

# ENGAGING IN ENGAGING RESEARCH

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## INTRODUCTION

This paper is intended to discuss research methodology, but it is impossible to separate methodology from philosophy. We advocate an activist approach to research. We believe that research should be a process of engagement with an issue, rather than a detached analysis of it. We also believe that research should be engaging in the sense that it should be relevant and accessible to the people it is designed to serve. These are not unique ideas. However, we hope that some of the specific ways in which we have engaged with research topics may be instructive to other researchers.

## GENDER RESEARCH PROJECT OF THE LEGAL ASSISTANCE CENTRE

In order to explain our approach, it is first necessary to set forth the context in which our gender research takes place.

The Legal Assistance Centre (LAC) is a public interest law firm with a head office in Windhoek and a network of six advice offices spread throughout Namibia. It was established in 1988 and currently employs 40 people. The work of the LAC is guided by our mission statement, which reads as follows:

*We, the Legal Assistance Centre, being public interest law centres, collectively strive to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia.*

The LAC's Gender Research Project was established in 1993. Its aim is to conduct research which will lead to the removal of gender discrimination in the law, and the improvement of laws and legal processes which are not effectively meeting the needs of women or men. The Gender Research Project is currently staffed by a legal researcher and a field researcher. It receives assistance from paralegal/gender officers based at each of LAC's advice offices.

Our first study was an assessment of an affirmative action provision for women which applied to Namibia's first local government elections. In 1994 we were commissioned by the Ministry of Health and Social Services to produce draft children's legislation based on a comparative study of precedents from other countries and recommendations from local experts. We also acted on a request from the Law Reform & Development Commission, channeled through the Law Society of Namibia, to investigate the constitutionality of

imposing a minimum sentence for convicted rapists. In 1995 we published a report summarising two years of research on the operation of Namibia's maintenance courts. During 1996 we plan to publish the results of a study designed to assess the effectiveness of Namibia's Labour Act in the domestic work sector.

Our choice of research topics has been guided by three major considerations. The first and most important guideline is the interests of our clients. For example, in recent years, the largest number of cases brought to our advice offices have concerned labour issues and maintenance problems. These two issues were thus identified as high priorities. The goal of serving our clients also means that we focus on applied research rather than academic research; like our impact litigation, our gender research strives to make the law more responsive to community needs.

The second consideration is political opportunity. By this, I mean that we sometimes rearrange our research agenda in order to take up an issue which is receiving government attention. We feel that it is important to take advantage of receptivity to legal change which may not recur. For example, we postponed our maintenance research temporarily when we were invited by the government to make input into draft children's legislation, because we believed that this provided an important opportunity to promote children's rights at a structural level. In short, we try to respond pragmatically to political circumstances, even where the priorities on the political agenda are not identical with our own.

The third consideration which guides our choice of topic is the fact that we are a law firm. Therefore, our starting point for research is always a legal issue. This invariably leads us into an exploration of socio-economic questions, but we try to keep our sights on the fact that the law is what we know and what we seek to influence.

Against this background, I would like to describe certain aspects of our research methodology, using two of our recent projects -- the study of the operation of the maintenance courts and the study of working conditions of domestic workers -- as examples.

## **ACTIVIST RESEARCH**

Some research models are premised on the idea of the researcher as a detached, objective observer who stands outside what is being researched. In this paradigm, the researcher collects information and draws conclusions, which may include recommendations for change.

We have taken a different approach. We consider the research process itself to be a tool for involvement and change. Because we conceptualise research as part of a package of services which we offer to our clients, we try to let the research process as well as the research results serve their interests.

Instead of simply collecting data, we exchange information with people who administer the law, with people who resort to the legal system to resolve a particular problem, and also with people who are reluctant to use the law and the courts. In practice, this means that we often end up revising our methodology as the research project progresses, and the publication of the research report becomes only one of many stages in our ongoing involvement with an issue.

These points can best be illustrated by moving to specific examples from our experience.

### ***Maintenance***

By "maintenance", we mean provision for the basic necessities of life. Parents have a duty to maintain their children in proportion to their respective financial resources, regardless of whether the children in question were born inside or outside of marriage. The Maintenance Act 23 of 1963 provides a simple procedure whereby persons who are entitled to maintenance can obtain a maintenance order requiring that monthly maintenance payments are made. Failure to comply with such a maintenance order is a criminal offence.

The fundamental question we wanted to investigate with respect to maintenance was the effectiveness of the maintenance courts. Clients had come to our advice offices with a range of problems, including complaints about the way that police handled summonses and warrants from the maintenance court, complaints about delays in the process of securing maintenance and complaints about rude behaviour on the part of some maintenance court officials. While we obviously could not determine in advance exactly what sort of reforms our research might suggest, we were alert to the potential need for amendments to the Maintenance Act, for improvements in administrative procedures and for increased public education around the law on maintenance.

Because we wanted to focus on the operation of the courts, we decided to draw on court files as our primary source of data. After consulting with the Law Reform & Development Commission and appropriate officials in the Ministry of Justice, we made a preliminary examination of records and registers in the Windhoek maintenance court. We also observed several maintenance negotiations and maintenance enquiries, and interviewed maintenance officers.

At this stage we extracted some basic information about the cases handled by the Windhoek court from the court register. For example, we determined the number of cases which were handled over a one-year period, the number of postponements, the average amounts of maintenance orders and the outcomes of criminal cases for non-payment. We announced our preliminary findings in a press release which also explained our plans for further research. Our objective was to stimulate public awareness and discussion of the maintenance courts and their function.

While we were carrying out this initial stage of documentary research, we organised a meeting at which some of the women who had approached the LAC with maintenance problems could voice their complaints directly to representatives of the Ministry of

Justice and the Namibian Police. We felt that this approach would be more empowering to our clients than if we articulated the points on their behalf. We also felt that the government officials involved might be more sympathetic to the issues raised if they were forced to confront the users of the system directly instead of through intermediaries.

This meeting was considered to be a success by all parties. Some of the misunderstandings which had developed were due to miscommunication. For example, some women had complained to the LAC that the police were telling them that they must trace the respondent in the maintenance case themselves. They interpreted this as an unwillingness to help on the part of the police. However, after discussing the issue further, it became clear that what the police were really asking for was more information to help them try to locate the man in question.

As a result of the discussion, some staff members at the Windhoek maintenance court were replaced and certain administrative procedures were improved. Liaison between the LAC and the police on maintenance issues improved somewhat after the meeting, and our clients reported that maintenance officers in Windhoek were making more effort to explain court procedures.

Results aside, the clients who attended this meeting gained valuable practice in asserting their rights, and the government officials involved learned more about how women perceive the maintenance process. The exercise proved that significant improvements in legal processes can be achieved in advance of formal law reform, through negotiation and follow-up. It also gave the researchers more insight into what data we should try to extract from the court files.

We developed a lengthy questionnaire to apply to the court files. We wanted to record information on the complainants (the persons who approached the court to seek maintenance), the respondents (the persons being asked to make maintenance payments) and the children involved. With respect to the maintenance procedure, we wanted to learn about the timeframes involved and the reasons for delays. Because of the complaints we had received about police performance, we wanted to give particular attention to the returns of service for summonses and warrants of arrest. We wanted to collect data on case outcomes in a way which allowed us to compare orders resulting from consent agreements with orders resulting from court enquiries. We wanted information on maintenance complaints following on divorce orders, and on substitution proceedings (where there is a request by the complainant to increase the monthly payments or a request by the respondent to lower them). We also wanted to find out what happened in cases where payments fell into arrears, in order to evaluate the efficacy of enforcement mechanisms.

We asked the computer experts who would be tabulating the data to ensure that we were organising our questionnaire in a way which was suitable for computer coding. Then we pre-tested the questionnaire at the Windhoek maintenance court. We revised it and pre-tested it again. With hindsight we realised that we should have conducted pre-testing at several different locations, because we subsequently discovered that while standardised

forms should have been in use throughout the country, different courts have distinctly different styles of record-keeping. We also realised too late that we should have run a test tabulation of the data from our pilot study, because we later discovered some flaws in our questionnaire which could have been corrected if we had performed a more thorough test run.

We decided to record information from every 10th file over a five-year period at selected courts in different regions. The sample included every file which had been active during the period studied, even if the initial maintenance complaint had been made at an earlier date. Thus, we were able to capture the overall activity of the courts during the selected years.

We chose to visit courts located close to LAC advice offices for the survey, as it was easier to combine interviews and public education work with data collection in communities where LAC had already established contacts. This approach was later complicated by the fact that we were unable to collect data from two courts in northern Namibia because the files were so incomplete. Looking back now, I believe that we should have employed a more comprehensive approach, or a more rigorous principle of selection. While our data does not indicate that there are striking regional variations, we cannot definitively say that our findings hold true for the entire country.

Our sample was large. Data was recorded from over 600 court files. While this made the study very time-consuming (particularly with only one field researcher), the decision to utilise a large sample proved to be a good one. We had to throw out large chunks of data because of obvious errors in the entries on the court files themselves -- such as maintenance orders being dated before the children concerned were born or even conceived. We also found that while our sample proved to be large for initial maintenance complaints, only a small number of the files we surveyed had follow-up proceedings such as substitution proceedings or criminal proceedings for non-payment. If we had not drawn on a large body of files, we would not have been able to form any conclusions about these components of the maintenance process.

Court files are very dry and limited sources of information. We tried to place our data into context by supplementing it with information from interviews with maintenance court personnel, interviews with individual complainants and respondents, group discussions, public meetings and cases brought to LAC by clients. These sources of information provided valuable ideas on how the existing procedures might be improved.

To return to the activist component of the process, it is important to point out that we combined our data collection with public education. We produced educational materials about the existing law before embarking on the data collection, and we preceded our questions to individuals or groups with explanations of the law and how it is supposed to work. In fact, the group discussions and public meetings were primarily educational in nature, with information-gathering playing a secondary role. During the course of our research, we also assisted with the legal aspects of a script for a film on maintenance, which proved to be a useful springboard for discussion in community workshops

conducted by LAC's Legal Education Project. Facts about maintenance were highlighted by LAC staff members in a number of radio and television programmes during this period, as another method of stimulating public discussion.

The data collection process provided an opportunity to compare the filing and record-keeping systems of different maintenance courts, which enabled us to share useful tips with court officials. Our field researcher organised an impromptu seminar on filing and diarising techniques at one court which was experiencing particular difficulties and returned several weeks later for a follow-up session. We hope that this kind of input may have helped to expedite the handling of cases and to reduce the number of lost documents.

Another issue which led to action during the course of the research process was the problem of men who were liable to pay maintenance moving to South Africa and escaping the jurisdiction of the Namibian courts. After independence, it was necessary for Namibia to enter into an agreement with South Africa for the reciprocal enforcement of maintenance orders between the two countries, but negotiations around this agreement were protracted. The LAC was one of several groups which lobbied the Ministry of Justice to hasten the conclusion of this agreement, and, while we cannot be sure if our efforts had any influence, Namibia entered an agreement with South Africa on the reciprocal enforcement of maintenance orders in August 1993.

During the course of the research, attorneys at LAC represented clients in several maintenance matters both in maintenance courts and in related High Court proceedings. These cases provided additional information on shortcomings in existing procedures. For example, representations on behalf of one client led to official confirmation that the policy of the Windhoek maintenance court to wait three months before acting on payments in arrears had no basis in law and would be discontinued.

Our involvement with the maintenance courts was complemented by simultaneous research on state maintenance grants which serve as a back-up system to families without resources. This was not part of our initial plan. However, while our maintenance research was underway, the LAC was invited by the Ministry of Health & Social Services to join a steering committee which was discussing law reform on a range of issues relating to children, including maintenance grants. The criteria for such maintenance grants was amongst the topics discussed at a 1994 Children's Act Workshop attended by social workers and others who work with children in Namibia. The LAC and the Human Rights & Documentation Centre of the University of Namibia were subsequently commissioned by the ministry to draft new children's legislation based on the recommendations from this workshop, and the LAC gave particular attention to drafting a detailed set of regulations for state maintenance grants which could dovetail with the maintenance court system.

The LAC also focused on aspects of the draft children's legislation which would address the rights of single fathers with respect to access, guardianship and custody of children born outside of marriage. This was tied into the maintenance research because of the fact

that many women we interviewed for the maintenance project emphasised that they wanted emotional support as well as financial support for their children, while single fathers argued that they should not be expected to provide financial contributions when they have no legal right to establish a relationship with their children. The children's legislation provided an opportunity to couple the rights and responsibilities of single fathers. (At the time of writing, the draft children's legislation is to the best of our knowledge still under consideration by the ministry.)

Another unplanned aspect of our methodology was inspired by our interviews with maintenance court personnel. It became clear during the course of the research that there were some misunderstandings about the correct interpretation of the law. For example, the Maintenance Act makes it possible for orders for the attachment of wages to be imposed against someone who has fallen into arrears with payments. While this procedure is intended as an enforcement mechanism, several maintenance officers and magistrates whom we interviewed understood it to be a mechanism for the convenience of the respondent and were prepared to impose it only if the respondent requested it. Other maintenance officers and magistrates were completely unaware of the possibility of utilising such orders.

We felt that the existing commentary on the Maintenance Act in legal textbooks was not organised with a view to practical questions about the administration of the act, so we decided to prepare a clear exposition of the act and its interpretation in case law as one of the chapters of the research report. At first, we envisaged this chapter primarily as a backdrop to our proposals for law reform. However, after we became aware of the prevalent misconceptions, we initiated contact with Namibia's Justice Training Centre about the possibility of additional training for maintenance court officials. Then, shortly after the publication of the report, a ministry official proposed that the chapter on legal interpretation be published separately as a Maintenance Manual for court personnel. This Maintenance Manual has already been distributed to every maintenance officer and magistrate in Namibia, and feedback indicates that it is proving to be a useful tool.

Thus, the summary of the data collected from court files and interviews is only one small part of a multi-faceted spectrum of "research results". However, we also try to make the form in which the research findings are published a useful part of the research process. We always make our findings and recommendations public by means of a press release which attempts to make the data accessible to the general public. We are fortunate in Namibia that the media are receptive to such information; in other countries, other methods for popularising research findings might be more appropriate.

In the case of the maintenance report, we encapsulated our findings in a profile of a typical maintenance complainant, coupled with a list of recommendations expressed in straightforward language. We also appended a draft Maintenance Amendment Act to the report, in the hope that this might facilitate government action.

We have been informed that the Ministry of Justice is favourably considering the amendments which we have proposed, and a high-ranking official of the Namibian Police

reported that the study's findings have prompted a re-examination of police procedures in maintenance cases.

Our involvement in the maintenance issue is certainly not over. Our public education efforts will continue. Depending on government's response, it may be necessary to follow up on our recommendations with lobbying efforts. If amendments to the Maintenance Act are adopted, then we would like to prepare a revised version of the Maintenance Manual for court officials. A new grassroots organisation, the Namibia Fathers' Union, recently approached the LAC to ask for support in their efforts to organise men who want to become more involved with their children. We may also carry out additional research on other aspects of maintenance in future -- such as maintenance in the context of divorce proceedings.

In this way, we hope that we are integrating data collection and analysis into a much broader programme of research and action.

### ***Domestic workers***

We have tried to take a similar activist, integrated approach in our current project on domestic workers.

This project was undertaken partly in response to the fact that government established a "Commission of Inquiry into Labour-Related Matters Affecting Agricultural Employees and Domestic Employees" in January 1995. The Farmworkers' Project of the LAC had already embarked on a study of the conditions of farmworkers in Namibia which would be available to guide the Commission, but we were concerned that the Commission would have insufficient information with which to evaluate the position of domestic workers. Therefore, during the second half of 1995, LAC's Gender Research Project worked together with the Social Sciences Division of the Multi-Disciplinary Research Centre of the University of Namibia (SSD) to carry out field research into the working conditions of domestic workers.

The plans for the study were discussed in advance with the Namibian Domestic and Allied Workers Union (NDAWU) as well as with other interested parties. There is no federation of domestic employers in Namibia, but individual employers were invited to attend a consultative meeting held at the outset of the project.

Data was collected in three regions, primarily through a questionnaire administered to employers, through structured interviews with individual employers and employees, and through group discussions with employees. This data was compared with information from the government's *1991 Population & Housing Census*, and with information from NDAWU membership forms. Supplementary information was also gathered through interviews with labour inspectors, with NDAWU executive officers, and with persons involved in running training courses for domestic workers.

We integrated this research process with a training programme for our paralegal/gender

officers. SSD, which has more experience in socio-economic research than LAC, provided a short training course for LAC staff who then carried out the field research together with SSD staff. We hope that this training programme will increase our capacity to carry out similar projects on our own in the future. We rushed through the training sessions in order to ensure that our report would be ready before the Commission's October 1995 deadline for receiving submissions. The Commission's work was later suspended indefinitely, and now we wish that we had devoted more time to training, as the inexperience of some of our team members led to ambiguities in the interpretation of certain portions of the questionnaire.

In this research project our activist approach has meant that we have found ourselves involved with the issue of domestic workers in unanticipated ways. LAC had already cooperated with NDAWU to formulate a contract for domestic workers which NDAWU could attempt to popularise amongst its members. Our consultation with NDAWU about the research project strengthened our relationship and led to additional forms of support.

For example, we helped NDAWU re-design its membership forms so that more data can be extracted from them in future, and we are in the process of helping them explore mechanisms for more effective collection of membership fees. We also helped NDAWU formulate strategies for requesting support from the National Union of Namibian Workers, the trade union federation of which NDAWU is a member, when NDAWU was experiencing a financial crisis.

NDAWU contacted us when it was approached by domestic workers who were being disadvantaged by certain aspects of Namibia's new Maternity Leave, Sick Leave and Death Benefits Fund, and we are lobbying the Social Security Commission and the Labour Advisory Council to reconsider the problematic provisions.

We are still in the process of analysing the data and completing the research report. We discovered in the course of our literature search that domestic workers -- and women in general -- are all but invisible in Namibian labour history, and so we have decided to add a historical chapter which pulls together the bits and pieces of information which are available, to give perspective to the findings on the current situation.

We are also in the process of preparing educational material on provisions of the Labour Act and the Social Security Act as they apply to domestic employers and employees. It is clear that lack of knowledge about the law is a problem for both employers and employees in this sector, so we intend to publish these educational materials simultaneously with the research results.

Another problem which has emerged is the absence of an employers' organisation for the domestic work sector, and we hope that we may be able to promote the formation of such a group in future.

Because we are still busy with the domestic workers project, it is impossible to say where else it may lead. As with the maintenance project, events may arise which will influence

the course of the research while it is still underway.

## **SUMMARY**

One might conclude that we are hopelessly *ad hoc* in our approach to research. We prefer to think that we are flexible and eager to engage with a particular topic instead of merely examining it.

The major disadvantage of our pragmatic approach is that it does make it difficult for us to stick to deadlines. The type of ongoing engagement which we advocate makes for a crowded agenda.

Nevertheless, we believe are that we are accomplishing more for our clients through our integrated approach than we might achieve by means of "pure" research. Organisations without a client base of their own might find it useful to form partnerships with other organisations which can facilitate linkages with the public and help to take research results forward.

We fear that many people view research as something which is the exclusive province of "experts" and not very relevant to everyday life. We hope that we are making a small effort to provide a different picture of research as a lively force for practical change.

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