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July 2007 Volume 1, Issue 2

## Promoting Women's Rights by Indigenous Means: An Innovative Project in Kenya

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**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/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*

**Introduction**

Western institutions and systems of justice have developed as a result of socio-political processes, historical events and philosophical debates that have taken place over many centuries. Such systems therefore resonate with European societies, but when imported in post-colonial contexts they tend to become only partially embedded in urban centers. Meanwhile, in rural settings the delivery of justice usually continues to be based on local histories and values, which can differ substantially from community to community.

Reform programs in all sectors often ignore the value systems, social structures and realities of the local communities they address, therefore delivering mixed results. Further innovative programs are required to foster meaningful connections between local social structures and value systems and official justice institutions. The key to success will be the ability of

different systems to adapt. Interventions may adjust the official system to local realities, but another possible focus is on the transformation of cultural values of individual communities. Processes of transformation allow change to be set in motion from within a society itself. This can mean that 'positive' values are emphasized and re-instated where lost, or 'negative' values are transformed into positive ones. The effect is that state institutions can gain legitimacy in the eyes of local communities, and official rights are promoted.

\* The author would like to thank Catherine Mumma for her helpful comments on an earlier version of this briefing note, and Caroline Sage and Pamela Dale for their assistance in crafting and editing the note.

## Debate and Approaches in Kenya



*“There is a growing awareness that innovative solutions which work with local systems have to be found.”*

Some developing countries have proven to be a fertile ground for debates over cultural differences and the modern state system. In Kenya, there is a general understanding of the wide-spread application of local justice mechanisms in place of formal systems.\* Also, a ‘reception clause’ in the Judicature Act of 1967 accepts customary law as long as it is not ‘repugnant’. While a minority of legal and development practitioners argue for the strict implementation of formal structures, pointing to the lack of human rights standards and the gender imbalance claimed to be inherent in informal systems, there is a growing awareness that some innovative solutions which work with local systems have to be found.\*\* Based on these understandings, assessed needs at the grassroots, and the failures of some internationally-imported

designs, NGOs and governmental institutions have started to involve local structures in their activities.\*\*\* However, detailed strategies of *how* to do this are still rare.

\* Robinson Ocharo, Beneah M. Mutotso, Report on Community Justice Systems Study in Kenya: Case Studies of Communities in Wajir, Isiolo, Laikipia, Meru North, Turkana Districts and Nairobi (Mukuru and Kibera Slums). Final Report, The Kenya Section International Commission of Jurists, 2003.

\*\* Isabella Masinde, Mohamud Adan, Ruto Pkalya, ‘Indigenous Democracy. Traditional Conflict Resolution Mechanisms, Pokot, Turkana, Samburu and Marakwet, ITDG-EA, January 2004; Katama Mkangi, ‘Indigenous Social Mechanisms of Conflict Resolution in Kenya. A Contextualized Paradigm for Examining Conflict in Africa,’ 1997, accessed at [http://payson.tulane.edu/conflict/Cs%20St/case\\_studies.htm](http://payson.tulane.edu/conflict/Cs%20St/case_studies.htm)

\*\*\* See for example the National draft Policy on Peacebuilding and Conflict Management by the Office of the President, in which ‘traditional’ conflict resolution methods are among the main principles of the framework. (Office of the President, ‘National Policy on Peacebuilding and Conflict Management,’ First Draft, July 2006).

### **Barriers to Women's Inheritance Access**

- ‘Traditional’ values prescribe that land has to stay within the patri-lineage. Women marrying into their husband’s lineage can therefore work on his land, but cannot obtain ownership.
- Women often do not have the understanding or the means to address official law. This is especially the case in rural or poor areas.
- The social stigma of taking family members to court would make the woman’s life afterwards difficult, regardless of the outcome of the case.

## Tackling Discriminatory Inheritance Practices

One innovative project in Kenya has experimented with practical solutions. In 2004, the Kenya National Human Rights Commission (KNHRC), Kenya’s national human rights institute, and the Policy Project-Kenya (‘Futures Group International’) set out to find innovative solutions for women who were facing disinheritance.\* Given the high number of HIV cases in Nyanza, Western Kenya, increasing numbers of widows are being left behind after their husbands’

deaths. In many cases, these women are either chased away from their house and land, or they are forced to marry their husband’s brother to be able to stay on their property. The official law provides for equal rights between men and women in relation to inheritance, and women are eligible to inherit the land and property of their husbands. However, many factors have prevented the application of the law, as indicated in the accompanying text box.

KNHRC decided to approach the problem by challenging the power of local values that have resulted in negative practices. The project focused on the leaders and elders of the local Luo communities, in order to win their support in the promotion of the official inheritance laws. The project facilitated a debate among Luo elders about the communities' values in regard to women. Luo perception is that their culture protects women. Facilitators therefore challenged the elders who held the belief that 'Luo culture protects women', by confronting them with cases in which women had been relegated to extreme poverty through denial of their right to inherit. They were also confronted with the affects of cultural practices on the spread of HIV.

It was clear that, due to social changes and a growing recognition of human rights and gender equality, the Luo culture on the protection of women's right to inherit now required a different implementation than in the past. Instead of widows being inherited by their spouse's brother, with the support of the elders in a number of cases it was agreed to install the widows legally as trustees of the communal land. That allowed the women to remain on their land and property and protect it for

their children to inherit without having to marry their brother-in-laws. However, the property would remain within the lineage of the husband. This approach respected the traditional principles and allowed a 'traditional' value (Luo culture protects women) to be preserved, while at the same time adjusting the practice to international human rights and gender equality standards.

The project report claims that KNHRC's approach was successful in a number of cases, and had a higher success rate than approaches using the academic/workshop style of imparting human rights knowledge, or that promoted the use of the formal justice system for redress. Unlike cases where women received legal support, the cases addressed by this project ended in reconciliation between the parties in conflict. Further, cases that were dealt with by the official law, even where they brought about a victory for the widow, did not necessarily result in the reinstatement of rights.

\* The project was funded by USAID.



*"We had a look at the culture and saw what was negative and what was positive. We want them to see what is not good, but enhance the positive features. We are not a welfare state yet, and many cultural aspects are important for people to survive. Other aspects need to be re-negotiated. We need to break the negative cultural values."*

*- Catherine Mumma, KNHRC, Nairobi 2006*

## Taking an Innovative Idea Forward



*“Promoting change from inside brings legitimacy to new processes or institutions, thus increasing the likelihood they will be applied.”*

While the KNHRC project has only been conducted on a small scale in Kenya, it can serve as a model for many types of interventions, beyond creation of access to justice. Many approaches for the introduction of human rights or gender awareness standards have proven unsuccessful at the local level. What is needed is the communication of these standards in local terms and through local leaders (among others). The idea to transform features in society that contradict western rights standards, or to reinstall eroded values for protection of the vulnerable, through initiating or allowing a debate within society, is an innovative way to let society determine its own changes. Promoting change from inside brings legitimacy to new processes or institutions, thus increasing the likelihood that they will be applied and acknowledged by the local community. The work with cultural values also provides an innovative approach, countering the argument that informal structures must always work against human rights standards and gender equality.

The World Bank's *Justice for the Poor* program seeks to gain a deeper understanding of local level justice processes, in order

to identify pragmatic ways to allow access to justice for the poor and marginalized. Learning from KNHRC's project and similarly innovative interventions, J4P research will focus on socio-cultural values, in order to develop spaces for local debates over values and in order to determine the appropriate agents for change at the local level.



### Further Information

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### Questions?

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