



Energising the criminal justice system in Malawi

A PARALEGAL AID SERVICE

What is a paralegal?

Paralegals, like paramedics or bare foot doctors, provide 'first' legal aid to ordinary people. This can be anything from informing them about the law and court procedures to advice and assistance with legal problems.

Why not use a lawyer?

Lawyers are city-based. Most poor people cannot access their services. The Legal Aid systems that exist are limited in terms of manpower and resources. The needs of many poor people are simple and do not require expert legal opinion or formal representation. A trained paralegal can assist with most of the ordinary conflicts with which ordinary people come into contact on a daily basis. More complex matters can be referred to the legal profession.



Is 'paralegalism' something new?

No. Paralegals have been around for a long time though perhaps called by other names. Traditionally, they have been respected and trusted members of the community offering advice and assistance on a range of issues including: inheritance, land and matrimonial matters. Recently, paralegals have proved they have an important role to play in providing basic services to those in conflict with the criminal law.



Do these paralegals actually represent people?

No, normally they do not represent people in court, nor charge a fee for their services. Paralegals provide basic education, advice and assistance free so that those caught up in the criminal justice system do not feel lost and are better able to fend for themselves and exercise their constitutional and human rights. Rather than compete with the criminal justice agencies or legal profession, paralegals provide complementary services; and rather than confront people, they seek to confront the problem by working in a spirit of co-operation with people.



THE PARALEGAL ADVISORY SERVICE (PAS) IN MALAWI

In May 2000, Penal Reform International together with four NGOs approached the Malawi Prison Service to propose a scheme that would allow paralegals into the prisons to educate prisoners on the criminal law and assist push cases through the system more speedily.

Three years later, the PAS has grown to 28 paralegals working in 13 prisons in the country housing over 84% of the total prison population. Their work and the standards they have set have earned the respect and admiration of prison officers, police and judiciary.



The PAS is based on three cornerstones:

linking the criminal justice system:

- improving communication, co-operation and co-ordination between the prisons, courts and police

legal literacy:

- to help prisoners understand the law and how it affects them

legal advice and assistance:

- to enable prisoners to apply the law and help themselves

The way the PAS works

Approach

- linking the criminal justice system: improving communication, co-operation and co-ordination

The paralegals provide the link in the chain that constitutes the criminal justice system. They seek to promote communication, co-operation and co-ordination between the various criminal justice agencies through:

Partnership

The PAS is a joint scheme operated by NGOs in partnership with the prisons, police and courts. While inside the prisons, paralegals work under the authority of the prison service and are subject to a Code of Conduct.



Collaboration

The paralegals work with and through prison and police officers and the courts. They do not 'point fingers' but seek to assist these overstretched and under-resourced agencies to fulfil their legal obligations

Trust

The basis of the working relationship is one of trust. Paralegals seek to find practical solutions to the problems encountered through dialogue. Problems identified are reported to the appropriate authorities and discussed in fora where these authorities are represented (such as Court Users Committees). Serious and repeated breaches of the law are referred to the constitutional watchdogs charged with investigating such incidents.

Legal literacy: Helping prisoners understand the law

Paralegals conduct paralegal clinics daily in the prisons. These are aimed at those prisoners awaiting trial. The course covers six modules from arrest and detention through summary trial to committal proceedings and trial in the high court. Emphasis is placed on preparing prisoners to help themselves by role playing bail applications, cross examination and pleas in mitigation.

The PAS has developed a 'Trainer's Manual for Paralegals Working in Prison'.



Legal advice and assistance: Enabling prisoners to apply the law

Paralegals work with prison officers to screen and filter prisoners so that those who have been lost in the system, or are in prison unlawfully or inappropriately are brought to the attention of the authorities. Paralegals ensure vulnerable groups (women and children, the elderly and terminally/mentally ill, foreign nationals) are given priority.

The paralegals compile case lists and refer the individual cases to the courts or police. They follow up each individual case until the person is released or convicted or sentenced. They assist prisoners to fill in standardized bail forms agreed with the judiciary, which paralegals then lodge with the appropriate court. They contact sureties to ensure they attend court at the right time.

Convicted prisoners are assisted with standard forms (also agreed with the judiciary) for appeals against sentence and for ensuring that sentences passed by the lower courts are confirmed by the High Court.

In addition, paralegals have helped improve prison conditions by setting up low or no cost micro-projects such as carpentry and soap making which are self-financing. They have established noticeboards with newspapers attached so that prisoners are kept up to date with current affairs.

Camp court underway in Zomba Prison



Results

An independent evaluation of the PAS described the scheme as 'energising the criminal justice system in Malawi' and commended it for being 'remarkably innovative and successful' in using 'relatively few resources to achieve maximum benefit for users (and used) of the criminal justice system in Malawi'. Between May 2000 – March 03, the PAS:

- conducted more than 900 PLCs educating almost 16,000 prisoners
- facilitated the release of over 1350 prisoners (through bail, discharge, dismissal or release on compassionate grounds)
- reduced substantially the numbers of persons held unlawfully in prison
- drew the attention of the Director of Public Prosecutions, Police and criminal registry to the plight of hundreds of homicide remand prisoners who had been waiting years for trial or committal for trial
- observed traditional authorities hearings and 91 capital trials
- reinvigorated communication, co-operation and co-ordination in all four magisterial districts through regular court user committee meetings
- encouraged magistrates to hold 'camp courts' inside prison to screen prisoners.

Impact

- Prisoners see the law in action through the 'camp courts' and improved access to bail; leading to
- increased confidence among prisoners in the justice system and decreased tension inside prison
- The PLCs have helped prisoners 'not to fear the trial and the judge'
- Judges and prosecutors agree that 'prisoners had become more sophisticated in their understanding of the law and of court procedure'



- Pleas are entered to charges on a more informed basis
- The screening of cases has served to reduce the use of unlawful detention from hundreds at the outset to tens today
- Agents and agencies within the criminal justice system are beginning to communicate better.

Quotations from the evaluation report

From the state advocates:

"Without them [the paralegals] the whole process would go back to sleep"

From the police

"It is not only a question of resources. We also need to be updated to human rights ideas and thinking. This is what the NGOs can do. They can give another kind of input, a different working spirit. The situation demands that we become aware of these things."

From the judiciary

"The feedback on the PAS is generally very positive. In areas where they have not been, they [other stakeholders] are asking for it. The impact is very positive."

From senior prison officers

"We cannot argue with the police. They just don't respond to our requests...the paralegals oversee this [requests to take action on remand cases]. The paralegals are assisting us very much."



Criteria for success

- A practical and effective work plan responding to the needs of the prisoners
- A 'highly co-operative and trusting spirit' developed with the criminal justice agencies based on a low-key approach
- Maximum participation of the stakeholders creating ownership of the scheme
- A service provider that complements rather than competes with the legal profession



A national paralegal aid scheme: 2003-2006

The PAS is expanding to establish a national paralegal aid service delivery programme over three years. Paralegals will start working in police stations and courts. The PAS will also advocate for changes to the criminal justice system.

In the area of training:

The PAS has developed a paralegal course in three certified phases (Basic, Intermediate and Advanced) over 12 months which draws on expertise from the sub-region.

In the area of prisons:

The PAS has extended to nine new prisons. The focus will continue to be on decongestion by screening the remand population: to speed up case disposal whether through plea, trial, committal to the High Court, discharge or case dismissal; and to facilitate release on bail. Convicted prisoners will be assisted with appeal forms.

In the area of police:

The focus will be on young offenders in conflict with the law and the PAS will work closely with the National Juvenile Justice Forum in conducting screening interviews; assist social services with report writing and police officers with parent-tracing. PAS paralegals will attend at interview and advise the juvenile on his/her rights.

In the area of the courts:

The PAS will focus on processing the bail forms received from the prisons, tracing sureties and liaising with the magistrates and prosecuting authorities. In addition, PAS will provide advice and assistance to witnesses, those in the holding cells and accused persons on bail. Paralegals will assist with screening of juveniles and develop links between the court and Traditional Authorities in order to facilitate bail and diversionary mechanisms.

A presence along the 'front-line' of the criminal justice system means that the PAS can provide timely and appropriate assistance to those in conflict with it while seeking to enhance communication, co-operation and co-ordination between the actors involved. This presence will also provide first hand evidence of issues of national interest which may be communicated to the decision makers to inform policy development and good practices for enhancing access to justice for the poorest people in society.



Paralegal Advisory Service - Code of Conduct for Paralegals working in prisons

Preamble

The purpose of the Code is to provide clear guidance to, and regulate the conduct of, the paralegals both within and outside the prison walls and to promote the trust and confidence of the prison authorities while respecting the independence and integrity of the paralegals as human rights monitors.

Paralegals will be bound at all times by this Code of Conduct.

Accordingly, I, the undersigned, agree the following:

1. To work in co-operation with the prison authorities at all times and to seek the advice and guidance of prison staff when in doubt. In particular, to notify the prison authorities in good time of dates and times of proposed visits and to advise promptly of any cancellation.
2. To submit at all times to the authority of prison staff while on prison premises including the right of prison staff to search my person.
3. To refuse any request made to me by a prisoner or relative/friend that might compromise the security of the prison and specifically, not to communicate messages (verbal or written), or any item whatsoever (concealed or openly) for a prisoner or relative/friend of a prisoner.

4. To refer any communication from the press to the prisons public relations officer or the paralegal co-ordinating team; and not to issue any press statement or otherwise communicate to the press myself save through the channels prescribed.
5. To wait for permission before entering the prison; and even when prior consent of the authorities has been granted to abide by any decision withholding right of admission.
6. To hold open meetings with prisoners and welcome the attendance of prison officers.
7. To refuse any meeting with a prisoner to which the rules of confidentiality should apply unless either the consent of the authorities has been requested and granted beforehand; or in the company of a certified legal practitioner or other member of a formal body.
8. To withdraw promptly from any scene in which prison staff and prisoners are in dispute.
9. To quit the prison premises promptly at the invitation of a recognised staff member.



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All quotations are taken from the evaluation report:
'Energising the Criminal Justice System in Malawi – the Paralegal
Advisory Service'

Fergus Kerrigan, Danish Centre for Human Rights. April 2002.

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