

Title: Law Without Lawyers: Improving Access to Justice in Liberia and Sierra Leone
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Policy Motivation for Research: In predominantly rural, post-conflict countries, it can be daunting to have to navigate a formal justice system long associated with corruption, inequality, and arbitrariness. In Sierra Leone, individuals are often arrested and kept in police detention or remand prison for far longer than the law allows. Without access to one of the less than 200 lawyers in the country—most of whom practice in Freetown—detainees can languish for months before their case is heard in court. The Sierra Leonean project evaluating the work of paralegals in semi-rural Sierra Leonean police stations, prisons, and courts, was thus motivated by the idea that the arrest and extended detention of individuals by the police without access to trial or other forms of due process is a violation of fundamental human rights. Furthermore, excessive reliance on extended detention is costly to society at large, both economically and socially. These costs include the costs to detainees’ families, the social costs of continuing distrust in government institutions, the costs to investment and entrepreneurship of a slow justice system, and the impact of police corruption on reported crimes.

In Liberia, far-flung rural villages can take hours to get to from a main road, and longer in rainy season. The formal system was decimated during the country’s civil war, and many Liberians remain unaware of how to access the formal system, when they must take a dispute to the formal system, and when they can forum-shop between the formal and customary systems. Meanwhile, the customary system remains gerontocratic, patriarchal, and hierarchical, with adverse consequences for women and the poor. The implementation of mobile paralegal programs was motivated by the need for an immediate alternative in a post-conflict setting to other local justice mechanisms that may not be accessible or trusted by all.

Since the justice system lies at the heart of any stable democracy, its efficient use encourages development, investment, equality, due process, complementarity between formal and customary systems, and justice in individual cases. Paralegals can promote fairness in both formal and customary settings by filling the void left by a dearth of lawyers and acting as a liaison between communities and the formal government.

Policy Impact: In the Sierra Leonean criminal justice system, our research findings will lend support for the expansion of paralegal programs whose goal it is to reduce extended pre-trial detention by obtaining bail for clients in police detention or remand prison. Moreover, they support new legislation allowing paralegals to represent clients in court, where most defendants are convicted without an advocate. Paralegals in court can advocate for their clients’ innocence as well as for release on bail. In Liberia, our research findings will determine whether mobile paralegal programs affect communities’ understandings of the formal system, knowledge of their rights under Liberian law, and increase forum choices through paralegals’ connections with the formal justice system.

Audience: These findings will be of particular interest to legal aid organizations and NGO’s interested in greater access to justice for their clients and their communities, think tanks focused on the relationship between formal and customary systems and the importance of durable institutions in post-conflict settings, and government agencies intending on increasing access to state services. Though the basic message of paralegals bridging the gap between rich and poor in resource-strapped systems is generally applicable to most countries, stakeholders working in countries with a history of strong reliance on customary legal systems and traditional norms are encouraged to take special notice. These findings are not limited to post-conflict settings.

Policy Implications:

- *Reduced time in pre-trial detention.* Our surveys found that paralegals led to a statistically significant reduction in time spent in pre-trial detention in police stations. Paralegals who were present at police stations every day and took on indigent clients by filing and following up on bail applications managed to get their clients released on bail faster. This meant that these clients did not have to wait in police detention until they were charged in court, and that the paralegal could re-apply for court bail to keep the client out of

remand prison once a hearing was held in court. Clients were then free to go home and provide for their families.

- *Reduction of total prisoners on remand.* The presence of paralegals led to a reduced number of inmates on remand in treatment prisons. This is partially because of paralegal work identifying clients in prisons and applying for bail in court, and partially as a result of obtaining bail for clients in police stations before they ever have to enter remand prisons. Since remand is where the accused spend the most time in pre-trial detention, it is important to effectuate programs aimed at remand inmates.
- *Potential for paralegals in court.* Paralegals can fill the role of a lawyer in representing clients where lawyers are scarce. Our surveys found that police prosecutors are present at over 95% of cases in court, while defendants were represented in a high of 12% of cases in one town and a low of 1.4% of cases in another. Moreover, magistrates adjourned 87.9% of cases, delaying their finish for another day and resulting in more time on remand for defendants. Paralegals can close this inequality gap and advocate for bail for their clients and for the dismissal of cases that are unjust or taking too long to complete due to police incompetency or missing complainants and witnesses.

Implementation:

- *Expand criminal justice paralegal programs in police stations.* Paralegals can fill the role of lawyers at low cost. Paralegals who work in police stations taking on clients and filling out their applications for bail reduce excessive pre-trial detention and provide a check on police abuse. Such a program can be run either through civil society or the government, depending on the country. But though conditions in Sierra Leone were favorable for the success of such a program, conditions in other countries may not be. In Malawi, a paralegal program called the Prison Advisory Service succeeded in reducing excessive pre-trial detention by 4% over six years, but caused a 74% increase in prison population as the clients they helped process through the trial phase were convicted more rapidly. The danger of simply displacing the problem is a factor in any criminal justice paralegal program focusing on processing arrested detainees, and should be thoroughly considered before program implementation.
- *Expand criminal justice paralegal programs in prisons.* Excessive pre-trial detention is at its worst among remand inmates, where due to court delays prisoners can stay for months before being convicted or acquitted. Paralegals taking on clients in prison can go to court and apply for bail on their client's behalf, as well as argue for release in the case of too many court adjournments. In Sierra Leone, where prison officers have little to no control over an inmate's conviction or release on bail, retribution against inmates for utilizing paralegal services may be minimal. Other countries wishing to implement paralegal programs in prisons should take note, however, and look to avoid retribution against inmates, either through monitoring or strict confidentiality.
- *Legislation on paralegal representation in court.* In countries like Sierra Leone and Liberia, where lawyers are few, paralegals can implement basic due process rights by representing clients in court. Countries with a dearth of affordable lawyers should pass legislation allowing paralegals trained in basic law to do so.
- *Paralegal certification.* To lend paralegals legitimacy and basic authority in the face of police officers and magistrates, governments can put into place paralegal certification programs. If a government is distrusted by its citizens, however, paralegals with government certification run the risk of not being contacted or trusted by clients. In such a situation, creating an independent body that provides certification, potentially through an international NGO, could help.
- *Implement record-keeping training.* In both the formal and customary systems in Sierra Leone and Liberia, poor records allow police and elite customary officials to take advantage of poor detainees and disputants who are unaware of their rights. Record-keeping training, and monitoring of records, can make paralegals' jobs easier in this regard. This issue can be complicated, since the literacy of officials is also a factor in poor record-keeping.

Dissemination:

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National Council for Law Reporting, Kenya: info@kenyalaw.org
Kenya Human Rights Commission, Kenya: admin@khrc.or.ke

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