledge of her. If found guilty the offender is liable to two years imprisonment.
- **Abduction:** Absconding with an unmarried woman under the age of eighteen years with intent to have unlawful carnal knowledge of her is an offence which is punishable with two years imprisonment.
- **Unlawful Detention:** Detaining or confining a girl or woman against her will with intent to have unlawful carnal knowledge of her is an offence punishable with two years imprisonment.
- **Operating Brothels:** keeping women in brothels or in any place for the purpose of prostitution or procuring men to have carnal knowledge of them is an offence punishable with one year imprisonment.
- **Sexual Slavery:** Women and girl-children being held against their will and owned by one or several persons in order to provide sexual services to their owners. Sexual slavery may be preceded by forced marriage of women and girl children.

#### What to Do

- Report matter to the police at the earliest opportunity for investigation and prosecution.
- Protect your children from sexual assaults by refraining from sending them to hawk in the streets and ensuring that you monitor the companies they keep and the characters of male children and adults living with you as they relate to her.

**Note to facilitator (15mins)**

*Divide participants into groups*

**Group Discussions**

- *Mention three ways you can protect your girl-child against rapists.*
- *Why do you think many women who have been sexually assaulted do not want to report their ordeal to the police?*
- *What can we do reduce the incidence of rape in our communities?*

**Why many survivors of VAW do not seek help**

A lot of women do not report incidences of violence for a variety of reasons including:

- shame
- lack of information and inaccessibility of services
- poor response or inappropriateness of services
- fear of reprisals
- potential loss of relationships, home or children for victims of wife battery or domestic violence
- no economic support
- hopefulness about the violence stopping
- family/cultural expectations
- partner's threats

**Remedies available to Victims of GBV or VAW**

- Reporting to the police - Victims can report the incident to the police for investigation and possible prosecution of the assailants.
- Recourse to court and taking advantage of the legal system: Victims can go to court to enforce their fundamental rights against torture, degrading and inhuman treatment and seek compensation. Finances should not be a constraint to seeking redress as victims can go to the legal aid councils, office of public defenders or Non Governmental Organizations.
- Accessing various services provided by Non-Governmental Organizations (NGOs): Victims can seek counseling, mediation and even legal assistance

from NGOs operating in the field of human rights. There are various organizations that assist women that are victims of GBV

***Note to facilitator (10 mins)***

*Introduce an energizer, get a small ball and ask participants to form a circle. Ask participants to throw the ball from one person to the other.*

**Instructions**

- 1. Select one person to take notes and write on the flip chart*
- 2. Tell participants that as soon as the ball touches their hand they should mention one type of harmful traditional practice they know*
- 3. At the end of the ball rounds, hold an interactive discussion on harmful traditional practices.*

## **6.5 Harmful Traditional Practices**

Harmful traditional practice is a form of Gender based violence

### **Types of Harmful Traditional Practices against Women**

- 1. Widowhood rites and practices:** This includes compelling a widow to:
  - (a) Drink the water used in washing the corpse of the late spouse to establish her innocence of the cause of death of her late husband as practiced in some communities in south Eastern Nigeria.
  - (b) Swim underneath a tree trunk laid very deep and close to the river bed also as a means of exonerating themselves from accusation that they are responsible for the death of the king who was also their husband, as is still being practiced in some riverine communities of South-South zone of Nigeria.
  - (c) Sleep either alone in the same room with the corpse of the late spouse or on the same bed with the corpse of their late spouse alone.
  - (d) Remain in confinement after the death of the spouse for any given period.
  - (e) Vacate her matrimonial home on the ground that she has no male child or no child at all for her late spouse.
  - (f) Shave the hairs on the head or any other part of her body.

(g) Wear mourning clothes of any make or otherwise adopt any life-style indicative of mourning for any given period from the date of the death of the late spouse

(h) Be remarried to a relative of the late spouse.

(i) Visit any shrine or perform any other ritual (m) forsake her matrimonial home

Apart from the ordeals of widows, women are also subjected to other harmful traditional practices such as

2. Male child preference
3. Early and forceful marriages
4. Female Genital Mutilation

***Note to facilitator (10mins)***

*Facilitator should have a short presentation on the laws addressing gender based violence.*

**Instructions**

1. *Prepare and distribute a handout to each participant on laws addressing gender based violence*
2. *Highlight international and national laws*
3. *Ask participants if they know of any local laws that affect GBV*

## **6.6 Laws addressing Gender-Based Violence**

Acts of gender-based violence violate numerous principles of international human rights: right to life, equality, security of person, equal protection under the law, freedom from torture and other cruel, inhumane or degrading treatment. There are also various local laws around gender based violence.

### **International Laws addressing Gender-Based Violence**

Key international documents include:

- The Convention on the Rights of the Child (CRC) (As well, the Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution)

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The Declaration on the Elimination of Violence Against Women (UN General Assembly)
- Rome Statute of the International Criminal Court (entered into force July 2002)
- UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children
- African Union Protocol on the Rights of Women in Africa
- African Charter on Human and People's Rights

***Some National and State laws that address Gender Based Violence***

- *Child Rights Act*
- *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act – law against trafficking in persons*
- *Edo State Female Circumcision and Genital Mutilation (Prohibition) Law No.4 of 1999*
- *Enugu State Law to make it Unlawful to Infringe the Fundamental Rights of of Widows and Widowers and for Other related Matters, 2001*
- *Imo State Gender and Equal Opportunities Law No 7 of 2007*
- *Anambra State Gender and Equal Opportunities Commission Law, 2007.*
- *Anambra State Malpractices against Widows and Widowers (Prohibition) Law No. 2005*
- *Enugu State Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law No. 3 of 2001*

# MODULE 8

## HUMAN RIGHTS

Duration 3 hrs

**Learning Objectives:** At the end of the session, participants would have a good understanding of:

- the concept and importance of human rights
- characteristics of human rights
- issues embedded in women's rights
- basic issues on children's rights

***Note to Facilitator:** Introduce module by helping participants to understand that all human beings are born equal and have internationally recognized rights irrespective of their age, sex, race, ethnic background etc. Human rights are inherent and therefore not be given.*

*Over the next 10 minutes, engage participants in a discussion on their understanding of what human rights are. Ask participants to analyse the term 'Women's rights are human rights'. Note their answers on a flip chart and paste them in strategic positions of the room. Give a power point presentation a general overview of human rights, highlighting the origin and characteristics and categories of human rights. Allow participants to ask questions and make comments at intervals. This segment should last about 30 minutes*

### 8.1 What are Human Rights?

Human rights are those rights that everybody has by virtue of being a human being. They are fundamental and inalienable rights essential to human beings and the fulfillment and enjoyment of their lives. They can be defined as those rights which are inherent in our nature and without which we cannot live as human beings. They are basic values without which people cannot live in dignity as human beings. Human

rights are the basic rights and freedoms that individuals are entitled to regardless of their economic status, nationality, jurisdiction, age, ability, ethnicity, sex, and sexuality<sup>12</sup>.

## 8.2 Characteristics of Human Rights

The nature of human rights is very unique. Its uniqueness is seen in its characteristics. The following are the key characters of human rights:

- **Universality** – Human rights belongs to everyone, regardless of your colour, religion, culture, gender etc. it is non discriminatory and applies to everyone in the world equally
- **Natural** – human rights are inborn. They are not given, bought, earned or inherited. They are inherent in people by the fact that you are a human being. It cannot be given to you or taken from you.
- **Inalienability** – human rights are absolute rights, fundamental freedoms and liberties that cannot be taken away from any human being.
- **Indivisibility** – all human rights are interdependent and interrelated. They cannot be divided. The promotion and enforcement of one right has a connection to the protection and/or respect of another right.

## 8.3 Legal Framework for Human Rights

Human rights instruments and treaties have been written at both national and international levels in order to ensure the protection of human rights at all levels. The international recognition of human rights principles emerged after the horrors of the World War II. The atrocities committed by the German Nazi under the leadership of Adolf Hitler were horrific and alarming. To avoid a repeat performance of such atrocities people wanted to ensure that no one is denied their fundamental freedom and justice by ensuring that civil, cultural, economic, political and social rights were recognized as universal and indivisible.

At the end of the war, the world formed the United Nations (UN) which met in San Francisco in 1945 where they pledged to promote human rights. The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly on 10th. December 1948 and was explicitly motivated to prevent the future occurrence of

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<sup>12</sup> <http://issues.tigweb.org/humanrights>

any similar atrocities. The Declaration itself goes far beyond any mere attempt to reassert all individuals' possession of the right to life as a fundamental and inalienable human right. The UDHR consists of a Preamble and 30 articles which separately identify such things as the right not to be tortured (article 5), a right to asylum (article 14), a right to own property (article 17), and a right to an adequate standard of living (article 25) as being fundamental human rights<sup>13</sup>. The UDHR is based on values that are shared by ancient philosophies and many religious traditions, especially the idea that along with our individual rights, we each have a responsibility to protect the rights of other human beings<sup>14</sup>. The UDHR proclaims a common standard of achievement for all peoples and all nations, regardless of nationality, tribal or ethnic grouping, sex, religion, economic status etc. The UN created two additional documents, the International Covenant on Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).

Human rights are well spelt out in the International Bill of Human Rights. The Bill is the combination of the UDHR and the two main United Nations legal instruments the ICCPR and ICESCR, both of which were adopted in 1966 and came into force in 1976. At the national level human rights provisions are incorporated in numerous laws but most importantly in the Constitution of the Federal Republic of Nigeria.

### **Human Rights Instruments**

International human rights instruments can be classified into two categories: *declarations*, adopted by bodies such as the United Nations General Assembly, which are not legally binding although they may be politically so; and *conventions*, which are legally binding instruments concluded under international law.

#### **Declarations**

- Declaration of the Rights of the Child 1923
- Universal Declaration of Human Rights (UDHR) 1948
- African Union Solemn Declaration

#### **Conventions**

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<sup>13</sup> <http://www.iep.utm.edu/h/hum-rts.htm>

<sup>14</sup> <http://issues.tigweb.org/humanrights>

- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).
- African Charter on Human and People's Rights (ACHPR) 1981
- Protocol to the African Charter on the Rights of Women
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979
- Optional Protocol To The Convention On The Elimination Of All Forms Of Discrimination Against Women
- Convention on the Rights of the Child (CRC) 1989
- African Charter on the Rights of the Child
- Convention Against Torture (CAT)
- Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Rights of Persons with Disabilities (2006)

### **National Human Rights Instruments**

- Constitution of the Federal Republic of Nigeria (1999) (Chapter IV)
- Child Rights Act (2003)

## **8.4 Categories of Human Rights**

### **▪ Civil and Political rights**

These are referred to as the first generation rights. Civil and political rights are a class of rights and freedoms that protect individuals from unwarranted government action and ensure one's ability to participate in the civil and political life of the State without discrimination or repression. These rights include, right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination and right to own property.

### **▪ Economic, Social and Cultural rights**

These are referred to as second generation rights. They are socio-economic human rights. They enable people to have social, economic and cultural security. They ensure different members of the citizenry equal conditions and treatments. These cover the right to employment, right to housing and shelter, right to health, right to food, right to education, right to safe water, right to preservation of one's mother tongue and other symbols of cultural identity, right to safety and security, right to an adequate standard of living. Some societies are unwilling to enshrine purported

economic, social and cultural rights as legal rights, seeing them only as needs that society or government might provide if resources are available, but which are not justiceable unless they are established by some contract. Nigeria is one of such countries.

- **Environment and Development Rights**

These are called third generation rights. The term "third-generation human rights" remains largely unofficial, and thus houses an extremely broad spectrum of rights, including: right to self-determination, right to economic and social development, right to a healthy environment, right to natural resources, right to communicate and communication rights, right to participation in cultural heritage, rights to intergenerational equity and sustainability etc.

- **Special Group Rights**

Some groups of people are vulnerable to discrimination and abuse. Group rights are the rights held by a group rather than by its members severally, or rights held only by individuals within the specified group. More recently though, demanding group rights is seen as a way of actively addressing issues of marginalisation and realising equality. This is where the group is regarded as being in a situation that requires special protective rights if its members are to enjoy human rights on terms equal with the majority of the population. Examples of such groups may include indigenous peoples, ethnic minorities, women, children and people with disability.

## **8.5 Constitutional Right<sup>15</sup>:**

The constitutional rights are those aspects of human right that are guaranteed by the constitution of a country. In Nigeria for instance, the civil and political rights are guaranteed under chapter four of the constitution of 1999 and are therefore, justiciable or enforceable in a law court. On the other hand many of the socio-economic and cultural rights are recognized in chapter two of the constitution but are not justiciable. Thus constitutional rights can be classified into guaranteed and justiciable rights and recognized but non-justiciable rights respectively.

***Note to Facilitator:** In the next 10 minutes, you may wish to ask participants at this point to mention the rights that they know are guaranteed by the Nigerian constitution. Below are the rights. Ask them which of the rights they believe are not being enjoyed by Nigerians and why.*

### **8.5.1 Guaranteed and Justiciable Rights under the Nigerian Constitution**

These include:

- (a) Right to life; S.33
  - (b) Right to dignity of human person; S.34
  - (c) Right to personal liberty; S.35
  - (d) Right to fair hearing; S.36
  - (e) Right to private and family life; S.37
  - (f) Right to freedom of thought, conscience and religion; S.38
  - (g) Right to freedom of expression and press; S.39
  - (h) Right to peaceful assembly and association; S.40
  - (i) Right to freedom of movement; S.41
  - (j) Right to freedom from discrimination; S.42
  - (k) Right to acquire and own immovable property; S.43
  - (k) Right to compensation in case of compulsory acquisition of property by the state; S.44
  - (l) Right to financial assistance or legal aid in case of an indigent victim of human rights violations subject to the promulgation of appropriate laws by the National Assembly; S.46(4)(b)
  - (c) Right to information on asset declarations of any public office holder subject to the terms and conditions prescribed by the National Assembly through appropriate laws; third schedule, part 1, para. 3(c) (m)
- Right to federal character representation in public offices and to enforce same through the Federal Character Commission; Third schedule, part 1, para. 7(c).

### **8.5.2 Recognized but Non-Justiciable Constitutional Rights**

These include:

- (a) Right to security and welfare-S.14(2)(b)
- (b) Right to adequate transport facilities -S.15(3)(a),
- (c) Right to social justice, equality of status and opportunity-S.16(1)(b)
- (d) Right to a just economic system; S.16(2)(c)
- (e) Right to suitable and adequate shelter, food, national minimum wage, old age care, pensions, unemployment and sick benefits, welfare in case of disability; S. 16(2)(d),
- (f) Right to human actions by the government; S.17(2)(c)
- (g) Right to easy access to courts; S.17(2)(e)
- (h) Right to adequate means of livelihood and employment; S.17(3)(b)
- (i) Right to just and human working conditions; S.17(3)(b)
- (j) Right to health and safety at workplace; S.17(3)(c)
- (k) Right to adequate medical and health facilities; S.17(3)(d)
- (l) Right to children, young persons and the aged to freedom from all forms of exploitation and neglect; S.17(3)(f)
- (m) Right to public assistance for the needy; S.17(3)(g)
- (n) Right to free education at all levels; S.18(2)
- (o) Right to safe environment-water, air land; S.20
- (p) Right to protection and preservation of one's culture; S,21.

**Note to Facilitator:** In order to deepen understanding of this topic, over the next 20 minutes, engage participants in a debate on justiciable and non justiciable human rights.

**Step1:** The facilitator may wish to ask participants the following questions:

1. What are the implications of classifying rights as justiciable and non-justiciable? Write their answers on a flip chart
2. Is it possible for citizens to enjoy rights that are classified as non-justiciable? Some of the participants may say yes while others may say no.

**Step 2:** Get the participants to form two groups. Give them 5 minutes to discuss their points in their groups. Each group is to select a representative who will present the position of his/her group in 3 minutes. You can declare the winning group based on the number of valid points presented.

## 8.6 Understanding Women's Rights

The reason that we emphasize “women’s rights” within human rights goes beyond history. Traditionally, women have not enjoyed equal access to basic human rights, protection, resources, and services<sup>16</sup>. Women’s human rights are an integral part of human rights. Hence the slogan “**Women’s Rights Are Human Rights**”, however, both the international and national human rights principles have not yet been applied effectively to redress the disadvantages and injustices being experienced by women by reason only of their being women. Women need particular kinds of legal protection to be able to enjoy their rights in full.

Women comprise more than half the world's population. Women are 70% percent of the world's poor, and two-thirds of those who are not taught to read and write. Women are the primary caretakers for most of the world's children and elderly. Yet much of the work women do is not valued - not by economists, not by historians, not by popular culture, not by government leaders<sup>17</sup>.

### 8.6.1 Women’s human rights: CEDAW

CEDAW is the most comprehensive and detailed international agreement in the history of women’s rights. With its spirit rooted in the goals of the UN, the

<sup>16</sup> <http://issues.tigweb.org/genderequality>

<sup>17</sup> <http://www.famousquotes.me.uk/speeches/Hillary-Clinton/>

convention incorporates all gender provisions from several documents into one definitive international legal instrument. Yet, CEDAW also goes one step beyond earlier human rights conventions by exposing the specific inequalities that plague women's lives. In doing so, it explicitly asserts what previous international mechanisms have ineffectively expressed: that women's rights as human rights must be respected and observed.

**Note to Facilitator:** Over the next 30 minutes, the participants can carry out the following exercise:

Ask participants to identify issues of concern to women in their communities, at work, in their families, etc. Write their answers on a flipchart. Engage participants in further debate on women's rights issues by asking the following questions:

Are the issues based on culture, tradition or myth?

Do the issues affect the status of women and men and how do they affect them differently? How can such issues be addressed?

## 8.7 The Rights of the Child

**Note to Facilitator:** At this point, spend the next 15 minutes to introduce participants to the issue of children's rights highlighting the rights provided for in the Nigerian Child's Rights Act of 1999 and the International Convention on the Rights of the Child

The Nigerian Child's Rights Act, 1999 defines a child as anyone under the age of 18 years. The Act makes it a crime for any parent or guardian not to allow a child or ward to go to school especially primary school.

According to the *UN Convention on the Rights of the Child*, "The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. The child should be fully prepared to live an individual life in society...in the spirit of peace, dignity, tolerance, freedom, equality and solidarity." -

Every child has a right to their childhood – a hopeful existence free of exploitation, violence, neglect, and extreme poverty. Children need education, health services, consistent support systems as well as love, hope and encouragement; all these things

and more are required in order to experience childhood to the fullest, and to eventually develop into healthy, capable adults<sup>18</sup>. A key concept of the Convention on the Rights of the Child (CRC) is that children - as individuals - have rights, and these must be enumerated, legally binding and made specific to the evolving development of the child. Although children have the same rights that adults have, violation of same rights may affect children differently from how it affects adults.

**Note to Facilitator:** *In order to deepen knowledge of participants on the issue of children's rights, you may wish to end this session by asking participants to proffer solution to the following issue. Rakiya is a 16 year old girl in JSS 2. Her father has just withdrawn her from school and married her off to his friend a Commissioner of RIYA State. Rakiya has a dream of becoming a medical doctor. The Riya State House of Assembly has refused to pass the Child's Rights Act into law. How can you help Rakiya to actualize her dream.*

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<sup>18</sup> <http://issues.tigweb.org/youthrights>

# MODULE 9

## GENDER, HUMAN RIGHTS AND HIV/AIDS

Duration 1 ½ hrs

**Learning Objectives:** By the end of this session participants will understand

- issues around HIV/AIDS and its implication for gender
- Human rights of People Living with HIV/AIDS

### *Note to the Facilitator (15 mins)*

*Facilitators should*

- *Ask participants for the meaning of HIV/AIDS? Participants individually answer the question*
- *Write out responses on flip chart.*
- *Facilitator summarizes and does a presentation on HIV/AIDS and its mode of transmission*

### 9.1 What is HIV/AIDS?

HIV means Human Immunodeficiency Virus while AIDS means Acquired Immune Deficiency Syndrome. HIV/AIDS is reported to kill about 8000 people daily across the world. Nigeria is ranked 2<sup>nd</sup> to South Africa in the African continent among countries with large number infected persons. Although efforts are being made to find a cure, at the moment there is still no full proof known cure or preventative medication.

There are different transmission modes:

- Sexual involvement
- Sharing of instruments such as razor blades, toothbrushes, earrings, etc.

- Nursing those who are infected without protection
- Blood transfusion
- Mother to child transmission

To prevent themselves from contracting HIV/AIDS, people should avoid premarital sex (Abstinence), be faithful to one uninfected partner (be faithful) or ensure that they make use of condoms during sexual intercourse and avoid sharing certain sharp objects with infected people e.g. razor, shaving stick, clipper, needle etc.

## 9.2 HIV/AIDS and Gender

Gender is an inextricable part of the HIV/AIDS equation. Women are said to be more vulnerable to infection than men because of their biological features and poverty. HIV and AIDS can be transmitted through, sex, mother to child, use of unsterilized objects etc.

### *Note to facilitator (25mins)*

*Divide participants to form 3 groups.*

*Each group should select a rapporteur to report back during plenary discussions.*

4. *Why are women more vulnerable to HIV/AIDS infection than men?*
5. *Do you think women are more likely to suffer discrimination because of their HIV/AIDS status than men? Give at least two reasons why you think so.*
6. *What are the gender implications of HIV/AIDS?*

*At the close of the group discussion, rapporteurs should report back to the workshop.*

*Facilitator should use notes below to discuss gender implications of HIV/AIDS*

**Gender issues related to HIV/AIDS include:**

- The impact of women's poverty on vulnerability to disease and access to health care
- Low educational status of women and its impact on health
- Impact of lack of access to accurate health information by men and women
- Health consequences of high rates of unemployment and limited job opportunities
- The health impact of the subordination of women and subsequent lack of bodily integrity
- The impact on the health of women of a culture of male dominance
- The effect of male dominance in sexual relationships on a woman's ability to protect her body and health e.g. negotiation of condom use
- Pregnancy and breast feeding risks
- Health consequences of men/women being forced to seek work outside the vicinity of their home

***Note to Facilitator (20 mins)***

*Facilitator should make use of the following case study to explain the gender implications of HIV/AIDS Steps:*

1. *Case study: Ask participants to role-play the case study below.*
2. *Discussion of issues raised in the role-play*
3. *Facilitator should ask questions on which gender issues are raised in the scenario below*
4. *Has any human rights been violated? Which rights have been violated?*
5. *What can a paralegal do if this kind of case is brought to him/her?*

*Facilitator should highlight how human rights relate to HIV/AIDS*

**Scenario: The intersection between gender and HIV/AIDS**

*Adijat is a 24 year old mother of two children aged four years and nine months. She lives with her mother in law in Ejio villa via Arigbajo. She does not have a regular income. Her husband sends his mother the sum of N10000 monthly for their upkeep. Adijat has to ask her mother in law for money for anything she needs. Her educational qualification is SSCE and she has never had a job because she is a full time housewife and never improved on her education. Her first sexual experience was at the age of 16 when her neighbour forced himself on her. He had just returned from the city and had recently been diagnosed as being infected with HIV. He had been told that he could be cured if he slept with a virgin. He warned her that if she told anyone she would die, she was afraid of death and so did not tell any one.*

*Shortly after the incident she met Joseph and started dating him. She never had sexual intercourse with anyone apart from him. He asked for her hand in marriage and paid her bride price when she was 20 years old. As there are no jobs in Ejio, Joseph left to find work in Lagos. He lives in a one room apartment in Iyana Ipaja. Although he does not have a regular girl friend like some of his friends, whenever he has the urge for sex he visits any of the brothels in his area to satisfy his sexual urge. He does not use condom during his sexual escapades as he believes this will reduce his level of enjoyment.*

*Joseph is able to go home three times a year. Whenever he is at home, he has sex regularly with Adijat. He would not consider using a condom after all she is his wife. They practice dry sex to increase his pleasure. She uses potash to wash her vagina which is believed to make her dry and tight. He believes that if she is wet she has been unfaithful to him. Although Adijat faces so much pain and discomfort during intercourse she obliges as she fears mental and/or physical abuse from him if she does not please him or if he thinks she has been unfaithful. She would be chased out of her mother in laws house and she has no where to go as her parents are late. After one of his visits Adijat discovers she is pregnant.*

*When Adijat was pregnant with her 9 month old baby she was asked at the antenatal clinic to have an HIV test done before she can register at the government clinic which has just been built in the village next to where Adijat lives. She carries out the test and the result is positive. Although Adijat was counselled at the "Heart to Heart" centre located in the hospital, she is still very confused and at a loss of what to think. How did she get this dreadful disease and what is she going to do now. Not knowing very much about the infection and in her confusion Adijat tells Joseph about her hospital report. He becomes abusive and says that HIV must be a woman's disease. He discusses with some of his friends who tell him he needs to get rid of her before she infects him. He then accuses her of infidelity and sends her away.*

### ***Note for Facilitator – Gender issues raised***

- *Adijat is disempowered, being economically dependent on her husband and his family and is isolated from her own family. She has no authority for decision-making but must please those who have this authority.*
- *Due to lack of education, there are many myths regarding HIV, how it is spread and how it is cured.*
- *The economics of working away from home have both physical and emotional health risks. The myth that men must have sexual intercourse to satisfy their urges may lead to the acceptance of the town girlfriend or the use of sex workers.*
- *The practice of dry sex and its linkage to pleasure and fidelity is another myth and due to the trauma experienced during dry sex increases the likelihood of transmitting STI's to the woman.*
- *The woman is not valued for herself but rather for her role in reproduction and childrearing. This brings up a side issue of infertility, where a woman becomes of no value if she cannot produce children.*
- *Although she has been counseled, much of the information is overwhelming. The knowledge that Adijat is HIV positive has resulted in her husband blaming her and sending her away. The public health crisis is in educating people on the transmission of HIV, how to practice safe sex either to keep themselves HIV negative or to prevent further spread if HIV positive, what their options are for pregnancy, how to care for themselves when they are HIV positive.*

### **9.3 HIV/AIDS and Human Rights**

A poor respect for human rights increases the prevalence and worsens the impact of HIV/AIDS. The spread of HIV/AIDS also undermines progress in the realization of human rights, as the pandemic places strain on the resources of the country. The main human right issue for people living with HIV and AIDS is discrimination by members of the society. There are various forms of discrimination against People Living with HIV/AIDS (PLWHA) and People Affected by AIDS (PABA). These forms of discrimination include the following:

- (a) Desertion by spouses, friends and other family members;
- (b) Refusal to offer treatment by medical personnel to such people;

- (c) Denial or removal from such persons any treatment or medication or any support or enabling facility including accommodation for their functioning in the society;
- (d) Failure to remove, eliminate or ameliorate any obstacle that unfairly limits or restricts such persons from enjoying equal opportunities or failing to take steps to accommodate the needs of such persons.
- (e) Refusal to admit into school or not allowing them to continue in an educational institution;
- (f) Denial of access to and use of religious or worship areas and services;
- (g) Denial of access to and use of communal places
- (h) Denial of access to credits, loans and insurance services so long as the persons have disclosed, where required, in utmost good faith, their status to the insurance company or financial institution;
- (i) Depriving such persons of the right to an elected or appointed public office or admission to a public function.
- (j) Denial of access to any place of human endeavour.

**HIV/AIDS-related human rights include<sup>19</sup>:**

The right to life	The right to the highest attainable standard of mental and physical health
The right to liberty and security of persons	The right to freedom of association
The right to non discrimination, equal protection and equality before the law	To right to freely receive and impart information
The right to equal access to education	The right to marry and found a family
The right to privacy	The right to freedom of movement
The right to freedom of expression and opinion	The right to be free from torture and other cruel, inhuman or degrading treatment or punishment
The right to work	The right to seek and enjoy asylum

<sup>19</sup> Adapted from the resource pack on “Gender and HIV/AIDS’ prepared for the UNAIDS Interagency Task team on Gender and HIV/IADS, 2005.

**Note to facilitator (20mins)**

*Divide participants into 3 groups*

**Group Discussions (15mins)**

- *How do you think human rights, HIV/AIDS and gender are linked?*
- *How can respect for human rights help to address the gender dimensions of HIV/AIDS?*

*At the end of the group discussions and report back, facilitator should have a short presentation (10mins) on the link between human rights, HIV/AIDS and gender highlighting the key issues and stating key actions required to promote a gender sensitive human rights strategy against HIV/AIDS (use notes below)*

**Key Actions Required**

- Efforts should be made to combat stigma and discrimination in relation to gender, poverty and HIV/AIDS
- Promotion of the rights of women
- Combating sexual and economic exploitation of women and girls
- Promotion of access to highest attainable standard of mental and physical health.

**Note to facilitator (10mins)**

*In rounding up have a short presentation on the remedies available for people living with HIV/AIDS(PLWHA) and people affected by AIDS(PABA)*

*Have a five minute question and answer session.*

**9.4 Remedies available to Victims**

- (a) Legal Action: Unfortunately, for the victims of discrimination on grounds of HIV/AIDS status, the Nigerian constitution 1999 does not offer them much hope in terms of provisions that can help them enforce their rights. Section 42 of the constitution which guarantees every person the right to freedom from discrimination only prohibits discrimination on the ground of **community, ethnic group, place of origin, sex, religion or political opinion**. Discrimination on the

ground of health status (or HIV/AIDS Status) of persons is not mentioned at all. Thus, unless a judge engages in extensive legal activism it may be impossible for a victim of discrimination on grounds of health status to enforce his/her right under section 42 of the constitution. There is an urgent need for a law that can protect people living with HIV and AIDS from discrimination.

- (b) Counseling; Victims of discrimination can report to appropriate NGOs and government departments for counseling on how to manage the situation to avoid being infected by HIV/AIDS.

# MODULE 10

## DEMOCRACY, GOOD GOVERNANCE AND RULE OF LAW

Duration: 2 hrs

**Learning Objectives:** By the end of this session participants will have a good understanding of the

- meaning and principles of democracy
- forms and duties of government
- concept of separation of powers
- concept of rule of law
- duties and responsibilities of citizens in a democracy

***Note to Facilitator:** Ask participants to define democracy the way they understand it. Note their responses on a flip chart and thereafter share your own prepared definition in a power point presentation. Highlight some of their definitions that are tenable and help them to understand why some of their definitions are inadequate or inappropriate. Each group has 10 minutes to perform this task. Thereafter, give a lecture on the meaning and principles of democracy using the information below as a guide. Encourage participants to ask questions and make comments.*

### 10.1 What is Democracy?

Democracy is one of the methods of governing a country or nation. According to Abraham Lincoln, democracy is defined as ‘*government of the people, by the people and for the people*’.

The main precept of democracy is a form of government in which everyone in the group, community or country has a say directly or indirectly on how the group, community or country is governed. However, because it is impossible for all the

people in a nation to gather together in one place to make decisions on issues affecting them, representatives are chosen (elected or selected) among the people through a political process. In a democracy, the elected leaders are answerable to the people.

Democracy can therefore be defined as:

- A form of government by the people through elected representatives
- Rule by the majority through the elected few i.e. although just a handful of the populace is ruling, the ruling class is subject to substantive limitations e.g. separation of powers, constitutionally prescribed procedures for the exercise of power, laws regulating actions and practices, etc.

## 10.2 Principles of Democracy

There are a number of principles that are essential for the existence, smooth running and sustenance of a democracy. It is worthy to note that in practice, democracies differ from one country to another. However, the following principles (signposts of democracy) are important for any democracy to succeed.

1. **Respect for the rule of law:** Rule of Law simply means that the law is supreme. In other words, the law is above everyone and it applies to everyone. Whether governor or governed, rulers or ruled, no one is or can be above the law, neither can anyone be exempted from the law. It also means that no one has the power to grant exemption in the application of the law.

The rule of law is a foundation for the liberties of all persons and for order. It respects everyone as equals and allows societies to organize their lives, plan their futures, and resolve disputes in a rational way.

2. **Respect for human rights:** For democracy to thrive there must be respect for human rights. A constitution and a set of laws that guide citizens and their leaders and regulates relationship between the government and the people and between citizens must be in place. The constitution provides for fundamental human rights of citizens and demands that they must be protected and respected.
3. **Separation of powers:** To avoid abuse of power and for democracy to work well, the powers, duties and roles of all the arms of government must be clearly defined. This reduces conflicts and makes governance easier. There are

three arms of government in a democracy - the executive, the legislature and the judiciary. Each arm serves as a check and balance on the other arms to prevent abuse of powers.

4. **Equality of all citizens:** There should be no form of discrimination against anyone, (either male or female) under a democracy. There should be equal opportunities for participation. Everyone is equal before the law and must respect the rights of one another.
5. **Regular, free and fair elections:** There must be a stipulated tenure of office for every elected official. For democracy to thrive, free and fair elections must be carried out within the stipulated period for a change of baton and to give the people the opportunity to choose whom they want to serve or lead them. Elections encourage public competition for power by more than one candidate or political party. This gives the citizenry the opportunity to be involved in deciding who will rule or serve the nation and how decisions will be made in the nation.
6. **Freedom of speech, the press, association, assembly etc.:** Under a democratic government there should be an independent press. Government should not control newspapers, television and radio establishments.
7. **The existence of organized opposition/multi-party system:** Democracy gives citizens freedom to choose their leaders from among many candidates, to decide which political party to join and support, and the nature of government they want. A multi party system allows for opposition to the party that wins an election. This helps provide voters with a choice of candidates, parties, policies to vote for. Historically when a country only has one party, the result has been a dictatorship.
8. **Accountability and responsiveness of the rulers to the demands of their citizens:** Democracy gives citizens the power to demand from elected representatives an account of their stewardship. Government provides elected representatives' funds to set up constituency offices to enable them meet with members of their constituencies regularly. They are expected to consult their constituencies before taking any position on controversial issues. The elected representatives are also expected to respond to reasonable demands and requests of the citizens.

9. **Transparency:** For a government to be accountable, the people must be aware of what is happening in the country, i.e. how and what decisions are being made. A transparent government carries the people along in its decision making strategies and activities.
10. **Citizen participation:** One of the basic principles of democracy is citizen participation in government. Participation is the key role of citizens in democracy. It is not only the citizens' right but also a duty and it builds a better democracy.
11. **Political tolerance:** This means that while a majority of the people rules in a democracy, the rights of the minority must be protected. People who are not in power must be allowed to participate in governance and speak out on issues.
12. **Accepting the results of elections:** In any competition there are always winners and losers, and it is the same during elections. Each party feels that they are the best and that it won the elections. Sometimes this leads to chaos when people do not accept the results of the election. This oftentimes leads to violence and therefore goes against democratic principles.
13. **Viable and active Civil Society Organizations (CSOs) and Non Governmental Organizations (NGOs):** CSOs and NGOs should follow up on actions of government, analyze their decisions, critique them, keep citizens adequately informed and challenge any authority that violates the human rights of the citizens or the constitution. The government on the other hand must create the enabling environment that will allow CSOs and NGOs to thrive well.

At this point participants need to relate what they are being thought with their experiences as citizens of a nation that practices democracy. Within the next 15 minutes, engage participants in a discussion session on the problems that they think are associated with the kind of democracy that Nigeria is practicing. Note their answers on a flip chart and thereafter make your comments. The problems listed in the box below are some of the likely ones that they will raise.

### 10.3 Problems facing the practice of democracy in Nigeria

The practice of democracy in Nigeria has experienced many hiccups for several reasons. Military rule went on for a very long time in the country and hindered the entrenchment of democracy. Successive military regimes have been responsible for the poor foundation of democracy laid in the country. They have also frustrated many transition programs in the country e.g. the June 12 elections

#### Some of the challenges of democracy in Nigeria

- Greed and corruption
- Abuse of powers by past and incumbent leaders
- Religious intolerance
- Rigging of elections
- Monetization of the electoral process
- Weak and dependent electoral commission
- Ethnic rivalry
- Compromised mass media
- Lack of basic freedoms e.g. freedom of the press, assembly, association, information, *etc.*
- Illiteracy, ignorance and political apathy on the part of

### How Government Works in a Democracy

#### What is Government?

Government is the collection of institutions which coordinate and regulate social life. Government provides the services that the society requires and demands. It prohibits, protects, regulates and coordinates in order to benefit individuals, groups and the entire society. There are various forms of government. It could be military dictatorships, monarchial systems or civilian democratic governments. These forms of government can function in many ways including:

**Autocracy** – A form of government in which absolute powers are domiciled in one person. This form of government gives room for tyranny and oppression

**Capitalism** – A political system in which individuals own and/or control the factors of production i.e. capital, land, labour etc. This form of government gives freedom of economic choice.

**Democracy** – A government of the people, by the people and for the people. It is a system of government in which supreme authority rests with the people.

*Note to Facilitator: Engage participants in a discussion on their expectations of the government of their States or LGA. Ask participants to form three (3) groups. Each group is expected to draw a 'Democracy Tree' and list what they consider to be the fruits, stem and roots of democracy. Give them 20 minutes to come up with their tree. Bring them back to a plenary session with the representative of each group presenting its tree. Each group has five minutes for presentation. Encourage participants to critique each others presentation constructively.*

*The following are some of the likely response from the groups:*

### **10.3.1 Democracy Tree – Fruits, Stem and Roots of Democracy**

*The **fruits** or dividends of democracy include:*

- affordable and adequate education services
- security
- regular and adequate salaries for workers
- good roads
- constant electricity supply
- good health care systems
- accountability and transparency in managing public affairs
- active Civil Society Organizations
- economic freedom
- political tolerance
- ethnic and religious tolerance

The **stem** of democracy is a free and fair electoral process

The **roots** of democracy include:

- Rule by the majority
- Separation of powers
- Independent electoral commission
- Regular, free and fair elections
- Rule of law and independent judiciary
- Respect for human rights
- Multiparty system and loyal opposition

For government to perform well, involvement of citizens in governance is critical. It is therefore important that both leaders and citizens are aware of their functions and responsibilities. At this point hold an indebt discussion session with participants on their perception of what the functions of government are and what their responsibilities as citizens are. Below are possible points to be raised by them.

**Functions of Government in society include:**

- Maintaining internal order and external security
- Ensuring justice
- Safeguarding individual freedom
- Performing regulatory functions
- Promoting the general welfare of the citizenry

## Characteristics of a good government

- It encourages popular participation
- Promotes respect for the Rule of Law
- Transparency
- Responsiveness
- Consensus oriented
- Equity and Inclusiveness
- Effectiveness and efficiency
- Accountability
- Mainstreams gender equality principles into its plans and programmes

## Responsibilities of Citizens in a Democracy

Citizens must:

Abide by the rules and regulations of the land

- Give mandatory military (where necessary) or civilian national service for a period of time
- Pay fair share of taxes promptly and regularly
- Accept the authority of the elected government
- Respect the rights of those with differing points of view
- Be active, not passive
- Be free to run for office or serve as appointed public officials for a time
- Utilize free press to speak out on local and national issues
- Be free to join labor unions, community groups, and business associations and other private voluntary organizations that share their interests – whether devoted to religion, ethnic culture, academic study, sports, the arts, etc.

# MODULE 11

## THE NIGERIAN LAW AND LEGAL SYSTEM

Duration: 3 hrs

**Learning Objectives:** By the end of this session participants will understand

- the origin and features of the Nigerian legal system
- the law making processes in Nigeria
- basic provisions of the Nigerian constitution
- the court system

***Note to Facilitator: Step 1** - Remember to take a copy of the current Nigerian Constitution with you to this session. Spend 5 minutes to introduce the module by stating that most people often have contact with the legal system when they experience one form of conflict or the other. As paralegals, participants would, in the course of their interactions with members of their communities have opportunities of assisting people on matters that have legal implications. It is therefore absolutely necessary to have a basic understanding of how the Nigerian legal system functions.*

***Step 2:** Spend 15 minutes to give a lecture on the features of the Nigerian legal system and thereafter take questions and comments for 5 minutes.*

### Background

#### 11.0 Background and Features of Nigerian Legal System

Nigeria as a political entity was a British colony until October 1, 1960. The British colonial administrators, who ruled the country for almost a century, brought with them the laws of England which they introduced into Nigeria. Thus, the Nigerian Criminal Code and the Penal Code are essentially adaptations of the criminal laws of England, even though some of the offences created in these codes are totally inconsistent with the customs of the people of Nigeria. For instance, in the criminal code, “bigamy” (i.e. marrying another wife under Christian or statutory law while the

previous Christian or statutory marriage is still subsisting) is an offence, but no one seems to obey or enforce it.

The Nigerian legal system is characterized by the following:

- (a) Multiplicity of law regimes - Nigeria is a federation of thirty-six States including the Federal Capital Territory, Abuja. Each State has its own legal system reflecting peculiarities of the customs of its people. In many states they are customary courts, particularly, in southern Nigeria, established to determine disputes in accordance with the local customs of the people. In northern Nigeria, States also have Sharia courts.
  
- (b) One Federal constitution - In spite of the multiplicity of legal systems, Nigeria operates only one constitution which applies throughout the Federation. Any other law, including State laws, that are inconsistent with the provisions of the Nigerian constitution 1999 are null and void to the extent of the consistency.
  
- (c) Influence of international conventions: As a member of the international community, Nigeria has ratified some landmark international conventions. When the Federal Government of Nigeria ratifies an international convention, the National Assembly has to enact it into law for the convention to become applicable in Nigeria. However, even when the National Assembly has enacted the convention into law, that law cannot apply to States until each State House of Assembly has domesticated that law. In other words, that law will not apply to any state of the Federation, which has not ratified it. For example, the Child Rights Act 2003, which was enacted, by the National Assembly, is still applicable only to the few States of the Federation, which have domesticated it.
  
- (d) Judicial precedence: Another feature of the Nigerian legal system is the widespread use of judicial precedence or previous judicial pronouncements and judgments. Lawyers are always citing judicial authorities or decided cases to buttress their argument that the court should give judgment in favour of their clients. Because of the hierarchy of Nigerian courts, a lower court is expected to be bound by earlier decisions of higher courts. Thus, the Court of Appeal is expected to be bound by earlier decisions of the Supreme Court in deciding a case

before it, just as a High Court is also expected to be bound by earlier decisions of the Court of Appeal in deciding a case before it. A lower court which decides to depart from the earlier decisions of a higher court in deciding a case before it will have to give reasons for such departure.

- (e) Hierarchy: As earlier mentioned, hierarchy of courts is a feature of the Nigerian legal system. The hierarchy, in a descending order include; the Supreme Court of Nigeria, the Court of Appeal, the High Courts, (including Federal High Court, the High Court of the Federal Capital, Territory, Abuja, and High Court of each State) Customary/Sharia Court of Appeal (for each state and the Federal Capital Territory) Magistrate/Area courts, Juvenile court, and Customary/Sharia courts respectively. They are also specialized tribunals of equal rank as the High Courts because appeals against their decisions lie directly to the Court of Appeal just at the High Courts. The tribunals include, the Code of Conduct Tribunal, the Securities and Exchange Tribunal, Election Petitions Tribunal, the National Industrial Court and so on.

***Note to Facilitator:** Hold a discussion session for about 15 minutes. Ask participants to give the meaning of Law as they understand it. Get them to describe the various systems of law/customs applicable in their community to offences such as stealing, murder and rape, etc. Note all their answers on a flip chart and thereafter give a power point presentation on an overview of the Nigerian Legal system over the next 20 minutes using the information below as a guide.*

## **11.1 Overview of Nigerian Legal System**

**Legal System** simply refers to the law, the courts, the personnel of the courts, and the administration of justice system in a State or country.

In promoting a good understanding of the law, it may be useful to commence this section of the training with an activity that can help the participants to express what their understanding of the law is.

### **11.1.1 What is Law?**

The law can be defined in different ways, but generally it can be said to be a set of rules which regulate the conduct of people, with the purpose of creating an orderly society<sup>20</sup>. Therefore Law can be defined as a body of rules designed to regulate human conduct.

### **Importance of Law**

- ⇒ It ensures equality and freedom of citizens of a nation
- ⇒ It ensures that offenders or violators do not go unpunished
- ⇒ It is used for the development of society
- ⇒ It aids in preservation of lives and properties
- ⇒ It ensure, peace and order
- ⇒ It is the foundation for good governance

### **11.1.2 Types of Law**

Law can basically be divided into two types: Manmade Law and Divine/Natural Law  
Divine laws are sometimes referred to as the laws of nature e.g. it is a common law of nature that what goes up must come down, this is also referred to as the law of gravity.

Man-made laws can further be classified as

- Domestic Law – This law operates locally in a country.
- International Law – This is a body of rules that regulates the relationship between different countries.
- Public Law – This consists of laws which deal with the state. It deals with the criminal, constitutional and administrative laws and governs the relationship of individuals with the state.
- Private Law – This deals mainly with civil rights and matters that concern individuals. This covers areas of contract, family welfare, tort succession etc.
- Criminal Law – This is the law of crime. It deals with rules regulating the omission or commission of crime and attracts punishment from the state.
- Civil Law - This is the law governing conduct which is ordinarily not punishable by the state. Civil law deals with violation of private rights, which can be remedied by way of compensation, damages etc.

### **11.1.3 Forms of the Law**

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<sup>20</sup> Legal Research and Resource Development Centre (1994), A Paralegal's Companion

Basically there are two forms of law – written (these are contained in written documents such as case law, statutes, or judicial precedence) and unwritten (these are expressed orally in customs/traditions and religion). Some religious laws may become statutory e.g. the Sharia law in the Northern states of Nigeria.

Under the Nigerian constitution no one can be punished for breaking an unwritten law, but there may be sanctions imposed by customs and traditions or religions for those who break rules.

#### 11.1.4 Branches of Law – Civil and Criminal

Under the Nigerian legal system, laws are divided into two broad categories namely, Criminal and Civil law respectively. In some cases a single act may constitute both a civil and criminal offence.

#### 11.1.5 Differences between Civil and Criminal Law<sup>21</sup>

CIVIL	CRIMINAL
The action involves individuals, groups or government. The party initiating the action is called the <b>plaintiff</b> , and the party accused is called the <b>defendant</b>	Criminal cases are usually initiated by the State against an individual or corporation. The state is referred to as the <b>prosecutor</b> and the party accused of crime is called the <b>accused person</b>
Civil cases involve the breach of duty imposed by law, or the violation of human and legal rights	A criminal case involves the trial of the accused person who is alleged to have committed an offence punishable under the criminal law
Where the plaintiff succeeds in his action against the defendant he/she may be rewarded monetary damages to be paid by the defendant, the court may make an order of injunction, which restrains a person from doing an act or compels a person to do a specific act. If the plaintiff fails in his claim against the defendant, the action is dismissed	The prosecution must prove beyond reasonable doubt that the accused person committed this offence. When this has been done the person is found guilty and a fine or term of imprisonment may be imposed by the court. Where the prosecution fails, the accused person is discharged and acquitted. The effect of this is that the accused person cannot be tried for the same offence
Example of civil cases are breach of contract e.g. failure to repay a loan, trespass etc.	Examples of criminal cases are murder, rape, stealing etc.

## 11.2 Description of Nigerian courts

### The Supreme Court of Nigeria

This is the highest court of appeal in Nigeria. It hears appeals directly from the court of appeal. It however, has original jurisdiction to the exclusion of any other court in any dispute between the Federation and a State or between States if and in so far as

<sup>21</sup> Ibid, p 14 -15

that dispute involves any question on which the existence or extent of a legal right depends.

### **Court of Appeal**

There is only one court of appeal in Nigeria. It however, has divisions in the various geo-political zones in the country. As the name implies, its primary function is to hear appeals on both criminal, customary court of appeal, sharia court of appeal and the various tribunals that enjoy concurrent status with the high courts. It however, has original jurisdiction to the exclusion of any other court in Nigeria to determine any questions as to whether or not any person has been validly elected to the office of the president or Vice-President or the office of the Vice-President has ceased or has become vacant.

### **High Courts**

High Courts consist of Federal Courts and High Courts of States. Both the Federal High Court and High Court of States have concurrent jurisdictions in both criminal and civil matters. The difference between the two courts is that the Federal High Court has exclusive jurisdiction over matters involving Federal Government personnel, institutions, agencies, revenues and the regulation of companies in Nigeria. Both courts have criminal jurisdiction over offences punishable by long jail sentences, life imprisonment and capital punishment. High Courts have appellate jurisdictions. For instance, decisions of the Magistrate/Area Court in the Federal Capital Territory, Abuja, can be appealed against at the High Court of the Federal Capital Territory.

### **Magistrate/Area court**

The magistrate court (as it is known in southern Nigeria) or area court (as it is called in northern Nigeria) is a court of summary jurisdiction. This means that it can give a summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if it considers that the claim or defense has no real prospect of success and there is no other reason why the case or issue should be disposed of at a trial. The court hears both criminal and civil cases. The criminal jurisdiction of the court covers virtually every offence contained in the criminal code (used in Southern Nigeria) or penal code (used in Northern Nigeria) except offences carrying life sentences or

capital punishment upon conviction. The civil jurisdiction covers such matters as the recovery of residential and business premises, recovery of debts among others. A tribunal such as the rent control and recovery of residential premises tribunal of Lagos state has concurrent status as any magistrate court but its jurisdiction is strictly limited to recovery of residential premises.

### **Customary Sharia Court**

Questions or issues relating to the customary laws of the community or people are usually decided by the customary court (as it is called in Southern Nigeria) or Sharia court (as it is called in Northern Nigeria). Legal practitioners usually do not appear for litigants in the customary court. The customary court judge or Sharia Court Khadi is usually someone who has vast and deep knowledge of the customs of the people and decides the questions or issues in accordance with the customs. Appeals against the court's decisions are made to the customary or Sharia court of appeal and not to the magistrate or area court.

### **Juvenile Court**

A juvenile court is a special court set up for the trial of young offenders and for the welfare of the young people. Generally, children and young persons are supposed to be protected and as such, they are not allowed to mix with adult's right from their time of arraignment and trial to their sentence and even prison custody. Accordingly, a magistrate when, when sitting alone, may constitute a magistrate's court, must when sitting with other persons to constitute a juvenile court, sit in a place different from that in which he sits as a magistrate's court or on different days or different times from those at which he sits as a magistrate's court. The practice these days however, is for the magistrate sitting as a juvenile court to ask everyone in the courtroom who has nothing to do with the case at hand including lawyers to leave the courtroom. A juvenile court is therefore, essentially a magistrate court with specific jurisdiction over children and young person's cases.

### ⇒ **Other courts**

- **Industrial Courts** – This handles labour dispute

- **Tribunals** – This is a special body that deals with specific matters e.g. Robbery and Firearms Tribunal, Treasonable Offences Special Military Tribunal, Miscellaneous Offences Tribunal (drug offence amongst others)

***Note to Facilitator:** You may choose to end this section of the training with an activity to further reinforce what has been thought through a lecture.*

***Jurisdiction of Courts***

- (a) *A ten year old boy was caught stealing a foul in the village. Elders of the village have agreed to hand over the boy to the police for prosecution in court to serve as a deterrent to other boys in the village. As a community paralegal, educate the villagers on which court of law the boy will likely be prosecuted and why.*
- (b) *Which court has the jurisdiction to try a person accused of murder? Give at least two reasons for choosing the court.*

### **11.3 The Personnel of the Law**

The personnel of the courts are:

1. **The Judges and Magistrates** – They preside over cases and give the verdict at the close of hearings. The character and personality of the judge or magistrate are very important because they may affect the outcome of cases. Some may be careful and attentive while some may be talkative and slow. In fact different people may draw different conclusions from the same facts. They must be lawyers.
2. **The Registrars** – They are responsible for the administrative work of the court. Most of them are not lawyers. The chief registrar however is a lawyer and he supervises the work of the registrars.
3. **Policemen** – They are law enforcement agents. They are responsible for the prevention of crime, the protection of members of the public and the maintenance of law and order in the community.
4. **The Bailiffs** – They are responsible for the service of court processes and execution of court orders.

5. **Lawyers** – These are people trained to administer and apply the law and to assist people when they have legal problems by giving them advice or by representing them if necessary. Lawyers may also work with the government and private organizations to make policies or legislation, which affect people in their daily activities.

***Note to Facilitator:** Whereas the law as it relates to different issues is often clearly written, its administration, however, requires human input and this is where many citizens experience one form of abuse of their human rights or the other. It is important to spend ample time on this section of the module. Spend the next 30 minutes to give a lecture on issues of Arrest, Bail, Detention, Searches and Seizure etc. Encourage participants to ask questions and share some experiences they had in the past that relates to the topic.*

#### **11.4 The Administration of Justice**

In administering justice, controversies often arise in relation to issues such as arrests, bail, detention and search. It is therefore important for paralegals to be familiar with this aspect of the administration of justice.

##### **11.4.1 Arrest**

A police officer has the power to arrest a person who has committed a crime or is committing a crime or is about to commit a crime. Under the police Act, a police officer can arrest without a warrant any person whom he has reasonable grounds to suspect of having committed an indictable offence against any Nigerian law unless the written law creating the offence provides that the offender cannot be arrested without a warrant. Thus, a police officer can arrest with or without a warrant depending on whether the written law, which created the offence, provides for arrest with warrant. For instance, under section 249 of the criminal code, any person who goes about begging for alms or using children to do so in a public place may be arrested without a warrant. On the other hand, any person who unlawfully and indecently assaults a male person cannot be arrested without a warrant under section 353 of the same criminal code.

A civilian may also arrest a person who has committed a crime and is trying to escape justice. The arrested person must be handed over to the police at the earliest opportunity. A warrant of arrest is a written order that gives the power to arrest the persons whose name is written in the order. It must be signed by the magistrate that issued it and must state the offence that is said to have been committed.

#### **11.4.2 Detention**

A police officer has the power under section 35(1) (c) of the 1999 Nigerian constitution to put a person in detention under the following circumstances:

- (a) For the purpose of bringing the person before court in execution of the order of a court;
- (b) Upon reasonable suspicion that the person has committed a criminal offence;
- (c) To such extent as may be reasonably necessary to prevent the person from committing a crime offence.

#### **11.4.3 Search and Seizure**

When a suspect is arrested, his premises or his person is searched and if there are incriminating documents, exhibits, etc they are seized. The police can search or arrest a person who they suspect of possessing materials that have been stolen or obtained in an illegal way. When a police officer wants to search a premise, he needs a search warrant. If the police search a premise without a search warrant they can be sued for trespass. A search warrant is a written order that empowers the police to search the premise of the person named on the order. In any case of search only a female police officer can search a female.

#### **11.4.4 Bail**

Bail is a promise by a person called a **surety** to produce the person arrested of a crime whenever he/she is required by the police at the place specified in the agreement (i.e. police station or court). A detained person may, upon application, be granted bail either by the police or by the court.

##### **11.4.4.1 Bail by the Police**

If a person is taken into police custody for an offence other than an offence punishable with death, the officer in charge of the police station may, if it will not be practicable

to bring such person before a magistrate or justice of peace who has jurisdiction over the offence within twenty-four hours after arrest, inquire into the case and, if it appears to him that the offence is not of a serious nature, discharge the person upon his entering into a recognizance with or without sureties for a reasonable amount to appear before a court at the time and place named in the recognizance. If the person is retained in custody he must be brought to court as soon as practicable. However, what the police do where they wish to detain a person for longer than twenty-four hours is to take him to a magistrate and obtain a remand order or warrant. This has however, led to the notorious phenomenon of “holding charge”, which often mean an indefinite detention without trial of accused persons in custody.

#### **11.4.4.2 Bail by Court**

Any person who is charged with an offence punishable with death cannot be admitted to bail except by a judge of the High Court. If a person is charged with any felony not punishable with death, the court may if it deems fit, admit the person to bail. In any other case, the court shall admit the person to bail unless it sees good reasons to the contrary.

#### **11.4.4.3 The Bail Process**

Where a lawyer represents an accused person, it is the lawyer who applies to the court for the bail of the accused. The application is usually made orally before the magistrate or by a motion on notice before the High Court judge as the case may be. Since bail is a constitutional right however, the fact that the accused has not applied for one probably because he is not represented does not deprive him of the right. It is for the court to grant it and for the prosecution to oppose the grant by stating its reasons. The court may then uphold or overrule the objection and state reasons for doing so.

- ⇒ Surety: A surety is a person who agrees to forfeit a sum of money fixed by the court if the accused fails to surrender to custody or fails to appear to court as at when required.
- ⇒ Recognizance: This is the sum of money fixed by the court to be paid by a surety to the government in the event that the accused absconds or jumps bail.
- ⇒ Bail is Free: The recognizance has often caused a misunderstanding whereby the accused person believes it to mean he is to bring the bail amount stated. This is not true. Rather, the recognizance is only payable if the accused jumps bail. It is also

wrong to say that a woman cannot request to bail an accused person. There is no Nigerian law that supports this wrongful denial of the rights of women.

⇒ Self recognizance with condition: Sometimes the court may grant an accused bail on self recognizance with condition. This means that the accused need not produce any surety.

**Note to Facilitator:** You may choose to end this section of the training with an activity to further reinforce what has been thought through lecture.

**Group Discussion (10 minutes)**

- (a) Ask participants to state reasons why a suspect may be detained by the police for more than two days.
- (b) Ask participants why a person charged with murder is not likely to get bail before a magistrate?

### **The Constitution and Law Making**

The constitution is the supreme law of the land which sets out the parameters of governance. It is a set of rules and regulations that governs the structures and system of organizations of a country. It is the apex law of any country. All other laws conform to or are derived from the provisions of the constitution. It does not replace or substitute these other laws but it sets the standards of which they must follow.

- The constitution is the supreme or highest law of Nigeria
- It must be followed by both the government and all the people of Nigeria
- It determines the structures of government and defines the powers they have
- It ensures the protection of the human rights of the citizens of Nigeria and sets up institutions to ensure that your rights are not abused by government or anyone else.

**Note to the Facilitator:** As at the time of the development of this manual, it was the 1999 Constitution of the Federal Republic of Nigeria that was operational. You will therefore have to use the current Constitution as at the time you are using the manual to conduct the training.

Make sure you have a copy of the current Constitution with you so that you can show it to the participants. Encourage participants to buy a copy each, as it is a vital reference document.

For government to function effectively there must be a constitution, as our constitution contains the set of rules for how Nigeria is governed.

### **Brief overview of the Constitution**

The Constitution has a preamble and is divided into chapters and schedules.

- The preamble is the introduction to the constitution.
- There are eight (8) chapters and seven (7) schedules in the Nigerian Constitution.

### **CHAPTERS**

- **Chapter 1** has 2 parts.

Part 1 details the general provisions of the constitution. It gives information on the Supremacy of constitution, The Federal Republic of Nigeria and the States of the Federation and the Federal Capital Territory, Abuja

Part 2 deals with the powers of the organs of government in Nigeria. It gives information on the arms of government i.e. the Legislative powers, Executive powers and the judicial powers. It also highlights the three spheres of government (Federal, State and Local governments) and how they must work together. The chapter also looks at issues of creation of new states and boundary adjustments.

- **Chapter 2** – Fundamental objectives and directive principles of state policy describes the guiding principles which are expected to be pursued in the efforts of the nation to realize national ideals.
- **Chapter 3** – Citizenship describes the means by which the citizenship of Nigeria can be acquired. These are (a) by birth (b) registration and (c) by naturalization
- **Chapter 4** – Fundamental human rights, it gives details of rights that are protected and which every citizen has a right to claim and defend. The rights stated in this chapter are: right to life, right to dignity of human persons, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property.

- **Chapter 5** – this chapter deals with the legislature and is divided into 2 parts. Part 1 on the National Assembly and Part II on the House of Assembly. The legislature is the arm of government which makes laws for the whole country. At the Federal level it is called National assembly made up of the Senate and House of Representatives while at the state level it is called the House of Assembly and for the local level it is called Councilors.
- **Chapter 6** – This chapter deals with The Executive and is divided into three parts. Part I – Federal Executive; Part II – State Executive and Part III – Supplemental. The executive is the part of government that puts the laws made by the legislature into operation. The President is the head of the Federal Executive, the Governor is the head of the state executive and the Chairman is the head of the local government executive.
- **Chapter 7** – This chapter deals with The Judiciary and is divided into 4 parts. The Judiciary is the part of government that interprets the laws and deals with administration of justice. The chapter gives details of the different courts in Nigeria.
- **Chapter 8** - This chapter deals with the Federal Capital Territory, Abuja and other general supplementary provisions. It is divided into four parts.
  - Part I - Federal Capital Territory, Abuja
  - Part II - Miscellaneous Provisions including Procedure for proclamation of state of emergency, Restriction on certain citizens, Restrictions on legal proceedings etc.
  - Part III - Transitional Provisions and Savings System of revenue allocation, issues of Debts etc.
  - Part IV - Interpretation, Citation and Commencement

## **SCHEDULES**

- Schedule 1** - Lists the States of the Federation and defines the area which constitutes the Federal Capital Territory, Abuja
- Schedule 2** - Gives a list of the matters and areas over which both the federal and state legislatures can make laws
- Schedule 3** - Makes a list of executive bodies
- Schedule 4** - States the functions of the local government councils and stipulates areas for which only the local government can make laws

**Schedule 5** - This schedule contains the code of conduct for public officers

**Schedule 6** - Deals with the composition, powers and functions of election tribunals

**Schedule 7** - Contains the oaths which will be sworn by every public officer especially elected officers before they resume office.

### **Tiers of Government**

To ensure that government works effectively and the benefits of good governance trickle down to the grassroots, it is divided into Federal, State and Local Government.

Each of the level of government operates the three arms of government.

1. **The Federal Government** deals with issues that affect the nation as a whole. The federal government consists of the federal legislature (National Assembly) which is made up of the senate and the house of representative. The executive is headed by the president who works with the vice president and federal executive that is also referred to as the cabinet. Members of this cabinet are known as ministers. The minister's deal with each area that government controls e.g. finance, education, health etc. there is also the judiciary at the Federal level this includes the Supreme Court which is the highest court in the land and the Federal high courts etc.
2. **The State Government** deals with issues that affect their states only. This includes provision of health services, education services etc. there is a state legislature that makes laws for the state and is known as the House of Assembly. Each state also has an executive made up of the Governor, Deputy Governor and an executive council made up of people appointed by the governor to head the different ministries in the state. These people are called commissioners. The state also has its own judiciary system.
3. **The Local Government** is made up of smaller communities. This tier of government deals with issues that affects the communities and brings governance closer to the people. Each local government also has an executive that consists of the chairman and deputy chairman and a legislature that consist of councilors.

*Note to Facilitator: End the session by taking general questions. Thereafter you may wish to evaluate the session using an evaluation form or other preferred method.*

# MODULE 12

## LAW OF CONTRACT

Duration 2 1/2 hrs

**Learning Objectives:** By the end of this session, participants will be able to:

- define what a contract is
- itemize the different types of contract
- state the qualities of a valid contract
- describe how a contract is discharged
- discuss the remedies available for a breach of contract

***Note to facilitator:** Introduce module by helping participants to appreciate the importance and relevance of the law of contract to their ability to function effectively as paralegals. Some of the conflicts that paralegals are called upon to resolve are related to breach of contract/agreements between two or more individuals, groups of people or communities. Being skillful in this area is useful, however, this should not be misunderstood as being capable of handling the technicalities of a contract that would be enforceable. It is therefore not advisable for a paralegal to draft contracts agreements except they are simple and straightforward. Ask participants to define a contract and also state the features of a contract. Note their answers on a flip chart. Give a lecture on these issues using the information provided below as a guide. Analyse the answers given by participants and help them to appreciate loopholes in their definitions, if any.*

### 12.1 What is a contract?

A contract is an agreement between two or more parties whereby one party agrees to do something for a consideration. For a contract to be binding there must be certain features, which the law recognizes.

### 12.2 Types of contract

There are two types of contract - contract under seal and simple contract.

**12.2.1 Contract under seal:** They are written instruments to which the contracting party attaches his seal and delivers it to the other party after executing. Examples of contract under seal are bonds and deeds. There are certain transactions which the law requires to be under seal e.g. contract relating to the disposition of land.

**12.2.2 Simple contract:** They could be oral or written.

### **12.2.3 Features of a valid contract**

A contract must have certain essential characteristics to be binding on the parties and they are:

**a. Offer and acceptance:**

There must be an offer by one party to the other, which must be accepted before the parties are said to have entered into a contract. The offer and acceptance brings the parties to a “**Consensus ad idem**” that is to say a meeting of the minds.

**b. Intention to create legal obligations:**

For a contract to be binding on the parties, there must be a feature clearly showing that the parties intended that the relationship shall be governed by the enforcement of legal rights in the event of failure by one party to carry out any part of his obligations under the contract. In other words, it must be shown that the transaction is not a gentleman’s agreement or agreement binding in honour only. See: *Coward Vs Motor Insurer’s Bureau* (1962) 2 WLR 663. *Jones V Vernon Pools Ltd.* 1938 ALL E. R.626

**c. Consideration:**

For a contract to be binding there must be consideration. The consideration must move from one party to the other and must be valuable. Consideration need not be adequate once a value can be attached to it. In law, consideration consists of some right, interest, profit or benefit extended to a party by the other (See *Australian Blue Metal Limited Vs. Hughes* (1962) 3 WLR 802).

### **12.3 Unenforceable contracts**

There are instances where contracts have the above characteristics, however, they are still not binding or cannot be enforced by either of the parties. Examples of such contracts are those based on fraud or some other forms of illegality.

*i. Contracts that are required to be under seal:*

There are some contracts that the law requires must be under seal to be enforceable. Such contracts include deeds relating to disposal of interest in land. Failure to comply with this requirement will make the contract unenforceable. The Companies and Allied Matters Act requires that transactions involving companies registered under the Act, as Limited Liability Companies or Public Companies be under seal.

*ii. Contracts that are required to be in writing:*

Some statutes require certain contracts to be in writing like Bonds, Money Lenders Act, Transfer of Shares under the Companies and Allied Matters Act, etc. When such contracts are not in writing, they are unenforceable.

*iii. Illegal contracts:*

Illegal contracts and contracts designed to promote immoral purposes are unenforceable. Example: A contract entered into by parties for carrying out a legal business by illegal means.

*iv. Fraud:*

Fraud renders a contract unenforceable. Misrepresentation in the nature of fraud also vitiates a contract like in cases of Contract “**Unberrimae Fidei**” or contracts of utmost good faith like Insurance Cases. See *John Holt & Co. Ltd. Vs Oladunjoye 1936 13 NLR*.

**Note to facilitator:** For the next 10 minutes, have the participants discuss the following case and proffer a solution. Mr. Ajiboye’s secretary presented him with a document for him to sign. She led him to believe that it was a letter or permission for the company accountant to give the janitor money to buy supplies. However, the letter actually stated that the accountant should give the secretary money to buy office supplies for Mr. Ajiboye. She used the money for herself. When it was discovered that Mr. Ajiboye collected money to buy office supplies that he didn’t need, his secretary, himself, and the accountant were brought before the company disciplinary committee to find out who was in the wrong. Let the participants role-play as members of the disciplinary board.

For a contract to be binding on the parties there must be capacity to enter into the contract. Example: A mentally incapable person cannot legally contract. A contract with a minor (below 18 years) for luxury cannot be enforced, against him.

*Note to facilitator: For the next 5 minutes, pick a few participants to state what actions they would take if they were to be Mr. Henry in the case below. George signed an agreement with Mr. Henry that he would help him transport his farm products to 10 different customers daily for a specified daily fee. When he started, Mr. Henry discovered that he could in fact deliver goods to only 6 customers daily. Can he move to nullify their signed agreement?*

#### *Illiterates Protection Act:*

The Illiterate's Protection Act protects the illiterate party in contract under writing (not under seal) whereby the illiterate is deceived about the real content of the contract. It is a shield and not a sword and can only be raised as a defense in an action for breach against the illiterate.

#### *Duress and under influence:*

These factors can also make a contract unenforceable, example of duress is where under threat to life or bodily harm you assign your property to the person or someone he demanded you to. Similarly undue influence can vitiate a Contract.

#### *Mistake:*

A mistake can vitiate a contract especially if it is a mistake in law.

## **12.4 Discharge of contracts**

- **Performance:** When the parties have carried out their obligations under the contract, the contract is said to have been discharged.
- **Agreement:** The parties to a contract can agree to bring the contract to an end. This situation can be described as Accord and satisfaction thereby giving rise to release of the parties to their contractual obligation.

- **Frustration/Act of God:** In contracts where the performance is dependent on the continued existence of the thing or person, the death or destruction of the person or thing frustrates the contract. Generally an Act of God like earthquakes frustrate contracts and discharge the parties from further contractual obligations.
- **Breach:** There are two types of breach viz: - fundamental breach necessitating total breach and ordinary breach, which does not totally cancel the contract.

A breach of a fundamental term or condition necessitates a repudiation of the contract while breach of a warranty may give rise to enforcement of the contract by the other party

*Note to facilitator: Pick two people each for the roles of the people involved in the case below. Have them state what actions they would take. Lara bought a car from Tunde who claimed that it was fairly used. On using the car, Lara discovered that most of the components were faulty. Can she return the car?*

## 12.5 Remedies for breach of contract:

**Specific performance:** A court on proof of a breach of contract by a defendant orders specific performance of the said contract. An example of such remedy is land which has been partly paid for by the buyer before the renunciation of the sale or fully paid for the seller refusing to convey title to the buyer – *Jones Vs. Lipman (1962) 1 WLR 832*.

**Damages:** There are two types of damages which can accrue or ensue to plaintiff in an action for breach of contract viz: special and general damages.

(a) **Special damages:** They are breaches of the contract. Special damage must be quantifiable and must be directly related to the contract breach whereof the plaintiff is complaining of special damages are pleaded and proven specifically.

(b) **General damages:** This is claimed in an action for breach of contract where the plaintiff has not specifically lost quantifiable sum in monetary terms. It is meant to compensate the plaintiff for the breach of the contract by the defendant.

In conclusion, despite the fact that there are remedies for breach of a contract, it is possible that such damages cannot be claimed if action for remedy is presented to the court late. In law there is what is called **Limitation of Actions**. All actions have time limit within which they must be presented to court or they are said to be status barred. This means that when a breach occurs, the plaintiff is entitled to bring his action for relief within a specific period of time or forego his claim e.g. An action for debt not brought within 6 years since the debt accrued may become status barred unless the debtor acknowledges the debt by paying part of the debt, thereby reviving the debt.

#### **Relevant Laws**

Sale of Goods Law Cap S2 Laws of Lagos State 2003  
Section 4(2) Statute of fraud 1677 for Eastern and Northern States  
Section 67(2) PCL 1959 for Western State including Edo and Delta State  
Section 5(3) Law Reform (contract) Act 1961 for Lagos and Abuja

# MODULE 13

## FAMILY LAW- MARRIAGE, DIVORCE AND RELATED ISSUES

Duration 3 hrs

**Learning Objectives:** By the end of this session, participants will have a good understanding of:

- different types marriage
- valid marriages
- rights of women under different forms of marriages
- the laws governing marriage and divorce

**Note to Facilitator: Step 1** – Spend the next 5 minutes to introduce the module by stating that marriage in Nigeria is governed by different laws and people are free to choose what form of marriage they want to conduct. This has however have been found to be very controversial in view of the fact that the rights and obligations under the different marriages vary. Instances abound where women have suffered and continue to suffer because of the discriminatory laws regulating issues under the kind of marriage that they conducted. As paralegals, participants need to be conversant with the different types of marriage that can be conducted in Nigeria so that they can advise people, especially women on their rights.

**Step 2** - Ask participants to define marriage in their own words. Note their answers on a flip chart. Give a presentation on what a marriage is and the characteristics of a valid marriage. You can use the information below to develop your presentation. This segment should last about 40 minutes.

### 13.1 What is Marriage?

In Nigeria and many other countries, marriage is a widely accepted social institution usually marked by a ceremony by which a man and a woman become husband and wife. In recent times,

some countries have expanded the definition of marriage to cover unions between people of the same sex. Same sex marriage is not legal in Nigeria, although many argue that this is an abuse of the fundamental human rights of homosexuals. In 2007,

the Lagos State House of Assembly passed a law titled – *A law to prohibit the legal relationship between persons of the same sex and for other connected purposes*. Section 4(1) of the said law prescribes a punishment of 10 years imprisonment for anyone found guilty of being married to a person of the same sex. While conducting, aiding and witnessing same sex marriage carries a punishment of 5 years.

The Lagos State law referred to above defines marriage as “*a legally binding union between a Man and a Woman, be it performed under the Authority of the State, Church, Islamic Law or Customary Law*”

**Note to Facilitator:** Spend ten minutes to discuss the possible effect of the Lagos State law *in view* the provisions of some international instruments that recognizes the freedom of choice regarding sexual orientation.

### **Types of marriage**

In Nigeria we recognize two types of marriages –

- a. monogamous i.e. one man one wife, this type of marriage is usually statutory and
  - b. polygamous i.e. one man and more than one wife or one woman and more than one husband, this type can either be under the customary or Islamic law.
- The rights of women under the two types of marriage differ.

### **13.2 Forms of Marriage Recognized in Nigeria**

Marriages can be conducted under three systems recognized in the country, these are:

- a. Statutory marriage or marriage under the Act
- b. Customary law marriage
- c. Islamic Law marriage

**Note to Facilitator: Step 1** - *One thorny aspect of marriage is the constant abuse of the rights of women irrespective of the type of marriage celebrated. Give a presentation on the differences in characteristics and modes of celebration of the three forms of marriage.*

*The information below will be useful in preparing your presentation. Your presentation should not last more that 20 minutes. You can take questions and comments for another ten minutes.*

**Step 2:** *Thereafter ask participants to form three groups. Each group is expected to list the rights of women under one form of marriage. They should also list some of the ways in which the rights of women are abused under such marriage. They have 15 minutes to perform this task. The representative of each group should make a presentation in 5 minutes. Encourage participants to critique each others work. Make comments on the presentations. This segment will last about 45 minutes.*

A. *Legal Characteristics of a Statutory Marriage*

- It must be voluntary – i.e. there must be free consent of the two parties. Where this is absent, the marriage can be annulled.
- It must be for life – This means that at the time it was contracted it must have been intended for life unless dissolved by a decree or by death.
- Parties must be unmarried at the time of contracting the marriage.
- The marriage must be monogamous in the sense that it must be between one man and one woman so that neither spouse can contract another marriage so long as the original marriage subsists.
- Parties to the marriage must not be closely related by blood
- Where the parties are below 21 years of age the consent of their parents or guardians are required before the celebration of the marriage.
- The parties to a marriage contract cannot on their own dissolve it except through a formal legal act of dissolution or divorce by a court of competent jurisdiction or by death of one of the parties.

B. *Preliminaries of a Statutory Marriage*

These include the following:

- **Notice of Marriage:** Either of the parties to the marriage must complete and sign a notice of marriage in the prescribed form and lodges it with the registrar.
- **Registrar's Certificate** – On receipt of the form properly completed, the registrar will enter it in detail in the *Marriage Notice Book* and display it. After 21 days and up to 3 months from the date of notice, the Registrar shall issue his certificate to the applicant. The party must swear to an affidavit that one of the parties has been resident in that district for at least 15 days preceding the marriage and that other marriage requirements have been met. *The marriage thereafter must take place within three months of the date of notice.*
- **Special License:** This can be issued by the governor under special circumstances to dispense within the 21 days notice where the governor is satisfied by an affidavit sworn to by the parties that there is no lawful

impediment to the proposed marriage and that the necessary consent has been obtained.

- **Caveat:** This can be entered by anybody objecting to the register issuing his certificate for the marriage to take place. The person objecting must state his full names, address, and reasons for objecting and then append his/her signature whereby a hearing has to take place before the High Court judge who either cancels the caveat or upholds it after a hearing in form of a summary trial in his chambers.

### **C. Celebration of the Marriage**

For a marriage to be valid, it must be conducted in one of the following locations after a registrar's certificate or a special license has been obtained:

- **A Licensed place of worship** by any recognized Minister of the church before 2 witnesses between the hours of 8am and 6pm with open doors. It is important to note that if the marriage contracted is a **church marriage or church blessing** celebrated in a church not licensed for the purpose, the marriage is not valid under the law.
- **A marriage Registrar's office** in the presence of 2 witnesses with open doors between the hours of 10am and 4pm.
- **Specially authorized places** for the celebration e.g. a Nigerian Diplomatic or Consular Mission office by a Nigerian diplomatic or Consular officer of the rank of secretary or above and one of the parties to the marriage must be a Nigerian.

### **D. Rights of Women under Statutory Marriage**

- A woman may use her husband's surname or retain her own surname. She is under no legal obligation to adopt her husband's name.
- A woman has the right to cohabit with the husband. In other words, she is entitled to live together with her husband subject to the circumstances of their jobs.
- She has the right to say no to excessive sex demand from her husband especially if such inordinate sex demand is detrimental to her health.
- She is entitled to be protected by her husband at all times. The husband must defend her from any threat of assault.

- She has the right to claim damages for adultery committed by her husband.
- She has the right to pledge her husband's property in return for credit to enable her buy necessaries.
- She has the right to the sharing of the estate of her husband along with her children in case of death of the husband.
- She also has the right to custody of her children upon dissolution of the marriage.

### 13.2.2 Customary Law Marriage

#### A. *Legal Characteristic of a Customary Marriage*

- It must be voluntary as between two consenting parties.
- It must have been intended for life.
- Parties must not be closely related.
- The consent of their parents or guardians must be obtained for a valid marriage.
- It is polygamous or potentially polygamous i.e. a union of one man and two or several wives.

#### B. **Characteristics of Customary Law Marriage**

- **Age:** No age limit is required although by section 3(1) of the Age of Marriage Law 1956 (Cap 6) of the Laws of Eastern Nigeria 1963 applicable in the Eastern states, 16 years is stipulated as minimum age of for marriage. This has been repealed by the Child's Rights Laws of the Eastern States where they have been passed – Anambra, Imo, Ebonyi. Furthermore, over 25 States of the federation have passed the Child's rights Law with the minimum age of marriage stated as 18 years).
- **Parties to the agreement:** These are usually the parents or guardians of the spouses-to-be- except where the man is of age.
- **Consents:** Two types of consent are involved here – the consent of the parties usually expressed in public at a formal occasion and the parental consent, which is necessary, where either of the parties or both of them are not of age. But it would seem that parental consent is required always in the case of a bride-to-be for the acceptance of the bride price.

- **The betrothal:** This becomes effective on the agreement of the parties and their respective families and the payment of the bride price
- **Statutory Prohibition:** Where a valid statutory marriage already exists, neither of the parties can enter into a valid customary law marriage.
- **Statute Bar:** In some part of Nigeria, intermarriage is prohibited amongst people regarded as out-casts (Osus) and the free citizens but this has been abrogated in the five Eastern states by the abolition of the Osu System law 1956
- **Position of Non natives of Nigeria:** The law as established by some cases is that a person who is not subject to customary law e.g. a foreigner cannot contract a marriage by that law except if he is domiciled in Nigeria.
- **Bride Price:** This is an essential ingredient of a valid customary law marriage and must be paid in order for a customary law marriage to be valid.

### C. Celebration of the Marriages – Customary Law

The marriage is contracted after the requirement of capacity and payment of bride price has been met and the bride is formally handed over by her parents or guardians to representatives of the bridegroom usually at a formal ceremony.

Grounds for Termination/Repudiation of Customary marriage

No grounds are required but usually reasons are adduced e.g. family background/history, diseases that are hereditary, behaviour or record of broken homes, etc. It can be repudiated on agreement by both parties or their families or the refusal of one party to go through the marriage.

Remedies for Breach

Only repayment of the betrothal fee or bride price if already paid.

### D. Rights of Women under Customary Marriage

- The rights of women under customary marriage are determined by the customs of the birth place or community of their husbands. In many customs;
- Women are mere properties of their husband and as such have no right not to adopt their husbands' surname after marriage;

- Women have no right to reject a marriage proposal after their parents have consented to the marriage with the would-be spouse.
- They do not have the right to say no to excessive sex demands from their husbands even at the detriment of their health;
- They do not have right to claim damages for adultery committed by their husbands since their husbands are entitled to take as many wives as possible.
- They have no right to the sharing of the assets of their husbands in case of death. Indeed, they may not only be dispossessed of their husbands' Estate but also are driven out of their matrimonial homes by their husbands' relations.
- They are subject to all forms of obnoxious customs such as trial by ordeal to prove their innocence of the cause of their husbands' deaths or compulsory shaving of hairs and confinement in the guise of mourning.

It is clear that women face greater violation of their human rights under customary marriage than under statutory marriage.

### **13.2.3 Islamic Law Marriage**

#### **A. Legal Characteristic of a Customary**

- It must be voluntary as between two consenting parties.
- It must have been intended for life.
- Parties must not be closely related.
- The consent of their parents or guardians must be obtained for a valid marriage.
- It is polygamous or potentially polygamous i.e. a union of one man and two or several wives, (maximum of 4 wives in the case of Islamic Law marriage).

#### **B. Features of Islamic law marriage**

- **Consent:** The parties must freely consent to the union except under the Maliki School of Islamic Law where a father has the right to conclude marriages on behalf of his infant sons and virgin daughters.
- **Dower-** bride price: Although what is paid as dowry differs from one locality to another, it must be paid for a valid Islamic marriage to be conducted.

- **The Marriage ceremony:** To be performed by a Cleric in the presence of at least two upright Muslim witnesses and thereafter the bride is led to her husband's house.

*Note to Facilitator: Just as the characteristics of the different forms of marriage differs, so also the legal implications. Spend the next 15 minutes to give a presentation on the legal effects of marriage using the information below as a guide. Thereafter have a mini discussion session and respond to the questions and comments of participants. This should take anothethe10 minutes*

### 13.3 Legal Effects of Marriage

#### A. Statutory marriages:

**Consortium:** This has been described as the right of a husband and wife to live together with all the incidents that follow from such a relationship e.g.

- Change of Name:** A wife usually changes her surname to that of her husband although there is no legal obligation for her to do so and she can continue to use the name even after his death or divorce as long as she does not use it for purpose of defrauding him or others.
- Duty to cohabit:** The husband and wife are expected to cohabit or live together except where by the nature of their jobs they mutually agree to live apart for a major part of the year.
- Sexual Intercourse:** The parties to a marriage owe each other the duty to consummate their marriage by having sexual intercourse but this has to be done reasonably with due regard to each other's health.
- Mutual Defence:** Both spouses can use reasonable force in defence of one another against a third party's assault – Criminal Code Act Section 32(3).
- Contracts between Husband and Wife:** A husband and Wife cannot enter into a valid contract between themselves as they are regarded as one legal person. A married woman can also maintain an action in contract against anyone in respect of her separate property as if she was single.
- Husband's Liability on wife's contract;** A husband is not liable for his wife's contract except: she has been expressly authorized to enter into the contract by her husband or he later ratified it; or the husband has by his conduct indicated to third

parties that his wife has his authority to contract on his behalf e.g. where he always pays for goods bought by her; or the wife cohabits with her husband and usually manages his household and the goods in line with the husband's station in life.

### **Husband and wife in Criminal Law**

1. **Husband's compulsion;** Except in case involving death or grievous bodily harm, a wife of a statutory marriage is not criminally responsible for an act she is compelled by her husband to do in his presence.
2. **Liability as accessory after the fact:** - A wife or husband cannot become an accessory by helping or assisting her husband to escape punishment.
3. **Conspiracy:** a wife and husband cannot be criminally responsible for conspiring between themselves alone except with third party.
4. **Property offences:** A husband and wife cannot steal from each other except where a spouse is leaving or deserting and has an intention to injure or defraud some other person.
5. **Unlawful Carnal Knowledge:** Under Nigerian law, a husband cannot commit rape on his wife as such cannot be guilty of having unlawful carnal knowledge of her but could be guilty of indecent assault on her. This is not the case in countries with better developed laws. In the United Kingdom, a husband can be charged for raping his wife.
6. **Husband and Wife in the law of evidence:** Competent and compellable witnesses: In all court proceedings a husband or wife is a competent but not compellable witness with only a few exceptions.
7. **Communications during marriage:** Communications between a husband and wife are privileged and neither of them can be compelled to disclose any such communication made during their marriage to each other.

### **B. Customary Law Marriage**

**Consortium:** Each spouse is under obligation to submit to the other's reasonable sexual demands and are required to cohabit and further entitled to each other's company.

**Mutual Protection:** the spouses are entitled to the assistance of the other in case of danger to life or limb.

**Remedies for interference with consortium:** Damages may be obtained in customary law but there are no developed full ranges of remedies

*Spend the next ten minutes to hold a group discussion session*

***Note to Facilitators:** Over the next 20 minutes give a presentations of the different ways in which a marriage can be terminated. The information below will be useful. Allow participants to ask questions after your presentation.*

## **13.4 Termination of Marriage**

### **13.4.1 Dissolution of Marriage under Statutory Law**

**Matrimonial Reliefs:** Applicable law – the Matrimonial Causes Act of 1970

#### **A. Nullity**

A decree of nullity is a declaration that there has never been a marriage in the first place. The party seeks to establish that owing to some defect, the marriage is invalid. It is different from the other matrimonial reliefs like divorce, judicial separation and restitution of conjugal rights, which are available in respect of valid and existing marriages. In nullity proceedings, the ceremony of the marriage must be strictly proved.

#### **Void and Voidable Marriages**

**Void Marriages:** A void marriage is one that has never been in existence. Such a marriage is void from the beginning and the parties therefore have never acquired the status of husband and wife.

#### **Grounds that can render a statutory marriage void**

- i. Existence of a lawful marriage
- ii. Marriage between prohibited persons
- iii. Formal invalidity: Marriage without compliance with some formalities prescribed by the Marriage Act.
- iv. Lack of consent: Consent of both parties absent.

- v. Marriage Age- A marriage is void if neither of the parties is not of marriageable age although there is no definition for marriageable age.

**Voidable Marriage:** is one that is good while subsisting but may be annulled at the instance of one or both parties owing to some existing defect by a court.

### **Grounds Rendering a Statutory Marriage Voidable**

- i. Incapacity to consummate the marriage
- ii. Unsoundness of mind, mental disorder and recurrent attack of epilepsy although these issues will not affect the validity of the marriage if they arose after the celebration.
- iii. Venereal Disease: if at the celebration of marriage one of the parties was suffering from the disease in a communicable form.
- iv. Pregnancy by a person other than the husband.

N.B. A person seeking divorce will not succeed except the he/she did not know of these facts as at the time of celebration of the marriage; the action must also be filed not later than 12 months after the date of the marriage; or marital intercourse has not taken place with consent of the person seeking divorce since the discovery of these facts.

### **B. Divorce**

Either party to a marriage may petition for divorce on the ground that the marriage has broken down irretrievably.

#### **Instances where the court could hold irretrievable break down of marriage**

- Willful and persistent refusal to consummate the marriage.
- Adultery and intolerability:
- Conduct, which the petitioner cannot reasonably be expected to bear. Examples of such conduct are habitual drunkenness or intoxication, rape, sodomy or bestiality, extreme cruelty, frequent convictions and habitually leaving the spouse without support, imprisonment for a period of not less than 3 years, attempt to murder or unlawfully kill the petitioner, insanity amongst others.

- Desertion: the separation of one spouse from the other with an intention of bringing cohabitation permanently to an end. The party must have deserted for a continuous period of at least one year immediately preceding the petition.
- Separation and respondent's consent to dissolution: Where the parties have lived apart for a continuous period of at least two years immediately preceding the proceedings and the respondent does not object to a decree being granted, divorce can be sustained.
- Three years' separation: requirement of non-objection of respondent is not necessary.
- Failure to comply with a decree of restitution of conjugal rights.
- Presumption of death: Where a party has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that the respondent is dead.

**The Decree of Dissolution:** A decree of dissolution of marriage is granted in two stages - Decree Nisi followed by a Decree Absolute after the expiration of a period of three months.

**Defence and Bars to a petition for Divorce:** A person seeking divorce who has been able to prove to the satisfaction of the court that the marriage has broken down irretrievably is entitled to a decree of divorce except where an absolute or discretion bar applies to the case.

**Absolute Bars:** A decree of divorce will not be granted in the following circumstance:

- (a) **Condonation:** where an offending spouse has been forgiven and re-instated to the position of a spouse on condition that he does not commit any more matrimonial misconduct, the forgiving partner is taken to have condoned the act.
- (b) **Connivance:** where a petitioner has consented, encouraged or willfully contributed to the commission of the misconduct on which a petition is based, he/she will be refused a decree of divorce.
- (c) **Collusion:** Acting in concert to procure the initiation or prosecution of a suit for divorce with intent to cause a perversion of justice.

**Discretionary Bars:** The court has discretion to refuse a decree of divorce on grounds of:

- **Petitioner’s adultery:** where a petitioner has committed adultery. He/she must specifically request the court to exercise its discretion in his/her favour.
- **Petitioner’s desertion:** where a petitioner has willfully deserted the respondent before the commencement or the happening of the ground for the petition.
- **Conduct conducing:** Where the habits or conduct of the petitioner have contributed to the existence of the ground for divorce.

### C. **Judicial Separation**

Judicial separation may be based on one or more of the facts that may ground a petition for dissolution of marriage. It relieves the petitioner from obligation to cohabit with the other party but they remain for all other purposes husband and wife.

**Alimony:** payment of periodic monetary sum to a spouse. The court usually makes the order in a suit for judicial separation or during the pendency of a divorce proceeding.

#### **13.4.2 Dissolution of Marriage under Customary Law**

This may be dissolved either by non-judicial divorce or by the order of an appropriate customary court.

**Note to Facilitator:** End the session with a general question and answer session and an evaluation using the sample evaluation form in the appendix section or any other preferred method of evaluation

# MODULE 14

## WILLS AND PROPERTY DISTRIBUTION

Duration 3 hrs

**Learning Objectives:** By the end of this module participants will know

- what a will is;
- why it is important for people to draw up a will before they die;
- those involved in making a will
- requirements of a valid will;
- general format of a will;
- how to draft a simple will
- concept of next of kin;

*Introduce module by stating that making a will is a very important aspect of life and contrary to the belief of many people, writing a will does not mean that one will die earlier than he or she would have, had a will not been written. Making a valid will solves a lot of problems especially for the spouses, children and other loved ones of a deceased person. Paralegals owe members of their communities a duty to inform them of the importance of writing wills. Encourage participants to listen very well and learn how to write simple wills that are valid so that they can also teach members of their communities.*

Spend the next ten minutes to brainstorm on what a will is, why participants think it is important to write a will and the appropriate time to write a will. Thereafter give a power point presentation on these issues using the information below as a guide.

### Meaning of Will

A will is a legal document, voluntarily made by a person called the **testator**, in which he/she say what should happen to his/her property, or who should look after his/her minor children, after his/her death. Any one who benefits from the will is referred to as “a **Beneficiary**”. The Testator makes the will during his lifetime while the Beneficiary gets the benefit under the will only after the death of the Testator.

### Why should you have a will?

- It enables you to give your property to whomever you want;
- It enables you to take care of your husband, wife or children after your death;
- It assures you of the fact that no one can take over your property against your wish
- It gives you the opportunity to appoint a **guardian** for your minor children and see to it that they are financially looked after until they can look after themselves;
- It enables you to decide and state who should round up your affairs after your death. This person is called the **executor**;

### Who are those involved in the process of making a will?

**Testator:** the person making the Will

**Witnesses:** people who sign the Will proving that the signature is that of the **Testator**

**Beneficiaries:** people who will receive benefits through the will, also called **heirs**.

**Executor:** the person who has to execute the will of the deceased and see to it that the estate is wound up according to the wishes of the Testator by paying all debts and distributing the funds left over to the **beneficiaries**.

**Guardian:** A person that is nominated to take custody and care of the under-aged children of the Testator.

**Note to Facilitator:** Attention of participants must be drawn to the very important fact that it is possible for people who are not satisfied with the content of a Will to try to contest it in the Court of law. In order to rule out the possibility of a successful contest, the following conditions must be strictly adhered to. Give a mini lecture on the requirements of a valid Will.

### Requirements of a Valid Will

A will is valid to pass any property the deceased has at his death if at the time of making it the Testator had the capacity and intention to make it and the will itself conforms with the requirements of the Wills Act 1837. You do not have

to see a lawyer before you can make a will. Be sure all the requirements are fulfilled and you are just fine.

#### *Capacity to make a will*

At the time of making the will the Testator must have the capacity to make it. Capacity in this case refers to age and mental ability. In terms of age, a Testator must attain the age of 21 years before he can make a valid will. Thus, a child cannot make a valid will even if he has interest or estate in a property he wants to dispose of in a will. The only exemptions to this age requirement are serving soldiers and marines or seamen at sea. On the other hand, in terms of mental ability, a Testator must be of sound mind at the time of making the will. This means that the Testator must;

- be able to understand that he is giving away his property to the said beneficiaries under the will;
- be able to understand and recollect the exact extent of his property he is transferring to the supposed beneficiaries;
- be able to identify those he wants to include in or exclude from the will as beneficiaries.

#### *Intention to make a will*

It is extremely important that a Testator have the intention of making the will at the time it is made. Lack of testamentary intention renders a will invalid. The question of intention does not arise with a professionally-drawn will; the Testator will have consulted his solicitor specifically to have a will drawn and there can be no doubt as to what he intended. Home-made wills, however, may be in the form of a letter, so that the true intention of the Writer has to be inferred after his death from the words he used.

#### *Conformity with the requirement of the Wills Act*

Even when the Testator has the capacity and intention to execute the will, the will so executed must conform with the requirements of the Wills Act. These requirements are as follows:

- A will must be dated

- A will must be in writing or typed and not oral. Oral wills may be valid but it is not recognized by the Wills Act.
- It must be signed at the foot or end of the document by the Testator or someone else appointed by him in his presence and by his direction.
- The signature must be affixed in the presence of two or more witnesses present at the same time or signed in the absence of witnesses but acknowledged by the Testator in the presence of two or more witnesses.
- The Witness must sign and subscribe the will in the presence of the testator (To attest is to see the testator signing while to subscribe is to sign the will as proof of attestation). A blind man can make a will but he cannot in law witness a will because his disability will prevent him from attesting to the making of the Will by the Testator.
- A beneficiary under the will must not witness the will otherwise the gift to him under the will, will fail but the entire will remains Valid.

**Note to Participants:** Select participants (male and female) from the group. Ask them to plan and present a play on a contested will (any member of the group can raise one that he or she is aware of). Get participants to identify the critical issues raised in the play and state how such identified problems can be avoided.

*One of the important objectives of this module is that participants are able to draft a simple will. Within the next ten minutes take participants through the general format of a will. Show participants samples of written wills.*

### **General Format of a will**

Wills drafted by solicitors resemble each other to a large extent, at least, in structure. The usual form appears in a logical order as follows:

*Setting the scene:*

- (i) Testator's name and address.
- (ii) Recitation that this is the last Will of.....

### *Preliminaries*

- (i.) Revocation of previous wills.
- (ii.) Appointment of executors and trustees

### *Dispositions (Giving away the property)*

- (i.) Particular gifts to individuals.
- (ii.) Gifts of what remain (residue)
- (iii.) Substitution gifts in case certain gifts fail.
- (iv.) Provision for payments of debts and expenses.
- (v) Provision as to where legacies should be paid from.
- (d) Administrative powers for Executors and Trustees in addition to their powers under status

### *Execution*

- (i) Testimonium (recitation that the testator signs to validate his Will)
- (ii) Attestation clause (reciting the presence of the testator and witnesses on signature by the testator)
- (iii) Signatures of testator and witnesses

### **Common tips about will making**

- Begin early to plan your will. It is always good to start as soon as you begin to earn a living and acquire property.
- Define your goals as early as possible
- Note that under section 3 of the Wills Laws of various States a will is subject to the Customary Laws of inheritance. Thus, if the custom of your community says the first son inherits the father's main house (i.e. the house the father lived until he died) you cannot disinherit your first son of that right through your will.
- A will remains a private and secret document until after the death of the testator.
- Give away as much money as you can while you are alive but ensure you keep enough to support yourself while alive.

- Make the gifts but reserve your right to use the property in the gifts during your lifetime.
- Review your will at least every five years to ensure it is compliant with current laws
- When purchasing a property make it joint ownership so that it automatically transfers to the surviving spouse.
- Make sure that the executors or trustees you appoint to administer your will are younger and trusted persons who will survive you and carry out your wishes.
- It is sometimes necessary for the person writing a will to ensure that the process of signing and witnessing the will is recorded in video form. This will guide against future protest especially as it concerns authenticity of signature and whether or not the person who wrote the Will was in the proper frame of mind as at the time of making the will.

**Note to Facilitator:** At this stage get participants to form four groups. Each group is to draft a simple will of different scenarios e.g. a married woman with children of different fathers; a married man with two wives and children; an unmarried male or female, etc. Give each group 15 minutes to perform this task. The representative of each group is to make a presentation in a plenary session. Give each group 5 minutes to make their presentation. Ask participants to critique the different presentations. You should end the session by reviewing all the presentations. Thereafter, go to the last segment which is presentation on the concept of Next of Kin.

### **The Concept of Next of Kin**

A Next of kin is the closest relative of a deceased person or the relative or relatives entitled to share in the personal property of one who dies intestate.

It is common in Nigerian organizations (private and public) for employees to state the names of their Next of kin in the Staff Employment Forms. Often times, the unmarried employee gives the names of their parent, brothers, sisters, uncle's aunts or even friends as their Next of kin. When these employees get married many of them never bother or simply forget to reflect their changed status in their employment forms. The result is that when they die intestate or without a Will, the person named as Next of kin in the employment form is usually approached to receive the benefits of the deceased person. Rather than hand over such benefits to the immediate family of the deceased, such people have been found to join in the scramble for the estate of the deceased under the erroneous belief that they are beneficiaries of the estate of the deceased. This confusion can easily be avoided by making a Will. It is important for paralegals to always advise that people should remember to state their spouses and children as next of kin

In strict legal sense however, the Next of kin should be a trustee and not a beneficiary of the estate of the deceased. In this sense, the Next of kin should see himself or herself as holding whichever part of the estate of the deceased (usually the deceased's entitlements from the last working place) in trust for the benefit of the deceased's surviving widow/husband and children. The Next of kin can only become a beneficiary if the deceased died testate and named him or her as one of the beneficiaries in the Will.

**Note to Facilitator:** End the session by taking general questions. Thereafter you may wish to evaluate the session using an evaluation form or other preferred methods.

# MODULE 15

## LANDORD AND TENANT LAW

Duration 2 hrs

**Learning Objectives:** By the end of this session, participants will understand the

- basic issues on the relationship between a Landlord and a Tenant
- laws that regulate the relationship between a Landlord and a Tenant
- the key terms and concepts relating to a Landlord/Tenant relationship
- legal procedure for the recovery of premises

*Note to Facilitator:* Introduce module by stating that different States have laws regulating housing issues across the country. Such laws control the acts of a Landlord and his Tenant; gives in details, steps to be taken by the landlord to recover possession of his property; provides for the rights of tenants and rents payable for any property in the State in a court of competent jurisdiction. Unfortunately, such laws (especially as they concern issues of rent) are often not effective because the law of demand and supply tend to be more realistic. However, other aspects of such laws have been useful in regulating Landlord/Tenant relationships. After the introduction,, give a lecture on who a Landlord and Tenant are as well as their rights and duties. Take questions and comments from the participants. (This segment should last 30 minutes).

### Understanding the rights and obligations of a Tenant and a Landlord

#### 15.1 Who is a Tenant?

- A Tenant is a person occupying premises whether on payment of rent or not. This means that a person can still be a tenant even though he pays no rent.
- A servant occupying a premises rented or owned by his employer is not a tenant.

- Any person, to whom the tenant lets all or part of the property he/she has rented, is a **Sub-tenant**. But if sub-letting is expressly prohibited in the rent agreement, the sub-tenancy does not bind the landlord unless the landlord decides to waive the breach and recognize the Sub-tenant.

### **15.2 Rights and Duties of a Tenant**

- The most important covenant of a Tenant is to pay rents, tenement rates, electricity and water rate as well as other sundry taxes.
- The Tenant should keep the premises in good tenantable order.
- The Tenant should not sublet to another subtenant without consent of the landlord and the landlord is enjoined not to withhold consent unreasonably.
- The Tenant should allow the Landlord to enter the premises for inspection periodically
- The tenant should give up possession of his property peacefully at the end of tenancy.

### **15.3 Who is a Landlord?**

- A landlord is the owner of a property and at the end of the tenancy he is free to take up possession. When a landlord dies, the ownership goes to his personal representatives who become the landlord.

### **15.4 Rights and Duties of a Landlord**

- It is the right of the Landlord to have his/her rent paid by the tenant as at when due;
- It is the duty of the landlord to pay the ground rents of the property even when the property has been let out;
- The landlord should not unreasonably withhold consent of a sublease request;
- The Landlord is responsible for external and structural repairs.

## 15.5 The Landlord/Tenant Relationship

***Note to Facilitator:** Ask 2 participants share some negative experiences they or somebody they know had in the past with some Landlords. Discuss the issues raised in their presentation. The aim is to expose some of the illegal actions that are sometimes carried out by some Landlord when their relationship with their tenants goes bad. After this exercise which should not last more than 10 minutes, give a presentation on the relationship of Landlord/Tenant relationship and highlighting the different types of tenancy. Use the information below as a guide. Thereafter take questions and comments. The estimated time for the presentation and the questions/comments is 25 minutes*

The contractual agreement starts with the prospective tenant seeking accommodation that suits his needs; he then approaches the owner/landlord or his/her agent, to inspect the property and its premises. It is important here that the tenant inspects what the Landlord has to offer and be satisfied with it before making payment. Where an agent is involved in the transaction, the Tenant is often asked to pay a fee of either 5 or 10% of the rent payable to the agent. There is also a legal fee calculated at the same rate. In some cases, where the rent is law, the agent often uses he/her discretion to fix an arbitrary figure as the fees payable.

Houses are in short supply everywhere in the world and this problem is more pronounced in African countries where governments have not lived up to their roles of providing enough cheap houses for the populace. The demand for houses is normally more than supply and Tenants are left with very little choices so they accept dilapidated rooms, leaking roofs, unpainted walls and houses with no toilet facilities etc. However, the Tenant should endeavor to insist that some repairs are carried out and the property should be livable otherwise if the Tenant carried out these repairs a deduction should be made on his rent. The tenant should also agree on the amount of rent to be paid. It is important that the Tenant informs the Landlord of any major repairs and have a prior agreement with the Landlord as to how refunds shall be made.

A Landlord and Tenant are required to enter into a Legal Tenancy Agreement or lease and further required to register a lease if the duration in time is more than two years. Ordinarily, a written Tenancy Agreement should contain the following clauses:

- Names of both parties

- Addresses of both parties
- Location and description of the property to be rented
- The amount of rent agreed upon per month or year
- The time frame of the tenancy or duration
- Duties of Tenant
- Duties of Landlord
- Signature of the parties

(see sample of a simple tenancy agreement in the appendix section)

**15.6** The agreed rent and when it is paid gives rise to three types of tenancy:

- **Monthly Tenant:** Where the Tenant and Landlord have agreed that the rent due is to be paid monthly. Either Landlord or Tenant only needs to give one-month notice to quit or terminate the tenancy agreement.
- **Yearly Tenant:** The sum agreed as rent is to be paid once a year. In this case, the tenancy can only be terminated upon issuance of six month notice.
- **Tenant at Will:** This is for an indefinite time. The tenant moves into the property with the understanding he/she can leave or be told to leave any time. This is often rare. The tenant pays rent but the tenancy does not last for any set amount of time and does not end on a certain date.
- **Tenant at Sufferance:** This type of tenancy arises when one comes into possession of property by lawful title but wrongfully holds over the property after the termination of his interest.

**Note to Facilitator:** One problematic aspect of a Landlord/Tenant relationship is the recovery of premises. It is often not easy to recover premises from a tenant. There are also some misconceptions about the duties and obligations of a Tenant and a Landlord as soon as a notice to quit is issued. It is important to clarify such misconceptions at this stage of the training. Give a power point presentation on recovery of premises using the information provided below as a guide to prepare your presentation. This session will last about 30 minutes.

## **15.7 Recovery of Premises Law**

1. Recovery of Premises by a landlord is governed by the Landlord and Tenants Law of each State e.g. Cap 76 Laws of Anambra State 1986 as amended by EDICT, 1995. It provides that the tenant must be given the requisite notices as provided in the Tenancy agreement or otherwise as prescribed by the Recovery of Premises Law.

The length of notice provided by the law is as follows

- A yearly tenant is given six months' notice
- A quarterly tenant receives 3 month's notice
- A monthly tenant is given a month's notice
- A weekly tenant gets a week's notice

2. After the expiration of the notice to quit, the landlord must serve the tenant with seven days' notice. This is called the notice of his intention to apply to court to recover possession. Failure of the landlord to give the statutory notices as prescribed in the agreement or where there is no agreement, as provided by Recovery of Premises Law is fatal to the case of the landlord. For example A was a tenant at will (a tenant who pays no rent) to B who sought to recover possession of the premises from A but failed to give him 7 days notice as provided by the law. The court rejected the argument and held that every tenant-at-will must be given 7 days notice of his intention to apply to court to recover possession.

## **15.8 Grounds on which the Landlord can Sue the Tenant to Recover Possession**

- Where a Tenant is unable to pay the agreed rent to the Landlord
- Where substantial repairs need to be carried out on the premises. In this case, the repairs must be substantial to make it impossible or dangerous for the tenant to continue to inhabit the premises.
- If the property is required for personal use and residence by the landlord or his adult children. Here, the Landlord must be able to show that no alternative accommodation is available for them.
- If the tenant is a nuisance to the premises or neighbors

## **15.9 Summary of the Procedure to obtain Possession from a Tenant**

The steps to be followed in order to recover the premises from a tenant are provided for in the Landlord and Tenants Law of each State. Such laws addresses issues such as notice to quit, notice of intention to recover possession and how to obtain an order for ejection from the court.

- A landlord desiring to recover possession of the premises let to his tenant shall firstly, unless the tenancy has ended, end the tenancy by service on the tenant of a **notice to quit** in the appropriate format;
- At the expiration of the notice to quit the landlord shall serve the tenant with **7 days** notice of his intention to apply to court to recover possession;
- Thereafter, the landlord will need to file his claim against the tenant in the proper form in a court of competent jurisdiction. The summons will be issued and served by the court;
- At the trial, the landlord shall unless the claim is admitted, lead sufficient evidence to establish his entitlement to possession having regard to the provisions of the Recovery of Premises Law and Rent Control Edict;
- A tenant can only be ejected by a court of competent jurisdiction. Until order is made by the court, the landlord has no right to arbitrarily eject the tenant;
- After a notice to quit has been issued to the Tenant, the Tenant is still under full obligation to pay his/her rent promptly. Where the Tenant does not pay, he/she is considered indebted to the Landlord and the Landlord can sue the Tenant for what is called Mesne profit even after the Tenant has moved out of the premises;
- The Landlord is also duty bound to ensure that the Tenant's enjoyment of the necessary facilities in the property is not disturbed. Where this happens, the Tenant can sue for damages.

#### Some relevant Laws on Housing and Landlord/Tenant relationships

- Business premises (rent control) Edict 1970 (Oyo State)
- Rent control tribunal Law Cap R2 Laws of Lagos State 2003
- Rent control and recovery of residential premises Law Cap R6
- Laws of Lagos State, 2003
- Recovery of Premises Law (Lagos)
- The Eastern States (except Anambra and Enugu State) are governed by Section 38 of Landlords and Tenants Law 1982) Abuja, Lagos and Northern States are governed by Section 3 of the Real Property Act 1845.

# MODULE 16

## LAND/PROPERTY LAW

Duration 2 hrs

**Learning Objectives:** By the end of this module participants will understand the:

- Basic concepts relating to land administration
- Classifications of land holding
- Ways in which land can be sold legally

***Note to Facilitator:** Spend 5 minutes to introduce the subject by making paralegals to realize that land disputes are often common either between residents of a community or between two or more communities. It is therefore important for them to have a basic understanding of the laws relating to land administration. Paralegal also have to be very careful in giving advice on land matters. What this module will do is to give you basic knowledge and not expertise on the subject. Always advise clients to consult a lawyer when entering into legal agreements on land matters. Proceed to give a power point presentation on what land entails as well as some basic concepts or common terms used in relation to land. You will find the information below useful. 30 minutes should be adequate for this segment of the training.*

### 16.1 Land

Land is defined for our purpose as the earth surface subsoil, the air space above it, as well as things that are permanently attached to it. Statutory definition of land is that land includes buildings, structures, rights and privileges and rents etc. Thus, land consists of natural and artificial elements. This is usually expressed by Latin Maxim “*quid plantatur solo solo cedit*” The legal significance of this is that whatever human improvement it is attached to the land accrues to it and belongs to its owner unless there exist contrary intention.

## **16.2 Right**

At law, land in its physical state is not capable of ownership. Rather the subject of ownership consists of some right to use and enjoy the land to the exclusion of other persons. These rights vary in degrees. Broadly speaking, these are denoted by “ownership” and “possibility”.

## **16.3 Ownership**

Ownership signifies a maximum right over the superior right of another person. Ownership vests in a person the right of possession. The right of possession may be immediate as when the owner is actually in possession. On the other hand, possession is mediate where the owner grants possession of his land to another person. The ownership remains with the grantor while possession is with the grantee for the duration of the grant. However, the right of possession can be limited as the land reverts back to the original source of the grant at which time the grantor resumes possession.

## **16.4 Possession**

Possession is the physical control a person exercises in relation to land. The right to possession of land may be lawful or wrongful. It is lawful where it is exercised based on a grant by someone or an authority that has the power to make the grant. On the other hand, the right to possession is wrongful where it is exercised neither by virtue of right ownership nor grant. An example of this is expressed technically as “adverse” possession. Adverse possession is good against the whole world except the true owner. The lawful right of possession confers on the possessor the right to occupy and use the land and

## **16.5 Relationship between Ownership and Possession**

Possession may be the basis of ownership. Our Customary Law exhibits this characteristic feature. Thus, where there are rival claimants of land, title belongs to the claimant who is able to show that he was the first to enter into possession.

Similarly, adverse possession may confer “possessory title” on a squatter by virtue of the relevant limitation law where the owner suffers a delay of twelve years before

maintaining an action to recover possession after he had knowledge of the interference with his possession.

***Note to Facilitator:** Having a clear knowledge of the different titles that lands are subject to can help to safeguard individuals, groups and communities from being defrauded. Communal land and land regulated by statutes fall under the administration of different regulatory bodies. At this point, spend the next 30 minutes to explain the difference between communal and State land to participants. The information below can aid the presentation of this segment of the training.*

## **16.6 Land Tenure Systems**

Land tenure is the system of land holding in any given society. The duality of the Nigerian Legal Systems has resulted in the existence of customary and non-customary land tenure systems. These have now been qualified by the land use Act 1978. The Act provides for a new uniform land tenure system in Nigeria.

## **16.7 Classification of Land Holding Units**

The indigenous land tenure system is dominated by two units of land holding - the family and the community among others.

- The family: Joint family holding is a form of tenure well known in Nigeria and forms the basis of “communal holding”
- The Community: Customary law recognizes communal ownership of land, which may be a tribe, a town, a village or a more restricted unit. This is often called ‘common land’ and can be used for grazing, farming, building, hunting and forestlands.
- The Individual: The individual can also acquire interest in land under the native system employing customary formalities. Such title is covered by native law and custom.
- State Holding: State land is simply land held by the State and subject to the State land laws. It includes land acquired compulsorily under the Public Land Acquisitions Act. The special features relating to this land are that the land can

only be held on lease from appropriate government and in every lease of such land there is an implied covenant against assigning, subletting or otherwise parting with possession thereof without the written consent of the governor of the State.

## **16.8 Family Land**

The term ‘family’ in relation to family land means a group of persons who are entitled to take ownership of a property after the founder of the family has died. The family therefore connotes a group of persons bound by blood who are entitled to inherit the property in accordance with the customary rules of succession or under a will, which creates a family property.

Family land is land vested in a family as a corporate entity. The individual member of the family, thereof, has no separate claim of ownership to any part or whole of it. Thus a member has no disposable interest in family property either during his lifetime or under his will. Note a grand child cannot demand a portion of family land upon which to build as of right nor can he challenge a disposition of family land by his own parent. But he can do all these when his own parent who was a member of the family dies.

### **16.8.1 Creation of Family Land**

Family land can be created by operation of law or by acts of the parties

- **Operation Law:** Where a landowner who was subject to customary land died without a will, his self acquired property devolves to his children as family property in accordance with the applicable customary law.
- **By Acts of the Parties:** Parties may by their own act create family property by way of first settlement, purchase, conquest and absolute gift of land.

### **16.8.2 Management of Family Land**

The family head personifies the family. As such, the powers and rights of ownership of family land are vested in and exercisable by him on behalf of the family. It is therefore, the responsibility of the family head to preserve the family property from any unlawful interference. He/she (in some cultures women can be the head of the family) is expected to keep it in good state of repairs and to allocate portions of family

land to members who require land for use. He/she is also to take part in the transfer or alienation of family land in order to give a valid title to the transferee.

### **16.8.3 Rights of members in a Family Land**

The purpose of family land is to provide land for the needs of members of the family. The rights of members of family to family land include the being able to live or reside therein.

- To be able to move in and out of it freely and without hindrance;
- Right to income from family land;
- Right to have a voice in the management of family land.

### **16.8.4 Determination of Family Land**

The occurrence of any of the following events determines family land

- Absolute transfer
- Partition

**16.9 Customary Relationships:** Customary law recognizes certain customary land relationships in the use of land. Some relationships exist as a means of providing land for strangers/or immigrants e.g. customary tenancy, while pledges operate as secured credit transactions.

Customary tenancy is created where land-owning individual family or community grants a right of occupation of land to another person or group of persons who are usually stranger or immigrants to live in or farm in return for which they acknowledge the title of their grantor by the customary tribute.

### **13.9.1 Features of Customary Tenancy**

- The grantor and grantee of customary tenancy referred to as customary overlord and tenant respectively.
- The customary tenant is neither a donee of the land, a borrower of it, a lessee, a tenant at will, a yearly tenant or a licensee.
- A customary tenant is a customary grantee of possession, interest that endures in perpetuity subject to abandonment or misbehavior.
- Once in possession, time does not run against a customary tenant;

- The interest of a customary tenant is transmissible to his heirs; he cannot alienate the land without the consent of his overlord.
- Similarly, a subsequent grant of land by the overlord to another person, during the subsistence of the tenancy, does not over reach the interest of this customary tenant unless it is with his consent.
- If (6) happens, the subsequent guarantee takes qualified title subject to the interest of the tenant.

### **16.9.2 Determination of Customary Tenancy**

Customary tenancy may be terminated by abandonment, accomplishment of purpose or by forfeiture.

**16.10 Non-Customary Land Law:** The non-customary land law system is otherwise referred to as statutory law.

**16.10.1 Leases:** A lease creates a leasehold state. A leaseholder is commonly called the lessee or the tenant on the other hand a grantor is called the lessor or the landlord. A lease may be a legal estate or equitable interest in land depending on its mode of creation. It may be granted for a term of years, ranging from the period 99 years to a year. The expression ‘term of years’ includes a term for less than a year or for a year or years and a fraction of a year or from year to year. A valid lease is characterized by the following essentials.

- Certainty of term
- Actual entry
- Exclusive possession

**16.10.2 Creation:** The requirements for the constitution of leases vary with Law and Equity.

**At Law:** A distinction is made between leases not exceeding and those exceeding three years.

- Lease not Exceeding Three years: Leases for a term not exceeding three years may be created orally, provided the lease takes effect in possession and reserves the best reasonable obtainable.

- **Lease Exceeding Three Years:** However, for a lease, which exceeds three years to confer appropriate legal term on the tenant, it must be made by deed.

**In Equity:** As it is characteristic of Equity, it has no set form for creating a lease of duration.

### **16.10.3 Registration of Instruments**

The system of registration was introduced into our country to promote a degree of security of title which was largely absent from the unwritten nature of land transactions under the customary law. S. 3 of Land Instrument Registration Law establishes in the State a Land Registry charged with the responsibilities for the Registration of Instruments, including powers of attorney affecting land in the State. An instrument whereby one party (hereinafter called the grantor) confers, transfers, limits, charges or extinguishes in favor of another party (hereinafter called the grantee) any right or title to or interest in land in the State and includes, an estate contract, a certificate of purchase, a power of attorney under which any instrument may be executed, a deed of appointment. A will is not included.

Note: A purchase receipt is not a registrable instrument. But an agreement for sale or lease of land qualifies as estate contract and therefore registrable.

### **16.10.4 Effect of Non-Registration**

**Void:** Instrument affecting land other than a grant of State Land that is not registered within six months is void. Similarly, every instrument affecting land the subject of grant by a native to non-native is void unless it is registered within six months of execution from the date of consent of the governor. It however, confers equitable interest where the purchaser has gone into possession and paid the purchaser price or rent.

**Non-Admissibility:** S. 15 states that a registrable instrument, which is not registered, is not admissible in evidence, but may be admitted as acknowledgment of payment.

**Loss of Priority:** Where there is more than one instrument executed by the same land, priority is determined by the date of Registration. This means that the first to be registered will be preferred where there are rival claims.

### **16.10.5 The Land Use Act 1978**

The Land Use Act 1978 was enacted as a Decree and came into effect on the 29<sup>th</sup> of March 1978. The title suggests that the Act is designed to control land use and thus a planning statute. This is generally misleading. The Act is basically a Land Law Statute which de-emphasizes private powers over and interests in land in favour of the State.

In pursuance of the objectives, the Act has created a tripartite system of land – holding: The State, Federal and Private.

**16.11 State Land Holding:** The Act sets out to vest the title to land comprised in the territory of each State in the Governor to be held in trust and administered for the benefit of every Nigerian. The Act vests the radical title to land in the Governor, devoid of the possessory interest of erstwhile land owners, upon trust. In all, the Governor is vested with bare title to land to the extent that is necessary for him to administer the land within the territory of his state, for the purpose of achieving the objectives of the Act. The Land vested in the Governor is zoned by S. 3 into “Urban” and “Non-Urban Lands”

- **Urban Land:** For land in urban areas of the State the control and management thereof is vested in the Governor, assisted by the Land Use Allocation Committee as an Advisory Body.
- **Non-Urban Land:** The respective Local Governments are conferred with the powers to control and manage land within their area of jurisdiction of which the land is situated in the non-urban areas of the State.

**16.12 Federal Land Holding:** S. 1 of S 9 of the Act example land vested in the Federal Government and its agencies before the commencement of the Act from the Land in the territory of each State vested in the Governor. Agency is defined in subsection 2 to include any statutory corporation or any other statutory body (whether corporate or incorporate or any company wholly-owned by the Federal Government. The powers of control and management of the Federal land, including the Federal Capital Territory dare vested and exercisable by the head of the Federal Government or his ministerial nominee.

**16.13 Private Landholding System:** While the whole thrust and purpose of the Act is to assert government's powers and rights over the land, it nevertheless concedes some property right in land to the individual in the form of Right of Occupancy. Under the Act, a Right of Occupancy is either statutory or customary.

**16.14 Certificate of Occupancy (C of O):** This is a statutory right granted or deemed issued in an urban area by the Governor. By virtue of section 34 of the Land Use Act 1978, any person without title to a parcel of land in respect of which Certificate of Occupancy was issued acquires no right or interest which he did not have before. This is the weakness of Certificate of Occupancy issued in such a case. It is never associated with title.

**16.15 Express Grant Deemed Issued:** A Statutory Right of Occupancy is deemed issued to a person in whom land in urban area was vested at the commencement of the Act in respect of the "developed" or undeveloped land.

#### **16.16 Effect of Lack of Consent**

Lack of the appropriate consent as required may lead to either of the following consequences.

- i. Revocation of the right of occupancy
- ii. Nullity of the transaction
- iii. Illegality of the transaction

**Note to Facilitator:** Ask participants to share experiences concerning sale of land that they are aware of. Did the sale run into problems? How were the issues resolved? What regime of law was the land in dispute subject to. Analyse the experience together as a group. Thereafter, give a presentation on sale of land under customary law and statutory law. You may find the information below useful. Take questions and comments from the participants after your presentation. This segment of the training should not last more than 30 minutes.

## **16.17 Sales of Land**

There are two clear and distinct ways by which land in Nigeria can be properly and rightly sold, validly acquired and legally transferred namely:

- Under customary law or
- Under statutory law.

Each method of sale has its peculiar incidents and formal requirements and failure to observe these incidents of sale may invalidate any purported sale.

### **16.17.1 Sale of Land under Customary Law**

To transfer an absolute title under customary law, there must be evidence that the sales were concluded in the presence of witnesses and the names of those witnesses should be clear and unambiguous. Those witnesses should witness the actual delivery or handing over the land to the purchaser who must be put into possession in the presence of those witnesses.

### **16.17.2 Sales of Land under Received English Law**

In order to transfer the legal title under “English Law” a Deed of Conveyance in respect of the same should have been executed.

### **16.17.3 State of Purchase Receipts**

A mere receipt of purchase of land which is unknown to native law will only confer an equitable interest in law if the seller is acting for the family but not a legal estate which can be conferred by conveyance of the said property. In other words, where

land is sold under English Law or statute, money is paid and receipts are issued, the purchaser can acquire an equitable interest if he goes into possession.

This means that if a person sells his land to another and fails to put the person in possession, he retains possession. The payment of money by the other person and receipt of money by the owner does not per se amount to a transfer of possession to the purchaser. There must be either a conveyance executed in his favour or an entry into possession by the purchaser to cloth him with legal title in the instance and equitable title in the second instance.

**Note to Facilitator:** End the session by taking general questions. Thereafter you may wish to evaluate the session using an evaluation form or other preferred methods.

#### **Relevant Laws**

Land Use Act, 1978

Land Instrument Registration Law

# MODULE 17

## ROAD TRAFFIC LAW

Duration: 1 ½ hours

**Learning Objectives:** By the end of this session, participants will understand

- basic requirements for being able to drive a vehicle on the road legally
- what traffic offences are
- basic traffic regulations

**Note to Facilitator:**

*Introduce the module by stating that Knowing the laws relating to transportation and ensuring that one abides by them can go a long way in keeping one away from the net of law enforcement agents. The session is designed to highlight some road traffic offences. Thereafter give participants a power point presentation on the requirements for registering a vehicle, the government agencies in charge of road traffic matters and the road traffic offences that can attract an arrest without police warrant. You may use the information below as a guide.*

There are various federal and state legislations governing road traffic in Nigeria. A **motor vehicle** is described by law to mean a mechanically propelled vehicle intended or adapted for use on roads. A **highway** is described as including any road way to which the public has access. The law regulating road traffic does not allow any person to drive or own, a motor vehicle on the highway unless same is registered in

*Ask the participants to list the road traffic laws they know and state why they are important. They should also state the documents they know that one needs to drive a vehicle. Note these on a flip chart and develop on them with the material below.*

## **17.1 Requirements for a vehicle to lawfully ply the highway**

For a vehicle to be on the highway, the following conditions must be fulfilled.

### **1. Registration**

For a motor vehicle to be registered, the applicant shall submit to the licensing authority :

- an application for registration duly completed in the requisite or prescribed form;
- necessary registration fees;
- evidence of payment of import duty or evidence of letter of exemption from paying import duty (this is in respect of an imported car, but if the vehicle had been previously registered such requirement will not be needed).

### **2. Identification mark**

A vehicle duly registered shall be assigned an identification mark (number plate) and same must be exhibited on the vehicle.

### **3. Age**

A licensing authority shall refuse any application for registration of motor vehicle if convinced that the applicant has not attained the age of 18 years.

### **4. Insurance certificate**

For a vehicle to be licensed, the applicant must produce a minimum of valid third-party insurance certificate.

### **5. Driver's license**

No person shall drive a vehicle on the highway unless he is licensed for that purpose. A driving license shall not be issued to a person who is under 18 years of age.

### **6. Other requirements for registration**

In cases where the vehicle is registered for commercial purposes, the Licensing Authority shall demand the Certificate of Road-Worthiness of the vehicle before registration of said vehicle. Any vehicle registered shall be provided with a

registration book which shall serve as the permanent record of the vehicle. This registration book shall be produced within twenty four hours on demand by uniformed police officers or road traffic offenders. Vehicle licenses on payment of the appropriate fees, are issued to the owners for twelve months or six months as the case may be. The Licensing Authority has the power to refuse to issue licenses for certain reasons and any applicant so refused can appeal the decision to a magistrate for appropriate order.

### **17.2 State agencies/institutions in charge of road traffic matters and their functions**

Apart from the Motor Licensing Authority, the police, road traffic officer Vehicle Inspection Officer (V. I. O.) the Federal Road Safety Corp Marshal and the Road Traffic Wardens are the officers charged with the operations of the road. In addition the Lagos State Traffic Management Agency (LASTMA) is also charged with the responsibility of handling road traffic matters in Lagos State.

While the Police and the Corps Marshal have the power to arrest offenders for breach of the highway codes and traffic laws, the V.I.O. is charged with the responsibility of ensuring that all vehicles plying our roads are in good mechanical condition to operate. The Traffic Warden (also called the Yellow Fever) has the sole responsibility of controlling traffic on our roads, especially in the towns. The police and the Road Safety Marshals are empowered to arrest, fine or detain offenders of the highway regulations or codes and to generally ensure safety on the Roads. The police are to investigate road accidents and accident victims should be evacuated to hospitals for medical care by the two organs, i.e. the Police and Road Marshals.

***Note to Facilitator:** Ask the participants to list the road traffic offences they know as well as their penalties. Ask them to share experience of situations when they have broken one traffic offence or the other and what they had to do to bail themselves out. Thereafter, share with the participants the list of offences and the different punishments below.*

### **17.3 Offences for which the police can arrest without a warrant**

The police can arrest a motorist without a warrant for the following offences:

- a. Driving without a valid driving license.
- b. Driving a vehicle not registered or with expired license
- c. Driving a vehicle without valid insurance certificate
- d. Driving a vehicle without a valid M.O.T certificate
- e. Driving while drunk or under the influence of drugs
- f. Reckless or dangerous driving
- g. Over speeding
- h. Not observing the traffic regulation or driving against a one way street
- i. Manslaughter
- j. Driving a vehicle suspected to have been stolen
- k. Driving without using a seat belt
- l. Riding a motor bike without a helmet

In most of these cases, the police or Road Marshall can impose a fine on an offender in line with the provisions of the law. The police have the duty to charge an offender to court for an offence especially in a manslaughter case and it is the duty of the court to impose the appropriate punishment on such an offender.

#### **17.4 The powers of punishment by the court include**

- Suspension of the offender's driving license for a period
- Imposition of fine
- Jail term
- The police can also impound an offender's vehicle for serious offences and charge the driver for such offence or release the vehicle on payment of the imposed fine.
- The V.I.O. can impound a vehicle for road-unworthiness by issuing a certificate and until the conditions are met the vehicle shall not operate.

#### **Relevant Laws**

Road Traffic Law Cap R 10 Laws of Lagos State 2003  
 Road Traffic Law CAP 116. 1963, Laws of Eastern Nigeria  
 Road Traffic Regulations of Anambra State 1985

# MODULE 18

## CONFLICT AND CONFLICT RESOLUTION

Duration: 2½ hrs

**Learning Objectives:** By the end of this session participants will be able to:

- explain in clear terms what conflict is
- state the causes and types of conflicts
- state different methods of settling disputes or resolving conflicts
- understand the process of reconciliation, negotiation and mediation
- resolve simple conflicts

### *Note to Facilitator (5 mins)*

*The information in this module is aimed at providing ample information on the subject. As a facilitator, you will have to design your power point presentations in a more succinct form so that the session is not boring.*

*Introduce module by clarifying the misconceptions around conflict. Help participants to appreciate the fact that conflict is not always a bad occurrence. Conflicts can have both negative and positive sides. It is therefore important to know how best to manage conflicts when they arise so that lessons arising from them can be used positively for promoting change and development.*

### **18.1 Understanding the Meaning of Conflict**

Generally conflict is believed to be a disagreement between two or more people over a specific issue or action; however, conflict can also be a personal experience of one person over an issue or action. Oftentimes, people associate conflict with chaos, arguments, fights, destruction, crisis etc. What all these concepts have in common is negativity. Conflicts usually reflect the diversity and complexity of human societies and should not be seen as a dysfunctional experience, as it can be an opportunity for

change. If we look at it this way, conflict on its own is neither positive nor negative. It is worthy to note that conflict is a natural and necessary part of our lives. If conflict is managed in a constructive way, its resultant effect is development, change, interaction, progress, knowledge, peace etc.

### ***What is Conflict? (25 minutes)***

#### **Activity (10mins)**

##### ***Step 1***

*Facilitator should write the word “conflict” on the board.*

##### ***Step 2***

*Ask participants what this word means to them.*

##### ***Step 3***

*While participants are expressing their understanding of Conflict, note their answers on a flip chart.*

##### ***Step 4***

*Without any explanation or input, ask the group to classify the answers generally in three categories. Thereafter do a classification of their answers in three categories i.e. answers considering conflict as negative; answers considering it as positive and as being part of innermost life; and answers considering it as inevitable (without qualifying it as positive or negative).*

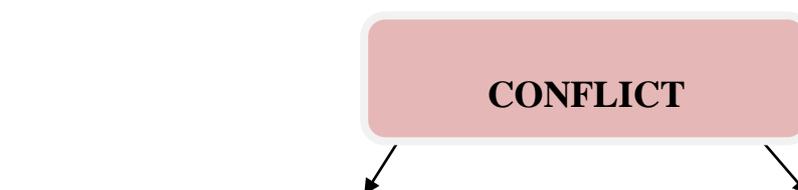
##### ***Step 5***

*Ask participants various questions on the meaning of conflict: e.g. why do you consider conflict as negative? In what way do you consider conflict as positive?*

#### **Presentation (15 mins)**

*At the end of the activity, facilitator should give a presentation on what is conflict, and types of conflict using the information below as a guide.*

### **Conflicts<sup>22</sup>: the two sides of a coin.....**



<sup>22</sup> Adapted from Ojielo. O. (2004) “Alternative Dispute Resolution” A paper delivered at the CENGOS AGM at Owerri, Imo State.

### **Negative effects**

- *Loss of life*
- *Loss of property*
- *Abuse of human rights*
- *Displacement of persons*
- *Hurt/pain*

### **Positive effects**

- *Development*
- *Knowledge*
- *Dialogue*
- *Progress*
- *Change*

Conflict is inevitable and it keeps re-occurring. As human beings, we encounter conflict everywhere, sometimes at home, in the office, at social gatherings or when we are asleep alone in our beds. Part of developing an effective intervention strategy is having knowledge of and understanding the general categories of causes of conflict. The causes of conflict are innumerable but can be simply categorized thus:

- Conflicts over resources – These usually occur when there are two or more people or groups scrambling for scarce or limited resources. Usually when the resources are made available the conflict is solved.
- Conflicts involving issues – These are the most difficult to understand and resolve as they are seated at the core of our values and belief system.
- Conflicts over psychological needs - These are conflicts over things that cannot be seen but which have an impact on the psyche of an individual.

A proper analysis of the different types of conflict that parties are dealing with helps the one that intervenes to determine the most appropriate strategies for handling the dispute(s) effectively.

## **18.2 Types of Conflict**

There are numerous types of conflicts and it is important that we know the types or kinds of conflict we encounter daily. We will limit our discussions to the following types of conflict:

- **Intrapersonal Conflict** occurs within the person. It usually occurs during decision making or goal setting, aspiration, use of time, deciding what to do at a particular time or during a period of time etc.

- **Inter personal Conflict** occurs between two or more individuals. It is a person to person type of conflict.
- **Intra-group conflict** occurs between individuals within a particular group. When there are factions in the group conflicts are inevitable e.g. different factions within the same political party disagreeing about whom to sponsor for the next senatorial district elections.
- **Inter-group conflict** occurs between different groups, organizations, communities etc. in such conflicts it is usually difficult to identify the underlying needs and values of the different groups
- **Intra-national conflict** occurs within a nation between different groups or communities or parties. It occurs even between the government and the citizens sometimes.
- **International conflict** occurs between two or more nations.

### 18.3 Levels of Conflict

There are different levels of intensity in conflict, which can range from mild disagreements to:

- a) Simple conflicts;
- b) Serious disputes;
- c) Deep-rooted conflict;
- d) Protracted conflict; and
- e) Violent conflict.

*Note to the facilitator: Spend about 5 minutes to explain each level of conflict clearly to the participants*

Conflicts can either be left to rise (escalate) or it can be reduced (de-escalated), irrespective of their level. Conflicts often rise when handled in a destructive manner and are reduced when handled in a constructive manner.

Conflicts are more likely to escalate when:

- ⇒ other parties join in and take sides
- ⇒ any of the parties feels threatened

- ⇒ there is a loss of interest in maintaining the relationship
- ⇒ there is an increase in a show of anger and/or frustration
- ⇒ there is no expertise in the handling of the conflict

Whereas conflicts are more likely to de-escalate when:

- ⇒ emotions of anger, frustration and/or fear are expressed in a direct and mature manner
- ⇒ threats are reduced or eliminated
- ⇒ needs and concerns are expressed and discussed more openly
- ⇒ the needs of involved parties are acknowledged
- ⇒ those involved in the problem focus on the problem rather than on the persons

It is very important to remember that conflict progresses. Because conflict is dynamic in nature, conflicts not dealt with may grow and change. *The stages of conflict can be seen as thus but may not necessarily follow this progression (this is just an example of a typical conflict)*

**Note to Facilitator (15 mins)**

*In building participants skills on conflict resolution, it is important for them to be able to identify the different stages of conflict so that they can respond appropriately and promptly too when necessary. Facilitator should give a presentation or mini lecture on the stages of conflict and ways of handling conflict.*

1. **Early Warning Stage** – this is when the conflict is very simple and is still developing.
2. **Formation Stage (problem emerges)** - This is the earliest stage of conflict. A problem emerges and things that were previously taken for granted become serious issues.
3. **Escalation Stage** - At this stage, people begin to take sides, perceptions become distorted and parties begin to commit resources to defend their

positions, leaders make inflammatory statements regarding such positions and street demonstrations increase and intensify.

4. **Violent Crisis Stage:** This is the peak of the conflict where crisis emerges. Tension and violence become intense and communication between the disputing parties breaks down completely. Loss of human and material resources may occur at this stage.
5. **De-escalation stage:** During this stage, there is a gradual cessation of hostilities arising from conflict weariness and/or intervention by a third party.
6. **Outcome Stage** – Outcomes may vary depending on how the conflict is handled. At this stage, the conflict may be transformed whereby all causes of conflict are removed and reconciliation occurs.

### **18.5 Conflict Handling Styles/Behavioural Responses to Conflicts**

As individuals we have different responses to conflict. These responses depend on our personality and sometimes the conflict situation. The way we respond during conflict situations depends largely on our values and the kinds of messages we have received and assimilated from parents, teachers, friends, peers, siblings, the media and our own life experiences. The way we handle conflict can either resolve the problem and create peace or aggravate it causing destructive behaviour sometimes resulting in violence or enmity.

Although the approaches to conflict vary from person to person, they can generally be grouped into four:

1. **Avoidance or Denial** – This is a very common method of dealing with conflict as a lot of people just can't cope with conflict so they would rather avoid the person or cause of the conflict or deny within themselves that there is a conflict situation even though they are angry or hurt.
2. **Suppression or Tolerance** – Some people will suppress their anger or feeling. This is very similar to denial but in this case, they admit that there is a problem but would rather restrain their feelings and pretend that all is well or tolerate the situation and just bear with the other party. This method usually leaves the problem to brew until it becomes a hydra headed monster e.g. a housewife who keeps quiet every time her husband wrongs her for the sake of

peace, until one day she feels she can't take it any more and explodes. This does not solve the problem but just buries it for a while.

3. **Confrontation/Self Help** – In this case the parties involved decide to slug it out or do something drastic like fight the other person or get into an argument where each individual holds on tenaciously to their point of view and refuse to shift grounds or see the other person's point of view. More often than not, this approach often leads to violence and both parties end up losing. In some cases confrontation might lead to a win/lose situation whereby the stronger party wins. This however, is not the best approach to resolving a conflict.
4. **Problem Solving** – This is an approach whereby involved parties listen with the intent to understand the underlying elements in the conflict and deal with the issues. People that use this style normally show respect for the differences and look out for amicable means of solving the dispute whereby both parties will not feel cheated and will be satisfied. They are not usually concerned about who is wrong or right but see conflict as part of life and are more concerned with the resolution of the conflict in order to restore the strained or broken relationship.

***Note to facilitator (20 mins)***

***Before sharing the information you have on conflict resolution, get participants to try and resolve the conflict in the case below.***

*Note all their comments and suggestions on a flip chart and thereafter make your presentation. You may use the information presented below the case study below as a guide for your presentation. Discuss participant's suggestions and help participants see why some of their suggestions are good and why some may not be appropriate for the situation being discussed.*

***Case Study***

*A married woman has just run to you with bruises all over her body inflicted on her by her husband. She has told you in confidence that she would not mind separating from her husband but her concern is for her little children whom she does not want to bring up alone without a fatherly presence in the house. On the other hand, her husband has confided in you that he is through with the marriage and is marrying another wife in a month's time. As a community paralegal, how will you help resolve the dispute?*

## **18.6 Conflict Resolution**

The purpose of conflict resolution is to remove or tone down the negative results as well as the destructive effects of conflict, while preserving its beneficial, life-giving qualities. Conflict resolution is usually a solution to a disagreement, which results from underlying conflicts. It is also a resolution of a state of tension that exists when a party perceives that his/their intentions, objectives, interests, aspirations, desires, needs or expectations are obstructed by another party. There are various methods available for resolving conflicts. The method employed is dependent on the nature of the conflict and the parties involved in the dispute.

### **18.6.1 Methods of Resolving Conflicts/Disputes**

#### **A. Litigation**

There are cases in which the most suitable method of resolving the conflict is for the parties involved to go to the court of law. In litigation parties in a conflict take their cases before a judge and get lawyers to argue their cases before a judge who decides on what the outcome of the case should be. The more common mechanism for resolving disputes is litigation i.e. taking legal action. This system or mechanism has been found not to be suitable for every situation. Litigation has its place in dispute resolution especially when dealing with constitutional and criminal issues, but it is usually costly, time consuming, and energy sapping; the procedure is clumsy, complex, unpredictable, rigid, and shrouded in mystery for the lay person. Litigation should be avoided if the parties involved in a conflict can make use of other dispute resolution methods. Paralegals should help parties involved in a conflict explore other conflict resolution alternatives and only go to court as a last resort.

#### **B. Alternative Dispute Resolution (ADR)**

Alternative Dispute Resolution (ADR) provides other means of conflict resolution that eliminate the difficulties encountered during litigation and creates a win-win result for parties of the conflict. ADR covers a wide range of alternatives to litigation which involve third party intervention to assist the resolution of disputes. ADR is

flexible and adaptable, and specific ADR processes can be devised to suit complex disputes in inter-personal, communal and ethnic conflicts. ADR focuses on the cultivation of an attitude of patient negotiation, seeking mutual understanding, tolerance and accommodation. It requires dialogue, persuasion, mediation and trust capable of directing the people's energy into reaching consensus in personal, public and commercial dispute matters.<sup>23</sup>

### 18.6.2 Types of ADR

ADR can be classified into the following categories:

1. **Accommodation:** This is a term used to describe the settlement of disputes between hostile individuals and groups irrespective of their differences or hostilities. Accommodation is when parties involved tolerate themselves. It relies on information and law enforcement in reducing differences.
2. **Negotiation:** In this case, parties of a dispute opt out for a peaceful settlement. It involves settling between both parties. Parties that are willing to engage in negotiations are ready for a give and take situation and are not likely to be hostile to each other. Negotiation occurs in our day-to-day living. Negotiation consists of discussions between two or more parties around specific issues for the purpose of reaching a mutually satisfactory agreement.
3. **Mediation:** A third party who may be an individual or group helps the disputing parties in obtaining a settlement. The third party is referred to as a mediator. He /she must not be a party to the dispute and cannot take sides in the dispute. The case is similar to negotiation; the only difference is that a third party is required.
4. **Facilitation:** This is an assisted process which is similar to mediation in its objectives; however, facilitated processes typically do not adhere to a tightly defined procedure. In this type of proceeding, the facilitator works with parties to increase the effectiveness of their communication and problem-solving abilities.

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<sup>23</sup> Ogunyannwo S. *The Effective Mediator: A Complete Guide for Practicing Mediators* HMB "Hephzibah" Publishers Nov. 2005, p. 23.

5. **Conciliation:** This involves one party to the dispute, in the presence of the other party and the conciliator, either admitting that he or she has contributed in one way or another to cause the dispute or at least acknowledging that he or she might do something to end the dispute. Conciliation helps to heal a hurt ego. Unlike the mediator, a conciliator draws the settlement proposals subject to the demand of the disputants.

The success of conciliation lies in:

- (a) The ability to persuade the disputants to see the dispute from the other party's point of view;
- (b) The ability to identify the real issues for determination as opposed to the entrenched positions of the disputants;
- (c) The ability to think out mutually acceptable solutions; and
- (d) The ability to work out ways and means of actualizing the acceptable solutions.

Conciliation is a product of cooperation between the disputants; as such it ensures that whatever is agreed to be done by either party is willingly done without the need for any form of coercion.

6. **Arbitration:** This method of conflict resolution involves the selection of a person chosen by both parties. The person is known as an arbitrator. The arbitrator acts as a judge. This person does not necessarily have to be a judge or legal personnel. Decisions made are based on information provided by the parties and according to the relevant laws.
7. **Out of court settlement:** This is a method in which litigants (i.e. parties to a dispute that had initially been in court) decide to settle their dispute out of court. This is usually applicable when one party may have admitted the breach or offense and wants to settle out of court to avoid shame or disgrace.

**Note to facilitator (15 mins)**

*In a short lecture, briefly define what negotiation is and outline the strategies for negotiation. Make use of notes below for your presentation.*

## **18.7 Negotiation**

Negotiation is a voluntary attempt to resolve conflicts that arise from competing needs, interests and goals. It is a problem solving approach in which parties seek agreement rather than resort to violence and force. It is a communication or information-sharing process in which parties try to work out their real, perceived or potential differences through an agreement, which defines their future relations/behaviours. Negotiation involves negotiators communicating with each other over a dispute and their willingness to make concessions or to find a middle ground. There is no place for a third party facilitator in a negotiation process.

An agreement from a negotiation can either be formal or informal, written or unwritten, oral, explicit or tacit. An agreement reached in this process is enforceable as in a contract. Examples of negotiation include what goes on between an employer and his employees during strike actions or the daily experience of price haggling between traders and their customers. The outcome is usually a mutually acceptable agreement. It is an everyday activity for human beings and is one of the cheapest means of conflict resolution. It is a skill that every effective paralegal must have to be able to assist disputing parties during a mediation process.

Effective negotiation is based on concern for others and mutual respect. It usually brings about a win-win situation. The win-win method results in faster decisions which are of higher quality and build better interpersonal relationships and a stronger commitment to carrying out the decisions reached.

For negotiation to succeed, some or all of the following conditions must exist:

1. The issues in dispute are clearly identifiable and agreed upon by the parties in dispute.
2. The interests, goals and needs of the parties are not incompatible.
3. The parties recognize that litigation and other alternative procedures are not as advantageous as negotiation to resolve the dispute.
4. The parties need to cooperate to meet their goals.
5. The parties understand the implications of cost and the uncertainty of an imposed decision such as a court judgment.

6. The parties are capable of or are in a position to influence each other to act in ways that provide mutual benefit and avoidance of harm.

**Strategies for Negotiation:** The two recognized key strategies for negotiation are positional bargaining and principled negotiation.

(a) **Positional Bargaining:** is the traditional strategy in the business environment. It is also found in political and social circles. As the name depicts, it involves each side taking the most extreme position on what he or she wants or offers as the case may be. Discussions follow and parties haggle, threaten, bully etc. all in the effort to extract a shift or agreement from the other side. Concessions are exchanged and a middle ground is achieved.

(b) **Principled Negotiation:** The key characteristics of this strategy are:

- Negotiating on the basis of principles, not positions
- Being tough on the problem and not the people
- Encouraging problem solving
- Using objective standards to support decision making
- Aiming for a wise outcome reached effectively.<sup>24</sup>

In principled negotiation, negotiators seek to develop good relationships with the people on the other side and if deadlock occurs they may involve third parties to help develop agreement on interests or provide objective standard for a fair and just settlement. One of the major roles of an effective mediator is to help the parties focus on the future – on where the parties want to be and not where they are or were. With good negotiation skills, a mediator may be able to assist the parties to focus on their interests and not wants or positions. Identifying the needs of the parties rather than their wants clears the way for recognizing the shared goal.

**Note to facilitator (20 mins) you may wish to end this segment with this activity**

### ***The Sinking Boat<sup>1</sup>***

*In the midst of a shark infested sea of the Yenagoa creek is a congested boat of load people sailing to Makurdi, fleeing from a devastating war and starvation. After sailing half way and about 100 more miles to sail, the boats overload was becoming a danger to all aboard. To save the boat from sinking into the deep and dangerous sea, it must be decongested by a half of its passenger.*

*On board the boat are: 2 priests, 2 children, 1 carpenter, 1 gardener, 3 upland people, 2 highland people, 2 forestland people, 2 people each from the 3 ethnic groups in the north, south, east and 3 from the west, 2 lawyers, 1 nurse, 2 teachers, 1 judge, 2 ADR experts, 40%*

***Note to facilitator (15 mins)***

*Carry out a brainstorming session on, what is mediation. Ask participants to tell you what they think mediation is. List out their responses on flip chart. In a short lecture, briefly define what mediation is, who a mediator is and outline the qualities of a good mediator.*

*Ask participants to compare the qualities of a good paralegal with that of a good mediator.*

*Give a short presentation on the fundamental elements of mediation and the phases of the mediation process*

*Make use of notes below for your presentation.*

## 18.8 Mediation

*Mediation is the intervention of an acceptable and impartial third party in a dispute. It is the use of a neutral third party to help disputants reach a voluntary negotiation and settlement of their differences. Mediation is a voluntary, (unless ordered by a court or required by the contract), non – binding, private dispute resolution process in which a neutral person (the mediator) assists the parties to reach a negotiated settlement.*

### 18.8.1 The Mediator

The mediator uses a variety of skills and techniques to help the parties reach a settlement, but has no power to make a decision. A mediator unlike a judge or an arbitrator has no legal power to render a judgment. He/she has neither the power to impose a settlement nor the responsibility to counsel the parties. In the course of mediation, a mediator plays a number of different roles including: facilitating, opening communication channels, translating and transmitting information, separating issues from interests and creating viable options for parties to a dispute or conflict. The mediator must strive to be part of the solution and not part of the problem. Mediation is an action and not a position; so it is necessary for the mediator to be completely removed from the problem.

**Qualities of a Good Mediator:** The qualities of an effective mediator include being fair, impartial, independent, empathetic, non-judgmental, an effective and patient listener, a good communicator, intelligent, imaginative, resourceful, tactful and persuasive.

### 18.8.2 Fundamental elements of mediation<sup>25</sup>

The following elements distinguish mediation from other forms of conflict resolution:

1. **The process is voluntary.** Parties cannot be coerced into mediation and they may opt out of the process at any time.

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<sup>25</sup> UNDESA/UNDP and The Centre for Conflict Resolution, (n.d.) Skills Development for Conflict Transformation: A training manual on understanding conflict, negotiation and mediation [www.unpan1.un.org/intradoc/groups/public/.../un/unpan001363.pdf](http://www.unpan1.un.org/intradoc/groups/public/.../un/unpan001363.pdf)

2. **The mediator must be acceptable to all parties involved in the process.**

3. **The mediator offers *procedural* assistance rather than *substantive* assistance.**

That is, the mediator controls the process of resolving the conflict while the content is the domain of the parties.

4. **The mediator must remain impartial.** That is, the mediator must be able to set aside his/her opinions on what the solution to the conflict should be. In addition, the mediator should be seen as neutral, in terms that she/he should not be in a position to benefit from continued conflict or benefit directly (in the form of some sort of compensation) from one of the parties.

5. **Potential solutions and decisions on agreements are determined by the parties to the conflict, not by the mediator.** While the mediator may suggest possible solutions, the parties decide what outcomes will best meet their interests. The mediator does not serve as judge or arbiter.

6. **Mediation is an interest-based method**, that is, it seeks to reconcile the substantive, psychological and procedural interests of the parties rather than to determine who is right or more powerful.

### 18.8.3 Phases of the Mediation Process

1. **Introduction:** This process enables the mediator to introduce himself or herself, explain the process and his/her role (i.e. to assist the parties reach a mutual agreement), and ensure that he/she sets the parties at ease. The purpose of the introduction stage is to deal with and allay any fears that parties might have and ensure that people feel comfortable to participate in and trust the process. The beginning of the mediation session affects the tone of the whole discussion. During this phase it is important to agree on the ground rules before take off. Inasmuch as it is advisable to let the parties decide on the ground rules that will bind them during the mediation, the mediator being the process manager, should provide firm but sensitive control. The Introduction Stage is the mediator's time - the rest of the mediation belongs to the parties. It is up to the mediator to set the tone, be firm, direct the process. All of this will assure the parties that their concerns will be taken care of.

2. **Initial Joint Session (Information gathering):** This stage presents an opportunity for the mediator to begin to understand the perspective of each party, and

to start formulating in his/her mind, the crucial issues that need to be addressed, and a way to proceed. The mediator allows parties to feel that **they** have been heard, and assists parties to hear **each other**—sometimes for the first time. This represents a turning point in many conflicts, for parties who have not understood the effect of their actions on others, and have not been able to express what they in turn have been feeling. Each party presents general facts or tells the story of what happened; the complainant/claimant tells the story first unless they agree otherwise. As much as possible, interruptions are discouraged. The other party states his or her own version of the facts thereafter. At this stage allow parties to hear themselves and come up with positions of both parties.

### **Process during initial joint session**

- a) Each party explains the situation from their perspective while the other party listens.
- b) Mediators summarize briefly and empathetically as each party finishes, reflecting facts, feelings, interests and needs.
- c) Mediators may ask, or invite other parties to ask questions to clarify various points. Usually after listening, the mediator identifies the facts and issues as agreed upon and summarizes each party's views. The issues will be reviewed with this background: What do we know? What do we need to know?

### **3. Problem-solving**

The problem-solving stage is the most challenging part of mediation, for it is now that the first serious efforts at resolution are made. Although we propose a sequence of activities that will give you an idea of things that might take place, there are no rules about how to go about this stage.

The keys to managing the problem-solving stage are:

- **People/relationship-building skills** - tools that enable the parties to establish a human bond between them. i.e. communication skills;
- **Process-management skills** - e.g. maintaining control, breaking impasse, and managing the flow of communication; and

- **Problem-solving skills** - that is, tools for enabling the parties to discuss the problems that separate them in a way that is efficient and constructive, using good timing in switching from one to the other.

**Process:** Two basic tasks occur during this stage – working with problems through rational efforts at problem solving and negotiation, and working with people - through good listening and skill in handling bruised feelings.

### **Suggested sequence**

1. List issues for parties to see
2. Point out commonalities
3. Generate ideas to resolve the issues.

During this problem solving stage, if things get to a deadlock, the mediator might have to caucus. A caucus is a private meeting between the mediator and only one party. To keep things balanced, mediators caucus with both parties separately. Caucus is a useful tool, since dealing with one party at a time is simpler than with two or more in the same room. When things get tense or difficult, caucus is one easy way to maintain a sense of control. When all else fails, caucus! Although direct dialogue between parties is always preferred, private caucus is sometimes needed to break a deadlock or deal with emotional or confidential issues. Caucus is a powerful tool for dealing with problems, and in volatile or sensitive disputes it may become the primary means of communication.

**4. Agreement:** The purpose of the agreement stage is to concretize the outcome of the problem-solving stage, and to ensure that any agreements reached are clear, specific, realistic and proactive. This stage is one of the most critical phases of the mediation process. One common cause of failure in mediation is that mediators and parties neglect to work out the details and procedures for implementation of agreements.

**Process:** The agreement should state clearly **who** is agreeing to **what, where, when** and **how**.

An effective mediation agreement should be:

1. **Specific** - Avoid ambiguous words (e.g., 'soon', 'reasonable', 'co-operative', 'frequent') as they can mean different things to different people. Use specific words and dates that will have the same meaning to both parties.
  2. **Clear about deadlines** - State clearly all times and deadlines.
  3. **Balanced** - Everyone should gain something, and forfeit something.
  4. **Realistic** - Can the disputants live up to their agreement? Ideally the agreement speaks only for the disputants themselves, i.e. actions over which they personally have control.
  5. **Clear and simple** - When possible, use the disputants' language. While agreement details are very important, making agreements too complicated can lead to misinterpretations or misunderstandings which could create further conflict.
  6. **Proactive** - Include provision for later review, or set up a monitoring mechanism, or agree on a procedure for dealing with problems that may arise.
  7. **Signed by everyone present** - Upon completion read to the parties and get their responses. Does it cover all issues? Do they pledge to live up to it? Should we agree on some way to review progress in the near future? Then sign and date the agreement and give copies to both parties.
- 5. Closure:** When mutually acceptable resolutions are articulated and reached, the terms are usually drafted in the form of a written agreement and then the mediation session can close.

**Note to Facilitator (20mins)**

*Tell participants to form two groups. Each group should discuss the case study below and suggest ways of resolving the matter. They are to appoint a rapporteur each to report back to the group on their behalf. Their suggestions should be written on flip chart. Analyse their responses and make comments on their presentation. Allocate 10 minutes for group discussion and report back another 5 minutes for participants to comment. As the facilitator, spend 5 minutes to make*

*comments and summarize the issues in mediation highlighting the role of a paralegal in the process.*

### ***Case Study***

*A married woman has just run to you with bruises all over her body inflicted on her by her husband. She has told you in confidence that she would not mind separating from her husband but her concern is for her little children whom she does not want to bring up alone without a fatherly presence in the house. On the other hand, her husband has confided in you that he is through with the marriage and is marrying another wife in a month's time. As a community paralegal, how will you help resolve the*

### ***Note to facilitator (10 mins)***

*You may close the session with a brainstorming session on the benefits of ADR.*

- Ask participants to tell you what they think the benefits of ADR are*
- List it on flip chart*

*Summarize using the information below the benefits of ADR.*

*Close the session with questions and answers. Request participants to ask or any clarifications required and give feedback.*

## **18.9 Benefits of Alternative Dispute Resolution**

1. **Time Saving:** ADR can be scheduled by the parties and the panelist as soon as they are able to meet. Compared to the court process, where waits of years are normal, dispute resolution is as fast as the parties want it to be.
2. **Low cost:** One of the major reasons parties choose to resolve their disputes outside of the courts is cost. Alternative dispute resolution usually costs much less than litigation, allowing smaller financial disputes a financially viable way to be settled. Litigation is very expensive. ADR therefore is handy, easily available and the best alternative for interpersonal, civil and commercial disputes.
3. **Enhancing Relationship:** There is the attendant bitterness that results from litigation. This is because any case that goes to court will surely produce a winner

and loser and this usually worsens the bitterness that resulted in the dispute in the first place. But with ADR there is usually an amicable settlement.

4. **Empowering:** When people use ADR, they choose their mediators, arbitrators, their venues, and determine the pace of the sessions. This empowers the parties and gives them a sense of belonging.
5. **Simplicity:** The process is simple unlike the complex court processes.
6. **Cooperative Approach:** All ADR services take place in a more informal, less confrontational atmosphere. This is more conducive to maintaining a positive relationship between the two parties. With mediation, specifically, the result is collaboration between the two parties. (Combine 3 and 6)
7. **Confidentiality:** Disputes resolved in court are public and any judgments awarded are also public. Mediation, arbitration, and mini trials are all conducted in private and in strict confidentiality.

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