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Legal Aid Days as a Research Tool

Experiences from Northern Kenya

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Introduction

Providing legal aid as part of a research program can bring both methodological and community benefits. Legal aid days encourage people to open up more quickly, increase the amount of information people are willing to share, enable less vocal members of the community to speak out and satisfy the desire of researchers to give something back to communities - rather than just extract information.

Since 2007, the World Bank's *Justice for the Poor* program has been partnering with the Legal Resource Foundation (LRF), a Kenyan NGO, working to implement field research in the arid lands

region of Northern Kenya.¹ Together, they seek to understand how the poor and marginalized navigate prevailing justice systems. Legal aid days were included as part of the research methodology, capitalizing on LRF's wealth of experience in the legal aid sector.

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1 Qualitative field research was undertaken from July to December 2007 in Isiolo/Garba Tula, Baringo/East Pokot and Garissa districts.

Implementing Legal Aid Days

LRF provides legal aid clinics in many parts of Kenya,² usually in conjunction with members of the Law Society of Kenya. Lawyers offer free advice to people with limited financial means and sometimes provide free court representation. Legal aid days are useful in highlighting legal issues specific to certain communities and have enabled concerned organizations to address community problems. Legal aid days also provide an important forum for increasing community legal awareness.

Legal aid days are an established feature in Kenya but had never been used as a tool in empirical research. The research team set out to test legal aid (in support of other research methods) as a means of collecting data on the types of disputes communities encounter. Research-based legal aid days were held in Bula Pesa and Oldonyiro divisions, both part of Isiolo district. Neither division has any resident lawyers so the attending lawyers were sourced from Meru town, 60 kilometers away.

What is J4P?

Justice for the Poor (J4P) is a global research and development program aimed at informing, designing and supporting pro-poor approaches to justice reform. It is an approach to justice reform which:

- *Sees justice from the perspective of the poor and marginalized*
- *Is grounded in social and cultural contexts*
- *Recognizes the importance of demand in building equitable justice systems*
- *Understands justice as a cross-sectoral issue*



"Community members from rural areas seemed to fear those with formal authority yet the presence of lawyers allowed them to air their grievances."

The provincial administration, through the chiefs who are the administrative authorities for each location, informed community members they would receive legal aid from lawyers accompanied by a research team. Community members were asked to assemble in a public area and as the areas were open, passers-by had easy access to the venue. The days were well attended, first with curious community members, and soon by an enthusiastic crowd eager to share their grievances. In Oldonyiro, some participants walked one or two days from

Observing Power Dynamics

The legal aid days in Isiolo turned into public forums in which issues between the communities and formal authorities were debated in the open. In contrast to legal aid days in other areas of Kenya, communities in the arid lands insisted on sessions in which the whole public could witness the lawyers' responses.³ This difference brought to the fore interesting observations and gave insights into the power dynamics within arid lands communities.

The Position of Women

In the rural division of Oldonyiro, such dynamics were evident through the order in which the members of the community addressed the meeting as well as the seating arrangements - with women seated on the ground at the fringes while men sat on benches in the center. The most senior men each opened the aid days with a speech. This was followed by the contribution of more junior community members. Women did not speak during the communal sessions and only addressed the lawyers directly in individual sessions.

Longopito sub-location to take part. Community members had a range of concerns, including police harassment, cattle raids (which they attributed to the absence of police reservists in their areas), accident claims, domestic violence, divorce and maintenance issues. The research team stayed on in the community afterwards for further data collection.

² LRF has undertaken legal aid days in Mwala, Kangundo, Machakos, Kabete, Yatta, Thika, and Nairobi districts and within prisons based in Thika, Nakuru, Kisumu, Bungoma, Kitale, Kapenguria, Nairobi, Nyeri, Machakos, and Meru.

Rural and Urban Differences

In the urban center in Bula Pesa division, the dynamics played out differently. Despite the fact that the younger community members seemed to respect the older members, this did not stop them from openly disputing some issues that the elders of the community raised. In addition, women were very vocal and openly discussed their grievances in a public forum.

There were also notable differences in the way people from rural and urban areas engaged with formal authorities. Community members from rural areas seemed to be more reluctant to complain about those with formal authority, especially the police, yet in the presence of lawyers they gradually started airing their grievances. Those in the urban area spoke openly and without hesitation about their grievances. The legal aid days provided an opportunity to observe the interrelation between the formal (police, area chiefs, district officers) and informal (local elders) authorities and gave useful insights into issues between the two.

During both legal aid days, tensions between the community and the formal authorities were revealed. It became apparent that communities felt they did not have any avenues to address such grievances. This had made relations between community members and formal authorities worse.

The events led to an important finding: while many other grievances appeared to be dealt with through informal conflict resolution

mechanisms, issues arising between the community and the formal authorities have no effective mechanism or forum through which they can be addressed.

The legal aid sessions provided an opportunity for the community to discuss issues that had arisen with formal authorities and to seek answers to questions that they felt had gone unanswered for long periods.

³ In other legal aid days in agricultural areas of Kenya, community members have preferred to present their cases to individual lawyers in private.

Increasing Access to Research Data

The legal aid days gave researchers easy access to information on conflicts, disputes and grievances. Researchers gained a good understanding of the issues community members believed should be brought to the formal system and those that should be dealt with by the informal system. Most issues that were brought forward during the legal aid days were those for which local justice mechanisms had no answer, or where conflicting parties were dissatisfied with the informal avenues available to them.

The legal aid days also allowed researchers to obtain regular feedback about the cases taken up by the lawyers, long after the field visits were completed. This allowed analysis of case trajectories and an evaluation of what happened to cases in the formal system.

therefore often reluctant to reveal their issues to researchers, unless the research team remains long enough in one location and manages to gain their confidence. Legal aid days shorten this process and encourage women to speak out.

Through the legal aid days, the research team quickly gained a reputation as 'human rights' workers inside the community. Men, women, and youth began to volunteer information about the problems they faced. Some measure of trust which would have been hard to establish under normal circumstances developed rapidly between the team and the local populations.

“An advantage of legal aid days is that women are much more willing to come forward and explain their grievances when a lawyer is available.”

Women Speak Out

Another advantage of legal aid days is that the opportunity to receive advice from a lawyer on a specific problem presents an incentive for women to come forward and explain their grievances. Rural women often do not perceive themselves as important sources of information for an external visitor, as in local power hierarchies outsiders are usually addressed and dealt with by male community leaders or formal authorities. Women are

Women seated on the ground behind the men in Oldonyiro Division





A lawyer providing advice

Giving Back

Legal aid days provide an excellent opportunity to give something useful back to research communities, namely legal services. A community's expectation to receive goods or funding from outsiders can be more easily and appropriately managed through the provision of legal aid clinics. In Isiolo, the research team was able to provide the community with a

service while at the same time enhancing their understanding of conflicts, disputes and grievances. This benefit to the communities continues after the research is completed – with lawyers taking up cases and representing community members in court.

“A community's expectation to receive goods from outsiders can be managed through the provision of legal aid clinics.”

Challenging the Role of the Researcher

Using legal aid days as a research tool raises some issues and challenges. Despite it being often tested, researchers are arguably supposed to appear as impartial observers and not mingle in local affairs. During the legal aid days, the communities did not seem to distinguish between the researchers and the lawyers. For the rest of the researchers' stay in the locations, community members regularly assumed that they could ask the researchers for legal advice and often action.

In one assault case, local leaders approached the research team and asked it to get involved as their advocates in the interaction between the

police and the community. The team withdrew to discuss the position it was being asked to take. The team decided to observe a boundary between researcher and advocate. The team explained to the community leaders that they intended to be there to 'see only' and whilst they were now comfortable explaining the law, they would not become active in its application. Community leaders understood and appreciated this distinction and the team welcomed the opportunity to observe the interaction between different authorities in the assault case – an event they usually would not have been able to attend

Conclusion

Legal aid days represent an innovative method of data collection that builds a relationship between researchers and communities. Qualitative research on community conflicts and grievances can be difficult as community members often lack trust in researchers and are therefore unwilling to explain their issues. Legal aid days provide an opportunity to establish trust and provide a mechanism for establishing a reciprocal relationship.

Legal aid days allow observations of local power dynamics, particularly when sessions are held communally. This innovative research method also lets research teams avoid feeling they are 'exploiting' communities in simply extracting information – research can involve the immediate and direct provision of a valuable service in return.

Further Information

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