

**Leadership Dialogue with Traditional Authorities
Kumasi, Ghana
December 5, 2005**

**Theme: Customary Law Systems as Vehicles for Providing Equitable
Access to Justice for the Poor and Local Governance, the Peruvian
Experience**

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Nananom (Chiefs), ladies and gentlemen; good morning.

I am honored to be at the National House of Chiefs today to share with you some preliminary thoughts about the role of customary law in today's world and about Peru's experience with national dialogues as an instrument to address governance issues.

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Customary law systems in common law African countries help meet a fundamental need for justice, and thus provide an important complement to formal justice institutions. Their enduring popularity is an indication of their importance to the lives of the majority of people in Africa. They are also a testament to the fact that the States in many countries have failed to provide access to justice to most of the population.

Customary law tribunals have many valuable features which are well known to all of you. They are infinitely more accessible to the average person in Ghana than the formal courts. Traditional tribunals are inexpensive, efficient, and often geographically very close to users. Their proceedings are easily understood by users because they generally use a vernacular language and avoid legalese. They thus provide communities with a sense of ownership and social cohesion.

Another important advantage of customary tribunals is that, where appropriate, they encourage mediation and reach decisions that are restorative and tend to rebuild community relations, as opposed to the formal judiciary which can be adversarial. The laws applied by these customary tribunals tend to be flexible and to take into account current local values and mores. These laws evolve naturally with the communities.

Customary tribunals are crucial when the formal state institutions are unable to reach the people either because they are inaccessible as can be the case here in Ghana, or in more extreme cases where formal institutions have broken down or are affected by civil strife and conflict. This has been seen very dramatically in countries like Sierra Leone or Uganda.

We at the World Bank realize that we cannot talk about access to justice for the vast majority of people in Africa without discussing customary law systems. So the question is how, not whether, to support them, and how best to integrate them with the formal system.

The proposed learning program on the topic of traditional authorities in modern dispute resolution is therefore very timely. I know that in the leadership dialogue that will take place today and tomorrow, you will be discussing some of the challenges faced by customary systems and how to address them in order to ensure that they deliver justice at the very highest possible standards.

There will be some challenges that traditional tribunals in Ghana share with those in other of our member countries and there will be elements that are particular to Ghana. Let me share with you some of the challenges that we have assisted other member countries to deal with – I will be interested to hear whether these challenges exist in Ghana and if not, how you have dealt with them. Your success stories can also serve as models for other countries that have traditional tribunals.

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A common issue is that, because judgments are rarely recorded in writing, they can be inconsistent and unpredictable. It is also difficult to appeal from rulings where there are no records. Additionally, because procedures are quite informal there are, at times, concerns that basic rules of fair process are not always followed. Measures that have been proposed to meet these challenges have included providing the resources and training to enable traditional tribunals to keep written records. This is clearly not a solution that can be implemented overnight, especially in places where officials of traditional tribunals are not literate; however, it is a start. Training of officials of traditional tribunals in elements of procedure and human rights

may help to address the fairness of customary law processes. This would be especially useful as a precursor to closer integration between the traditional and the formal systems.

In some countries there have been concerns that customary laws can be discriminatory against women, children and vulnerable ethnic minorities. Again, I do not know if you would consider this to be an issue here in Ghana. Customary laws evolve to reflect the norms and expectations of communities, and we are interested in exploring whether there is a role for the World Bank to play in the evolution of the content of customary law.

In general, in many countries in Africa, we have seen that the operation of customary law tribunals is not really very well understood by policy makers and development partners. Because of this, there is a need for further in-depth analysis. This can provide valuable feedback to the officials of the traditional courts, and would also be a useful tool both for assisting policy makers to devise strategies for strengthening these systems. This would also help demystify customary laws, and ensure that the voices of all stakeholders are heard as these laws naturally evolve. Empirical assessments would also validate the day-to-day social practice of customary laws, over the ideology or theory of customary law. Very often the common sense approach used on the ground is not what is reflected in writings – often by outsiders- on the laws.

In the same way, we have found that the content of customary laws is not well understood in several countries. A question that comes up is whether or not to codify customary laws and procedures in order to better understand it.

I note that part of the mandate of the National House of Chiefs under the Constitution is to undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin.

On the one hand, codification would provide a basis for common understanding. On the other hand there is the danger that codification can freeze laws so that they stop evolving and can also remove discretion in the way these laws are applied. One option in documenting customary law is to include the clear proviso that any such description is a snap shot of a moving object and that the description does not freeze the law. This would allow customary laws to continue to evolve naturally with the changing values of the communities who are subject to them.

Another factor that we have found needs to be considered in understanding customary laws is that they are heavily influenced by other sources. Moreover, they often have been fundamentally changed by colonial experiences. This leads to problems in defining what we actually mean and understand by customary laws.

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As you move forward with this initiative of national importance you may also want to explore experiences from other parts of the world. One source of comparative experiences may be other developing countries. I believe that “South-South” experiences -- amongst countries in Latin America and

Africa, for example, -- may be more applicable because of the common challenges that such countries face. Likewise, some of the solutions being adopted may be transferable and adapted to local circumstances. For instance, various aspects of WB funded “mobile courts” projects in Guatemala and Peru may have components that could be applied to Ghana and the exercise that brings us here today. Another example could be the Justice for the Peace (“Jueces de Paz”) model, which are very effective and widely accepted in several countries in Latin America, including Peru.

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Integrating the two systems is fundamental for the progress of many developing countries, including Ghana. Whichever model is ultimately adopted by you to accomplish this endeavor will only succeed and have a lasting effect if it has the broad support of society as a whole. No reform – particularly one as complex as the one being discussed here today --, is sustainable over time without the commitment and active participation of society. For this reason, it is essential to have regular ties and a consistent dialogue between all actors involved: government, legislators, the judiciary, political parties, local leaders and civil society.

One of the most ambitious and successful national dialogues took place in my country, Peru. I had the honor and privilege of leading such effort, which culminated in an unprecedented national agreement between the government, the principal political parties and civil society organizations

regarding 31 long-term policies for the development of Peru. Let me take a few minutes to share with you some thoughts about this unique experience.

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