

THE PLC MANUAL

A Manual for Paralegals Conducting
Paralegal Aid Clinics (PLCs) in Prison



SECOND EDITION 2007

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**A MANUAL FOR PARALEGALS CONDUCTING
PARALEGAL AID CLINICS (PLCs) IN PRISON**

Second edition
2007



Nanzikambe is the leading arts-based development organisation in Malawi. The organisation's body of work in Malawi and the region encompasses producing and touring innovative theatre for Malawian and international audiences; and using theatre for education, development and social change.

Nanzikambe's artistic initiative includes adapting classics for the African setting and unearthing yet-untold stories and devising theatre that touches the heart of contemporary issues in society. Nanzikambe is committed to training versatile performers and theatre-makers and raising industry standards. The organisation's development work is concerned with social change, firmly believing in the crucial role that culture can play in poverty reduction. This work includes: training facilitators and educators in inter-active communication methods; providing forum theatre performances for potent message delivery, human rights advocacy and behaviour change; community mobilisation, producing written materials to enhance understanding of the use of theatre as an effective tool for education and development, developing interactive media for radio and television.

Since 2002, Nanzikambe has worked with paralegals in Malawi and Kenya to develop their approach to conducting Paralegal Aid Clinics (PLCs) in prisons. Nanzikambe has designed a tailor-made training course and rewritten this PLC Manual to include forum theatre and interactive learning methodologies.

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Penal Reform International (PRI) is an international NGO founded in 1989 with consultative status with the United Nations and the Council of Europe and observer status with the African Commission on Human and Peoples' Rights.

PRI seeks to achieve penal reform while recognising diverse cultural contexts by promoting:

- the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards
- the elimination of unfair and unethical discrimination in all penal measures
- the abolition of the death penalty
- the reduction of the use of imprisonment throughout the world; and
- the use of constructive non-custodial sanctions which encourage social reintegration while taking account of the interests of the victims

PRI has its central office in London with regional offices in Amman (North Africa and Middle East), Almaty (Central Asia), Bucharest (Central and Eastern Europe), Kigali (Great Lakes), Lilongwe (Central, Eastern and Southern Africa), Moscow (Eastern Europe), Tbilisi (South Caucasus) and Washington (the Americas).

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Paralegal Advisory Service Institute (PASI)

The Paralegal Advisory Service (PAS) started in **Malawi** in May 2000 as an initiative of PRI to develop a public/private partnership between four Malawian NGOs and the Malawi Prison Service, to provide legal education, advice and assistance to prisoners. From 2003, the PAS expanded its services from prison to police and court. In 2004, it received a UN-Habitat Good Practice Award. In 2007, the PAS, as supported by PRI, has evolved into the autonomous PAS Institute (PASI). The PASI is taking over the management of the PAS programme in Malawi and will act as a resource for training of paralegals in Malawi and abroad, as well as expertise for further regional and international development. Contact: pasi@sdnp.org.mw

In **Malawi**, the PASI partners are: Youth Watch Society (YOWSO: pas-yowso@sdnp.org.mw), Centre for Legal Assistance (CELA: pas-cela@sdnp.org.mw), Malawi CARER (pas-carer@sdnp.org.mw) and the Centre for Human Rights, Education, Advice and Assistance (CHREAA: pas-chreaa@sdnp.org.mw).

In **Kenya**, the Kenya Prisons Paralegal Project (KPPP) is co-ordinated by the Legal Resources Foundation (LRF) of Kenya. Contact: info@lrfkenya.org

In **Uganda**, the PAS (Uganda) is co-ordinated by the Foundation for Human Rights Initiative (FHRI). Contact: fhri@spacenet.co.ug

In **Benin**, the Programme d'Assistance Judiciaire aux Detenus (PAJUDE) is a partnership between the Ministry of Justice, Legislation and Human Rights and Prison Fellowship Benin, Centre Afrika Obota and the Benin Women's Lawyers Association.

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TABLE OF CONTENTS

SECTION 1: GETTING STARTED

i	The Paralegal	6
ii	The PLC Manual (2007)	6
iii	How to use this Manual	7
iv	The PLC Format	8
v	Making Active Learning Happen	9
vi	Relating to People in Prison	10
vii	Instant Theatre Role Plays	11
viii	Using Song	16
ix	Games	16
x	General Interactive Communication Techniques	17
xi	General Fun Creation	17
xii	Dynamic Facilitation	17
	Abbreviations	18

SECTION 2: Paralegal Aid Clinics MODULES

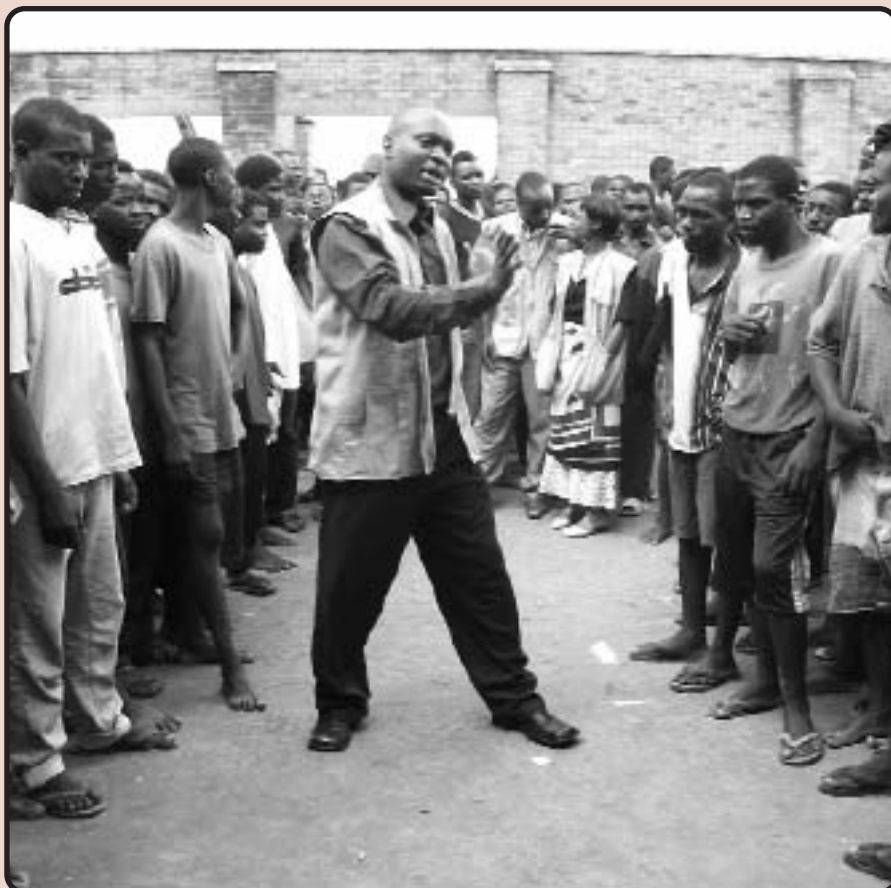
Part 1: Arrest, Detention and Bail	19
PLC 1 Arrest and Detention	20
PLC 2 Bail	24
Part 2: Introduction to Criminal Procedure	33
PLC 3 First appearance – Court Structure and Layout	34
PLC 4 Order of Events	40
PLC 5 Making a Plea in Mitigation	45
PLC 6 Summary Trial – Order of Events	50
PLC 7 Cross Examination (XX)	57
PLC 8 Conducting your Defence	66
PLC 9 Jury System (capital cases only)	70
Part 3: Introduction to Criminal Law	73
PLC 10 Definition of a Crime	74
PLC 11 Evidence	78
PLC 12 Burden and Standard of Proof	81
PLC 13 Common Defences – Absolute Defences	88
PLC 14 Common Defences – Partial Defences	95
PLC 15 Common Offences	99
PLC 16 Murder and Manslaughter (capital cases only)	106
PLC 17 Committal Proceedings (capital cases only)	108
PLC 18 Sentencing	110
PLC 19 Appeal	116
PLC 20 Interactive HIV and AIDS Education	119
Part 4: Games	129
Part 5: Homicide Case Studies	137

SECTION 3: APPENDICES

1.	Code of Conduct	142
2.	Malawi PLC Notes	143
3.	International Human Rights Law	149
4.	PLC Notes	153

SECTION 1

Getting Started



SECTION 1: GETTING STARTED

i) THE PARALEGAL

Paralegals are not lawyers. Accordingly, they do not seek to offer individual advice on the merits of any one case. They always refer people in need of such advice to lawyers.

In many countries, however, prompt access to a lawyer is not a practical reality for most people in prison – especially the poor. As a result remand (awaiting trial) populations in many prison systems are unusually high. Many people who pose no threat to society languish in custody pending trial, because they do not know how to access bail. Many face trial without the prospect of legal representation and have to defend themselves in court.

Under the Paralegal Advisory Service, paralegals – trained in the criminal law and procedure as well as forum theatre and active learning techniques – aim through Paralegal Aid Clinics (PLCs) to empower those in prison to apply the law in their own case by illustrating the law and procedure through these forum theatre and interactive learning techniques. People in prison learn through PLCs the good points to make in a bail application or plea in mitigation; and how to conduct their defence in court should they be unable to retain the services of a lawyer. They learn about the defences available under the criminal law. They are introduced to principles of sentencing; and they learn how to draft an appeal against sentence.

In this way, paralegals have enabled hundreds of people to gain their release (on bail) and to persuade the court to pass a lesser sentence or obtain their own acquittal at trial. The effect – in Malawi at least – has been to reduce the remand population from a mean of 35–40% prior to 2000 to a constant mean of less than 25% in 2004–7 – one of the lowest prison remand rates on the African continent.

Where lawyers are in short supply, the paralegals play a key role in providing appropriate legal advice and assistance that saves considerable court time and expense as well as unnecessary preparatory work by the lawyers.

ii) THE PLC MANUAL (2007)

This new edition has been developed by Nanzikambe and PRI in collaboration with the PAS and builds on the first edition of the PLC Manual published in 2002.

The PLC Manual (2007) includes extensive interactive theatre-based games and exercises based on Nanzikambe's interactive theatre training course. The manual has been re-designed to maximise participants' involvement and to break up the law and procedure into small chunks of content to facilitate understanding and application.

The activities contained within this manual are **one** option of many – paralegals are encouraged to try their own ideas for making the learning material interactive and engaging.

The manual doubles as a handbook for those working in prison and as a training tool for new paralegals in the criminal law/procedure, interactive learning techniques and conducting PLCs.



iii) HOW TO USE THIS MANUAL...

Use the space provided to apply relevant laws....

The PLC Manual is intended for use in all common law jurisdictions. In other words, it is designed to be relevant in all countries applying the English Common Law system. Since the criminal justice process is – in essence – the same in all these countries. The appendix at the rear has pages of notes for paralegals to enter the relevant laws as they apply in their own countries.

Take your time...

Experience suggests the optimum time for each PLC should not exceed 45-60 minutes. However where the energy is high and participants are clearly engaged it can exceed this time. If PLCs prove to be too long, they can be split over two sessions.

Choosing your PLCs

There are 19 PLCs which take participants through the criminal justice system from arrest and detention to appeal. Paralegals should present the PLCs as a 'course' to follow so that, by the end, participants will gain understanding and knowledge of how the criminal justice system works as a whole. It may be that some PLCs need to be repeated more often than others (eg on bail). It may be that others are more popular/fun/entertaining to present than others. A balance needs to be struck and attention given to ensuring the participants do not receive a partial view of the system as this will only cause confusion.

However, if you are conducting PLCs for persons accused of homicide, you will not be concerned with the PLCs in Part 1 and Part 2. If you are concerned with assisting people with bail and reducing the remand population you will focus on PLCs 1-3. PLC 20 concerns HIV and AIDS awareness raising. HIV rates are higher in prison than outside. The PAS mainstreams HIV and AIDS in its work.

The case studies in Part 5 are aimed at informing the discussion on the difference between murder/manslaughter.

Learn to use the manual through professional training...

The relationship with people in prisons needs always to be kept in mind. Some guidance is offered below at vi. Active learning techniques are summarised in vii below. They support, but are no substitute for, training by skilled theatre practitioners.

Keep working!

The only way a paralegal is going to develop as a facilitator and understand the interactive games and exercises in this manual, is to take the plunge and work through them – again and again and again!

Continue to develop creative ideas

Each PLC is uniform in format. They each contain suggested frameworks, ideas and specific exercises which are designed to stimulate the creativity in each paralegal and encourage him/her to keep trying new things, inventing new ideas, and continue developing the PLCs so that they do not grow stale.



iv) THE PLC FORMAT... Each PLC includes the following:



MATERIALS needed for the PLC such as flip chart. All PLCs need planning, but if there is any particular preparation needed in advance it is noted at this point in the PLC outline



GAMES set out at the back in Part 4. They are aimed at reducing inhibitions, energising the participants, or introducing PLC activities. Specific games are recommended at the start of each PLC

ACTIVITY

ACTIVITIES the activity framework that brings out the learning points



LEARNING POINTS a summary of the information to be communicated



PARALEGAL ACTION describes the interactive method to use in communicating the information/ procedure/concept



NOTES these are important and can relate to the law or activity details

KEY POINT

KEY POINTS these are crucial points to make absolutely clear in the PLC



POINTS TO MAKE these are explanations for the prisoners on points to make when appearing in court



TIPS emerged from field-tests of the manual and are designed to enhance facilitation

VARIATION

VARIATIONS, DEVELOPMENTS, ALTERNATIVES These are more activity options to choose from. They are not obligatory, though often very useful for diversity and paralegals are encouraged to come up with their own



PARALEGAL NOTES outline useful legal points and provide guidance to the PLs conducting the PLC



APPENDIX to refer to notes/detail in the law at the back of the manual. The Code of Conduct is set down in the Appendix. The relevant laws and procedures in each country where they differ should be incorporated in the Appendix and completed by the teams concerned.



COUNTRY CONTEXT signal to refer to the back of the manual, or substitute the particular point for local country setup.

PLC Action:

PLC ACTION concrete steps that should be taken at the end of some of the PLCs. Such as filling out bail/appeal forms.

v) MAKING ACTIVE LEARNING HAPPEN...

The PLC Manual places emphasis on the participants becoming active creators of their reality and **learning through action**. Additional importance is given to positive action for and by prisoners at the end of each clinic – eg individual case follow-up.

Co-creation

The first principal for facilitating active learning is 'co-creation.' This means that the activity is created by the facilitator and participant together – the paralegal's job therefore, is to facilitate discovery in the participant; consistently working with the idea of throwing the question and responsibility back to the group. Participants are much more likely to remember the content that they have discovered for themselves.

Self-discovery

People remember 20% of what they hear, 40% of what they hear and see, and 80% of what they discover for themselves. Each activity is created with this in mind.

Rehearsing for reality

The effect of Instant Forum Theatre is empowerment, rehearsal of reality and preparation for integration back into society. Through encouraging creativity, participants feel energised, alert and more confident and are able to grasp and rehearse key events in the court procedures.

Creating the right environment

Paralegals (ie: you!) have to leap in and set the tone of safety and openness and risk-taking. You have to be prepared to act yourselves. You have to allow yourself to play the clown. Do not expect your participants to do anything you wouldn't do yourself.

Using theatre for communication

The purpose of forum theatre and the theatre-based-activities used in this manual are to:

- bring about maximum, dynamic and engaged participation in PLCs
- bring the law and the criminal justice system to life
- make theory and procedure real and accessible
- educate through entertainment
- facilitate learning-in-action so that participants discover their needs and how to apply the law
- to transform participants into creators of their reality – rather than passive recipients of information



vi) RELATING TO PEOPLE IN PRISON...

Some things to watch out for:

Re-creating violent acts

You can work against encouraging violence by playing violent scenes in slow motion, or by setting rules that don't allow the actors to touch each other. The enactment of extreme violence (eg murder/rape) should be carried out by a paralegal and should not be a source of humour.

Focussing on the content, not the acting style

The sessions use drama as a vehicle for learning, but drama itself should not be the focus of discussion, and participants should not be concerned with great performances. Avoid any discussions about the quality of performances. It is valuable to promote the imagination, and encourage participants to let their inhibitions go and enter into a scenario with as much conviction and creativity as possible. But the focus of discussion should be the topic, not how the topic is delivered in a drama.

Tact and Discretion

Sensitivity to the reality faced by prisoners is crucial, eg: avoid dramatising individual cases from the participants – maintain a distance between personal experiences and the learning points of the PLC.

Difficult legal queries or problems

The information you communicate must be accurate and state the law as it is. The paralegal should not be drawn into offering an opinion either on the law or on the merits of an individual case. Answers could be: 'You must consult with a lawyer on this..' or 'ask a legal aid lawyer when s/he next visits..' The practice developed in Kenya of bringing lawyers into prison on a pro bono basis ('Legal Aid Days') should be considered; or you might check with a lawyer (or the programme co-ordinator) and provide an answer when you next see the person who raised the question/problem.

Personal security

Paralegals often work with large numbers of prisoners in the PLCs. While there has not been one security incident recorded in Malawi in over seven years, security remains a live concern. PLCs should always be conducted in the presence of prison officers and should not be conducted when there is tension within the prison on any given day.

Particular attention should be given to women paralegals: they should never be left alone and a male paralegal should always be present (ie near at hand and with visual contact) to accompany/support her if need be.

Identification

To ensure visibility and security, always wear a bright jacket with 'PARALEGAL' clearly marked on it.



vii) INSTANT THEATRE ROLE PLAYS

....involving 'actors' and 'audience'

Instant theatre role plays involve participants acting something out.

Whenever participants 'perform' be sure to give the audience something TO DO as well.

Most instant theatre role plays involve the audience in these ways:

- a) the audience has to work something out from the action, and the choices that the actors make determine what will happen in the action; eg:
  - Is it murder or manslaughter?
  - Is it theft or robbery?
  - Is it an absolute defence or not?
  - Is it a common offence or not?
  - Is it a fair arrest or not?
  - Trial or no trial? (based on the plea of the accused)

Or

- b) judges the actions in the role play; eg:
  - Should the accused be granted bail?
  - What sentence should be passed?
  - Is the accused guilty?



TIP

If participants have not acted in role-play scenarios before, facilitators should perform first, to demonstrate, then encourage participants to get involved.

5 easy steps to co-creating a role play with participants

1. Introduction
2. Set the scene (the situation)
3. Establish the facts
4. Establish the game
5. PLAY!

The following includes variation on the type of game you might play using role-play, with two activity examples.

STEP 1: INTRODUCTION – What is it? What is the point of it?

- 1 Quickly explain what a role play is: telling the story of applying for bail, for example, through acting it out.
- 2 Explain what the role play will specifically look at: eg: the exact point at which the accused will be required to apply for bail
- 3 What is the point? Briefly state WHY the role play is being used: eg: through acting in the role play participants will discover
  - a. how to apply for bail and
  - b. the best way to apply for bail.

STEP 2: SET THE SCENE – Who are they? Where are they? What are they doing?

- 1 Who is in the scene, the characters: e.g. Magistrate, accused etc.
- 2 Who plays the characters: decide which characters should be played by paralegals – the character who needs to have sound legal knowledge: eg: either the prosecutor or the magistrate.

- 3 Where the scene takes place: a court, the street, someone's home.
- 4 Optional: go further to establish the time of day, describe the atmosphere.

This is led by the paralegals who asks for volunteers.

Example: PL asks, 'what characters do we need?' Participant calls out, 'a magistrate.'

PL responds, 'Thank you, would you like to come up here and be the magistrate for us?'

STEP 3: ESTABLISH THE FACTS

The facts should be suggested by the participants. The paralegal asks for example:

- What's the charge?
- What were the circumstances of the offence? What happened?
- Who is the accused – family circumstances, the type of person, is s/he remorseful?

STEP 4: ESTABLISH 'THE GAME'

a. What will the actors do during the role play?

EG: They have to work out something while in the action

b. What will the audience do during the role play?

EG: They have to judge the action

STEP 5: PLAY!

- 1 Begin the drama. Build suspense in the audience with a count down (3, 2, 1) to saying, 'ACTION!' or 'PLAY!' or '123 Go!'
- 2 OPTION: Freeze the action at appropriate moments to ask the audience how the characters are doing. For example: how is the accused doing? Is there anything else he could say? Do you think the magistrate should grant bail? Why not? **Be careful to keep questions specific.**
- 3 Developing a FORUM:
  1. Let someone else come up and have a go at playing the 'accused'. See if they can do it better than the previous one. This role-play game can become a competition between participants (see below).
  2. Repeat the role-play giving other participants a chance to perform.



TIP

DYNAMICALLY CONTROL THE ACTION. Get the actors into position and ready, shout ACTION! Or PLAY! to start the role-play, and CUT! or FREEZE! to stop it. Stop the role play as soon as the crucial action has taken place. Then NEXT! to get two more actors up into the space.

The generic framework set out above applies to the following role play types:

COMPETITION ROLE PLAY

Participants compete with each other to 'act' out the procedure better than the last person.

This can be applied to most topics where participants need to practise certain procedures (eg: bail application, cross-examination, plea in mitigation).

Once you have set up the instant theatre activity, participants should be invited to act out the **same scenario** – eg: on bail, the actor playing the accused applies for bail in line with the facts established by the audience, and does

so to the best of his/her ability. This is followed by analysis and scoring from the audience, who decide whether the accused deserves to be granted bail –and give a mark out of 10.

Each new 'actor' must try to do the activity better than the last participant. Through repetition of this role-play, participants come up with the key points to make.

The aim is to encourage participants to think critically about the court procedure under exploration and find the most effective strategies.

ACTOR'S CHOICE

Participants secretly choose between acting out two different types of action.

The audience then works something out from the action. This is appropriate to topics where participants learn the difference between Murder and Manslaughter for example.

What to tell the actors: if you are doing the activity on Murder and Manslaughter, tell the actor that he must either 'intend' / 'pre-plan' to kill the person, OR he waits until he is provoked. He must not reveal his choice to the audience before he begins acting. You give the actor a choice that determines what he will do in the scene. Use this instruction to bring out 'learning-points' in the audience. In this case, the actor will make a choice that means his action will either result in murder or manslaughter. This means that the audience will connect 'intention' with the definition of murder. You can also tell the other actor playing the victim to 'choose' whether he provokes his assailant or not. The action results in a 'killing', or homicide.

The audience decides whether the homicide was murder or manslaughter. Tell them before the action begins that this is what they must watch for. After the role-play, ask 'Was it murder?' 'Was it manslaughter?' Let answers come but be careful not to enter into a big debate. Move on to another role play quickly. Through repeating the role-play 'game' many times, the learning point, namely, 'the difference between murder and manslaughter' becomes clear through participants working it out for themselves.

This variation can also be a competition – split the audience up into two teams and ask them to make a decision about the action. The team that gets it right, gets a point.

NARRATED INSTANT THEATRE ROLE PLAY

The paralegal narrates the action while the participants act out what the paralegal says.

This can be very amusing if the paralegal puts extreme elements into the story. For example:

- 'The robber ran at the speed of lightning away from the police.' Or
- 'the man had muscles the size of watermelons.' Or
- 'then the rain poured down and the police officers slid all over the place' etc...

This is appropriate for topics where the paralegal needs to control the exact outcome of the story. For example: a story about 'sentencing'.



TIP

Leave a gap after each phrase for the actor to 'act' what you've described. This will become like a game in itself, where the actor has to follow everything you say.

INSTANT FORUM THEATRE

Many participants get up and try out the same scenario, or problem, or pursuit. While similar to competition role play, it lacks the competition aspect, which can be useful for avoiding hostility. (Note: it is also useful for pleas in mitigation, defence, etc)

DEMONSTRATION

There are many activities where paralegals act out a scene themselves, or demonstrate a particular procedure, such as plea in mitigation, cross examination.

HOT SEAT ROLE PLAY

This is used to find out more details about an individual's thinking or experience. It puts the actor on the spot. Audience or facilitator can fire questions at him or her. It develops quick thinking and deepens understanding (see PLC 1 Activity 2).

IMAGE

This simply means creating a still picture image with the body, like a photograph. This can either happen in a group or individually. There are games in Part 4 which introduce how to do this. Use friendly, localised names to describe 'picture' or 'image'.

The reason for using any **action**, **image** or **dance** is to distance the participants from thinking too hard about the content. They will learn and remember the information through associated rhythms, actions, images, feelings. It also should be tremendously enjoyable!



IMPORTANT THINGS TO REMEMBER

REPETITION WORKS

- Repeat the role-play a few times – giving as many participants a chance as possible – and allowing the learning to happen over a number of role plays.

KEEP THINGS MOVING FORWARD

- Move the exercise on quickly. After one group has acted out the scene, get another up to do another one on the same topic.

ALLOW PARTICIPANTS TO WORK OUT THE LEARNING POINT FOR THEMSELVES

- Do not let the discussion after the role play run for too long, and do not feel that you have to get all the answers from your audience immediately. After 4 or 5 different role plays, the answers (learning points) that you want from your audience will flow much more easily. They will work out, for themselves, the difference between murder and manslaughter after a few times of seeing different examples in action. They will also understand the 'grey area' between murder and manslaughter. You do not need to get the answers straight away. **Remember: sometimes there may not always be an answer.** Criminal law is not a 'science' with a 'right' or 'wrong' answer. Remind participants that they will need to consult with their legal adviser on the finer points of their own case.

CREATE SUSPENSE

- Drama is exciting when the audience do not know what is going to happen next. You immediately engage the audience by giving them something to work out. This is one of the reasons for giving actors a choice in a scene between one action and another. The audience will watch more attentively to find out what they are going to do.

AVOID EXPLANATIONS BEFORE THE ACTIVITY

- Just leap straight into activities – don't explain what you are going to do in advance – just do it!

VARIATIONS

- There will be other forms of storytelling and role-play sprinkled throughout the manual – though these are mostly a combination of the above; all variations will have their own set of instructions within.



TIP

When to start or stop a role-play?

The answer lies in the learning-point you seek to make. If you are running a role play about cross-examination, the reason you are doing it is so that participants can practise cross-examination. Firstly, you need as many people to have a go at a cross-examination as possible so you need to keep the role-play short. Secondly, you only need to focus on that part of the process when cross-examination takes place. The participants can continue to practise in their own time afterwards – this should always be encouraged (eg: by inviting participants to form their own forum theatre clubs).



viii) USING SONG

Songs are an excellent way to get information across, and can also be used as icebreakers, energisers and endgames.

as an ice-breaker game

There are a couple of hilarious and fun songs outlined in Part 4. Each line has an accompanying movement, and the sheer silliness of it has everyone laughing and energised.

as an educational tool - with a specific message

Take a song that the group already knows and change the words to suit your message.

You can either plan this before your session, or create the new song with your participants, taking suggestions on the tune and the words from the participants. Or change the words to 'fruit salad' (see page 136) during a session on defences to murder and manslaughter:

- He drove me to it : provocation
- He tried to kill me : self defence
- I wasn't in my right mind : insanity
- I was not there: alibi

5 steps to co-creating a song

1. Decide on an appropriate tune that everybody knows – take this from the group, or prepare it – use traditional / popular songs.
2. Pick the words, or write the lyrics.
3. One line at a time, repeat the new words with the song.
4. Add actions to each line of the song.
5. Repeat all the way through until the whole group has got the song, and is clearly enjoying singing it. Try not to stop before this happens – it takes time, but it is worth persevering.

Some ideas: ask participants to sing a song they know, then change the words. Put actions to each of the points. Ask participants to make up their own song – even hold a competition for the best.

Note: the songs must be appropriate for the age group of the participants.



TIP

Experience shows that it is better to pre-prepare the song and lyrics in advance

ix) GAMES

...are not ONLY for fun...

Game suggestions are listed at the beginning of each PLC. These are summarised in a catalogue with instructions in Part 4 of this Manual. Use these as you wish. Some of the games have been adapted and expanded to facilitate the activities in the PLCs.

The purpose of games

They are as important as the educational exercises, since they lay the appropriate foundations within a PLC and because:

- Games encourage creative thinking – thinking of alternatives.
- Games warm up body, mind and voice
- Games energise
- Games introduce ideas or learning points that will be explored within the PLC
- Games introduce necessary techniques that will be used within the PLC.

The most common game used in the PLCs is the COMPETITION – splitting the group into teams and giving each team a 'buzz'. The buzz is used by the teams to signal that they know the answer – the first team to buzz is given the opportunity to answer.

A buzz can be anything like a whistle, animal, car horn etc (see PLC 6). This may seem childish for certain groups.



TIP When you set these up remember to explain HOW the teams are going to win!

x) GENERAL INTERACTIVE COMMUNICATION TECHNIQUES

- Use a ball to engage the audience. Throw the ball to participants when you ask a question.
- Use questions to get information across to participants, and as a way of guiding learning. When questions come to you, bounce them back! Get the dialogue going.
- AVOID talking for longer than a few minutes at the time. You know all this information perfectly – but lecturing the participants on what you know, will not work. They will remember very little of it.
- Repeat a participant's answer loud and clear for the rest of the group. This can develop into a call and response chant.
- Find out the techniques used by prisoners themselves to get attention from a group. Incorporate these into your PLCs.
- Share explanations with your co-facilitator. You will encourage an atmosphere of dialogue if you try, for example, one sentence each.
- If you are doing a repeated action or a call and response or frozen picture image exercise, don't explain, just DO IT. The participants will catch on.
- Use 'ACTION!' or 'PLAY!' to start an activity, 'FREEZE!' to stop it. Encourage participants to stop immediately, in a frozen statue, whatever their position.
- Constantly check on your participants – are they with you, are they learning, are they okay?

xi) GENERAL FUN CREATION

- Make simple hats out of paper for characters that will be used in the role play (magistrate, accused etc)
- Have the group count-down to the start of the 'action'
- Roll up flip chart paper into a cone to make a loud speaker
- Be prepared to be silly
- Make jokes
- Keep inventing your own!

xii) DYNAMIC FACILITATION

- Vary your rhythm and energy in presentation – to focus attention
- Think on your feet – for example, if answers are not quite right, carefully direct participants' thoughts with your questions, without dismissing their contribution
- Be in control of your emotions
- Keep any instructions clear and simple
- Reward participants for correct answers and committed participation in activities
- DELIGHT in your group's participation
- Focus your eye contact, and direct your physical presence – be relaxed, confident, but energised and ready for whatever your participants may throw at you
- Be absolutely 'in the moment' and ACTIVELY LISTEN to fellow facilitators and the group
- Support your voice; project, articulate and vary your speech
- Develop and use performance techniques such as: emotional range and commitment to portray character and situations; physical gestures and actions to symbolise facts or concepts; slow motion fighting; fake fainting – falling into the arms of your co-facilitator when something remarkable has happened – to focus attention or entertain; using a double take with the head as if something extraordinary has happened – this can be used to handle a difficult prisoner, or to reward clever answers.

- Care about your content. Speak from the heart, with conviction. Despite the fact that you have done this PLC 100 times before – it has to be AS IF for the first time. This leads to motivational presentation.
- Take care of your participants – do not judge; they have to know that you will attend to their needs.

Abbreviations

IHRL	International Human Rights Law
ICCPR	UN International Covenant on Civil and Political Rights 1966
CRC	Convention on the Rights of the Child 1990
JDLs	UN Rules for the Protection of Juveniles Deprived of their Liberty 1990
SMR	UN Standard Minimum Rules for the Treatment of Prisoners 1955
MSW	Making Standards Work, PRI 2001
PL	Paralegal



SECTION 2, Part I

Arrest, Detention and Bail



Arrest and Detention

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- How an arrest is made – the rules of arrest
- Detainee's rights
- 48 hour rule. What it is and what is its purpose?
- Remand Period
- Introduction to Bail



GAMES: SLOW MOTION FIGHT COMPETITION

ACTIVITY 1: HOW AN ARREST SHOULD BE MADE



Learning point: The Rules of Arrest
Paralegal Action: Actor's choice role play
 Discussion
 Song



STEP 1: Actors choice role play

Did the police follow the rules of arrest?

- 1 Invite 2 or 3 participants to act out an arrest scenario.
 Suspect, Policeman, Victim as a minimum.
 See example scenarios below, use these first, then invite the audience to set the scene and establish the facts – ie. choose the circumstances of the arrest. **What is the story/crime?**
- 2 Ask the actor playing the police officer to choose how the arrest is made. Whether s/he: chooses to follow the rules or not, see paralegal notes below
 You must outline this for him/her: Eg: 'choose between using force and not using force, during the arrest.'
 You can do this in front of the audience. It does not have to be in secret.
The actor playing the police officer must keep his/her choice secret.
- 3 Tell the audience they must watch the police officer to see if s/he makes a mistake.
- 4 PLAY! – Only act out the moment of arrest.
- 5 After the role-play ask the audience **if the police officer acted wrongly or rightly.**

Example scenarios:

- Policeman spots pickpocket in the market
  - Policeman sees person about to throw a brick through a shop window.
  - Traders see man reaching into car and grabbing cellphone. Traders shout, police give chase.
- 6 As soon as the role play is over fire the question at the audience:
What are the Rules of Arrest?
 Let the audience work it out based on what they have just experienced.



TIP

Build the energy of the game by vividly controlling the action: (ACTION! CUT! NEXT!)
 - this will increase the audience's engagement.



STEP 2: DISCUSSION - based on these notes:



PARALEGAL NOTES: RULES OF ARREST

- The police officer must explain to the person why s/he is being arrested.
- The police officer must inform the person that s/he need not say anything and that anything s/he does say may be taken down and used in evidence against him/her.
- The police officer may use reasonable force to detain the suspect if the person resists arrest, but where the suspect offers no resistance, or ceases to struggle, no force is permissible.



STEP 3: SONG – The Rules of Arrest

Take the main facts, simplify them, and create a song with participants.

For example:

I am arrested – you must know why
I speak – you do not have to
I am beaten – you should not be
I am hungry – you must be fed

ACTIVITY 2: RULES OF DETENTION



Learning point: Rules & Detainees rights



Paralegal Action: Hot seat role-play



Hot seat role play - Did the police follow the rules of detention?

Invite a participant to play the detainee in the police station. Ask the following questions

1. Should you be allowed legal advice?
2. Should you be allowed to contact a relative?
3. Can you be held in secret without telling anyone?
4. Should you be produced at court? By when?
5. Should you be fed?
6. Should you be given water?
7. Should any injuries be attended to by a qualified health professional?
8. Should you be allowed access to the toilet?
9. Should you be provided with bedding?

Confirm whether the participants' answer was correct or not after each answer.



APPENDIX: These questions are derived from the UN SMR and UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

VARIATIONS:

- a. Paralegals act out the police breaking the rules of detention – and the audience calls out when they see a mistake being made by the police officer.
- b. Competition with team representatives in the hot-seat.



NOTE: The hotseat should remain hypothetical. It should not result in personal testimonies of experiences in custody – UNLESS participants are willing.



PARALEGAL NOTES

Police have wide powers of arrest in many countries (see **A** appendix for **C** country specific laws); basically they can arrest anyone whom they:

- find about to commit a crime. For example, a police officer who comes across a man about to throw a stone through a shop window: s/he can arrest that man.
- find in the act of committing a crime.
- believe has committed a crime (based on reasonable grounds). For example, a police officer can arrest a man whom s/he sees running fast down a street carrying a bag and being chased by a security guard.

However at the moment of arrest police must inform you of the reason for arresting you.

ACTIVITY 3: WHAT IS THE 48 HOUR RULE?



Country specific: Adapt the time periods to the country context

Learning point: The 48 hour rule



Paralegal Action: Competition



Competition

Split the group into teams. Give each a 'buzz' word. Teams get an extra point if they can say why they answer as they do (as below) PLAY!

1. Q: For how long can a suspect be detained in police custody before being taken to court?
A: 48 Hours.
2. Q: Suspect arrested on Sunday evening, when should he be produced in court?
A: Monday morning.
Q: When is the latest he could be produced?
A: Tuesday afternoon.
3. Q: Suspect arrested on Thursday and Friday is a holiday, when should he be produced in court?
A: Monday morning.
Q: Is this unlawful?
A: No, because it is the first opportunity available.
4. Q: Suspect arrested on Saturday evening and the court is closed on Monday, when should he be produced in court?
A: Tuesday morning.
Q: Is this unlawful?
A: No, because it is the first opportunity available.
5. Q: Suspect arrested on Wednesday. And police do not produce him at court until the following Wednesday, because they are still conducting enquiries. Is this lawful?
A: No. The police can ask for more time to conduct their enquiries from the court.

Follow this game with a discussion, if doubt lingers and to cover points below. For example, Number 5 can easily be developed further into a discussion.

ACTIVITY 4: REMAND PERIOD IN PRISON

- C** **Country specific:** Adapt custody time limits to the country context
- ✓** **Learning point:** Remand period between court appearances
- A** **Paralegal Action:** Call and response game



Call and response game

- 1 Inform participants that the maximum time a court can keep a person in prison, BEFORE coming back to court is 15 days **C** (or other time period as set down in law).
- 2 Split the group of participants into 3.
  - The maximum time in prison is: Group 1: 15 days
  - Then the person must be brought: Group 2: Back to Court
  - When the person may: Group 3: Ask for Bail
  - The facilitator can abbreviate the call from 'The Maximum time in prison is' to 'Maximum time' or 'the person may?'
- 3 Repeat again and again, to build the rhythm.
- 4 Next reverse the call, eg: the facilitator calls '15 days' and the response is 'maximum time'.

VARIATIONS:

- a. Each individual participant gives the response one after the other – moving as fast from one side of the audience to the other
- b. The whole group says each response and different actions can be given for each. Eg
  - The audience stands up for '15 days'
  - Sits down for 'Back to Court'
  - Puts their hands out for 'Ask for Bail'

This can be turned into a game – the facilitator can build a rhythm (as in 'simon/john says') and then change the order, so repeat 'Maximum Time' and catch people out if they automatically sit down.

Another way to test participants knowledge is to throw the question, or the 'call' to the wrong group. This will cause much amusement.

The facilitator gives instructions at the start of the chant: either whisper, or shout or laugh, or say it angrily, or softly...

PLC Action:

Find out if any prisoner:

1. was mistreated on arrest and/or during detention in the police station
2. has yet to be brought before a court
3. has not been brought back to court within 15 days **C** after their last appearance
4. was kept longer than 48 hours **C** (how long and how many?)
5. problems noted can be presented at monthly meetings of the local Court User Committee / Access to Justice Committee / Case Management Committee **C** and magistrates can be encouraged to visit police cells

Bail

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What bail is
- How bail works
- Conditions for granting bail - how to meet police objections
- A model bail application
- How to make a successful bail application

GAMES: WHO YOU ARE AND WHAT YOU DO
NAME GAME WITH REVEALING ACTION
SLAP SLAP CLICK CLICK



MATERIALS: FLIP CHART



ACTIVITY 1: INTRODUCING BAIL

✓ **Learning point:** What bail is
A Paralegal Action: Quiz and competition



STEP 1: QUIZ - Working out group knowledge

Fire the questions from the table without giving answers.



STEP 2: COMPETITION

- 1 Explain the answers to questions that participants got wrong. If the discussion gets complex, talk through the paralegal notes.
- 2 Split the group up into teams. Give the teams names. EG Goats and Chickens, or Mango, Banana and Onion, or Bullets and Wanderers. Give each team a noise they must make if they want to answer a question
- 3 Fire the questions again.
- 4 Repeat the competition twice or three times to give different teams a chance to win.



NOTE: you can use the paralegal notes as further explanation each time the questions are answered by the teams.

Question	Simple answer	Further Explanation: Paralegal notes
1. An offence is committed. The offender is caught, what happens then?	S/he is arrested, taken to court, charged	PL explains: The prosecution need to prepare the case. They interview witnesses and take statements. They then need to fix a date when everyone can come together and hear the matter (ie in a trial). This takes time.
2. Meanwhile what to do with the offender?	Put him/her in prison	
3. But what if the person has never committed an offence before, he has a job and family to look after and he is well known in the community – and the offence is not all that serious? If he is presumed innocent until guilt is established, shouldn't he be allowed to carry on with his life while waiting for his trial?	Yes	Key point: this is what bail is – provisional liberty pending a return date to the police station or court
4. What is bail?	Temporary release while awaiting trial	This is where the accused person is allowed to go about his ordinary business provided that s/he attends court or the police station at the time and on the date appointed.
5. Is bail a human 'right'?	Yes - It should not be the general rule to keep people in custody awaiting trial (and particularly not juveniles)	The law gives the arrested person the right to be released from detention with or without bail. A ICCPR 9 and CRC 40
6. Does bail set the accused free?	Conditionally yes...	... providing that the accused returns to the police station or court on the date set by the police or court.
7. Who can grant bail?	A court or police officer	Three agents may grant bail: the 'most senior police officer' in the police station if it is a minor offence, otherwise: a magistrate and a High Court judge. Police bail is free. C (see Appendix for national variations).
8. Where does the accused go if s/he is granted bail?	Home or other address notified to the court	The accused must not disappear. If there is any suspicion that the accused will fail to appear for trial bail will not be granted.
9. Who can object to bail?	The prosecution	In some countries, community members can raise objections. Usually it is the prosecution on instruction from the police.

Question	Simple answer	Further Explanation: Paralegal notes
10. Where the police or prosecution object to bail, is there anything you can do?	Yes. You can meet their objections	For instance, if it is argued you will: a) Fail to appear, then you produce a surety b) Interfere with witnesses, then you can move away from that area c) Commit further offences, then you argue there is no basis for this as you have never committed an offence before
11. Who can refuse bail and why?	The Court	Bail is a matter of right unless the prosecution can show, or the court decides, that in the circumstances of the case, the accused should be kept in custody because of the serious nature of the offence and because there is a real risk s/he would commit further offences, or interfere with the evidence/witnesses or simply fail to appear for trial.
12. If Bail is refused – is that it?	No	You can appeal a decision of the Magistrates Court to a higher court.



STEP 3: DISCUSSION: Points that will be useful after the competition

1. Did the police / court discuss bail with you?
2. Did the court ask if you wanted to apply for bail?
3. Did the court explain how to apply for bail?
4. Do you think your offence qualifies for bail – why?
5. How do the members of the public understand this procedure?
6. Do you think it confuses people? How could the confusion be addressed?



PARALEGAL NOTES: BAIL

Most national laws (often stated in the Constitution) give the arrested person the right to be released from detention with or without bail.

A

A court or senior police officer can grant ‘bail’, whereby the accused person is allowed to go about his ordinary business provided that s/he attends court or the police station at the time and on the date appointed.

Bail is a matter of right unless the prosecution can show that in the circumstances of the case, the accused should be kept in custody because of the serious nature of the offence and because there is a real risk s/he would commit further offences, or interfere with the evidence / witnesses, or simply fail to appear for trial.

So important is this right that if the accused can show that s/he can satisfy the concerns of the prosecution (ie by reporting regularly to a police station to show that s/he is keeping out of trouble and in contact; and / or by asking a relative to stand for him/her in a sum of money which will be forfeit should the accused not appear for subsequent appearances) then bail should be granted notwithstanding the views of the prosecution.

Young persons (under 18) should only be kept in custody where there is no alternative and for the shortest period of time. (CRC 37)

A



STEP 3: QUICK DISCUSSION

Q: Name two ways that the accused can satisfy the objections raised by the prosecution.

Eg:

- reporting regularly to a police station to show that s/he is keeping out of trouble and in contact
- moving to an address away from witnesses/victim
- surrendering travel documents (to show that s/he is not seeking to leave the country)
- providing a surety for future attendance

ACTIVITY 2: HOW TO APPLY FOR BAIL

- ✓ **Learning point:** How to apply for bail in a simple offence
How to apply for bail when prosecution raises objections
How to apply for bail in a serious case involving violence
- A **Paralegal Action:** Narrated role-play
Forum theatre
Competition role-play



STEP 1: NARRATED ROLE PLAY - How to apply for bail in a simple offence

- 1 Invite actors in the space to play: a suspect, a few people in a bar, the police.
- 2 Invite the audience to watch the story carefully, thinking all the time of arguments the accused can use to apply for bail.
- 3 **Narrate THE STORY:**
You (the suspect) are in a bar. You have been drinking. An argument breaks out. There is a fight. You get involved because someone hits you and you strike back. You walk out just as the police arrive. They arrest you and charge you with assault. You go quietly to the police station and spend the night in the cell. The next day you are taken to court and the police object to bail.
- 4 FREEZE!
- 5 Continue the role-play with the 'accused' person, thank the other actors and ask them to join the audience.
- 6 Outline the personal situation of the accused:
You are a person who has no previous convictions. You have a job and a family to care for. You are the only bread winner. You have a home where you have been living for some time.

This is your first appearance. Either the prosecution requests an adjournment, or the charge is put and you enter a plea of NOT GUILTY.

- 7 The accused applies for bail (see good points box overleaf)
  - Tell the actor playing the suspect to apply for bail in the best way s/he thinks possible.
  - Tell the audience to judge how well s/he does. Does s/he make a strong case?



TIP Stick to the procedure in court when the bail application is made, there is no need to go over what happens before or after.

- 8 After the actor has finished, ask the audience questions based on the 'good points to make' eg. Was it his/her first offence? Is s/he a family man/woman? etc. and finally could his/her case for bail have been stronger?



GOOD POINTS TO MAKE

- ✓ I have never committed an offence before
- ✓ I am in work doing x, I earn y
- ✓ I have a family of four and three more who depend on me
- ✓ I have my own home where I have been living for the past 10 years. It is in the village where I have lived all my life: everyone knows me
- ✓ I ask for unconditional bail
- ✓ If there must be a condition: I agree not to go near the bottle store/bar/pub until after my trial

This shows the accused is:

- unlikely to reoffend while on bail
- unlikely to run off and fail to appear for trial
- unlikely to pose a threat to the community/others/society

- 9 Having established these good points. Invite the actor to reapply for bail, invite the audience to play the judge- should s/he be granted bail?
- 10 Move on quickly to the next volunteer and repeat the process. Through repeating the exercise, the participants should pick up the 'good points' to make, and think of others based on each individual case.



STEP 2: NARRATED ROLE PLAY - Repeat with new scenarios

Create your own.
Other scenarios you can use are below:

SCENARIO 1

Breach of trust: You are employed as a cook. Some items have gone missing from the house and the police are called. You are interviewed and you deny having anything to do with it. The police charge you and bring you to court. The employer sacks you. The police object to bail.

Your personal situation: You have no previous convictions. You have lost your job on which your family depends. You have lost your accommodation.

You enter a plea of Not Guilty (NG) and the magistrate is about to adjourn the case for trial.

You ask for bail (see good points box below).

KEY POINT

This is quite serious as it involves an alleged breach of trust. But the facts are entirely circumstantial: ie there is no direct evidence against the cook. The employer could have mislaid the items or someone else (eg a relative/visitor) could have removed them.



GOOD POINTS TO MAKE

- ✓ I maintain innocence in this matter
- ✓ There is no evidence against me.
- ✓ Others could have had the opportunity as well as I
- ✓ I worked in the house for the past xx years with no problem
- ✓ I have never been dismissed before and have good references (call one of them?)
- ✓ I shall go back to my village to live pending the outcome of my trial

SCENARIO 2

Trouble in your community: There is a land dispute in your village. It turns ugly. There is a fight and someone is injured. You are arrested and charged with causing the injury. The police take you to the police station and then to court. The police say that if you are released there will be more problems in the community and for you own protection you should be remanded in custody.

Your personal situation: you have no previous convictions. You are the bread winner and the rest of the family depend on you. You have relations far away with whom you can stay and the offer of a job.

You enter a plea of NG and the magistrate is about to adjourn the case for trial.

You ask for bail.



GOOD POINTS TO MAKE

I accept that there will be problems in my village, therefore I propose moving away to live with relatives in C district. They have come to court and will say that I can stay with them. I also have the offer of a job in C.

SCENARIO 3

Remand overstay: You have been charged with a simple theft, and spent two years in custody. You have no idea what the status of the case is. No trial dates have been fixed. You have had no legal assistance. You have lost your job. The prison conditions are very poor and your family is suffering.

You ask for bail.



GOOD POINTS TO MAKE

- ✓ It is my first offence
- ✓ Two years is likely to be longer than any sentence that the court may pass if I am found guilty
- ✓ The delay in bringing the case to trial is not my fault
- ✓ I am living in poor prison conditions
- ✓ I have not been tried within a reasonable period of time



TIP

As the actors make their bail applications – write down the good and bad points they make. This will help summarising at the end.

VARIATION: AUDIENCE JUDGES

1. Narrate scenarios, inviting different participants to act out the characters and the situation. As new characters are mentioned, new actor/volunteers are invited to fill the roles.
2. Invite the audience to play and to 'judge' if the accused should be granted bail.
3. After they have guessed, tell them the 'outcome'. DISCUSS

**PARALEGAL NOTES: REFUSAL OF BAIL**

Bail should only be refused where the matter is serious (ie act of violence, dishonesty involving a substantial sum of money) and where there is a real risk justice will not be done (because the accused will run away, commit other offences or intimidate witnesses). Otherwise bail should be granted as of right.

As concerns Juveniles, it is not in the 'best interests' of the juvenile to be kept in custody (see: CRC Art 3). The courts should therefore ensure that;

- any arrest, detention or imprisonment is in conformity with the law, used only as a measure of last resort and for the shortest period of time (CRC Art 37(b))
- detention before trial shall be limited to exceptional circumstances; but where used, priority shall be given to a speedy trial ((JDLs para 17)

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**STEP 3: INSTANT FORUM THEATRE - How to apply for bail when the prosecution raises objections**

- 1 Paralegal facilitators demonstrate the three guiding principles of likely police objections (see below and Appendix logo) acting out the process as it happens in court. A
- 2 Invite a volunteer to play the accused and give him/her the chance to tackle one of the likely objections that the police might make.
- 3 Invite members of the audience to shout FREEZE! and jump into the place of the accused, if they think of better ways to handle the police objections.
- 4 The facilitator should guide the forum by rewarding success and moving on to the next possible objection.

Q: How many applications can be made?

A: If bail is refused, you cannot make another one unless you can show that there has been a 'change of circumstances' since the last time you applied (ie months have passed, a relative has returned and can stand surety, you have a fixed address to stay at etc).

Q: Can I appeal?

A: Yes you can appeal refusal by the lower court to the higher court.

**PARALEGAL NOTES: POLICE OBJECTIONS TO BAIL**

A. Likelihood that the accused will FAIL TO APPEAR for trial ('evade his trial')

In determining this issue, the court should take into account among other things:

- the nature and seriousness of the offence
- the strength of the case against the accused
- the nature and severity of the punishment likely to be imposed
- family/community ties etc

B. Likelihood that the accused will INTERFERE with the evidence

The court should take into account:

- whether the accused knows the witnesses
- whether they have already made statements and agreed to testify
- the relationship with the witnesses and the extent to which they could be intimidated
- whether the investigation has already been completed etc



C. Likelihood that the accused will COMMIT FURTHER OFFENCES

The court should take into account:

- his/her previous convictions
- history of offences committed on bail
- past conduct of the accused indicating a pre-disposition to violence etc

C See appendix for other country variations

In applying these principles, the court shall weigh the interests of justice against the right of the accused to his/her personal freedom. Factors to take into account include:

- the period already spent in custody
- the probable period s/he will spend in custody until disposal
- the reason for delay and whether it was attributable to the conduct of the accused
- detention impeding preparation of his/her defence
- state of health of the accused

ACTIVITY 3: BAIL IN A SONG



Learning point: For all participants to remember the basic facts of bail application

Paralegal Action: Song



SONG

- 1 Example of how to summarise the key points. Do it your own way and put the words into the vernacular.
First offence – Yes! he gets bail
Family man – Yes! he gets bail
In employment – Yes! he gets bail
Fixed Address – Yes! he gets bail
No violence – Yes! he gets bail
- 2 Put the song together in any of the ways described on page 16.

PLC Action:

Ask participants;

- a) Has anyone not applied for bail?
  - b) Has anyone been granted bail but cannot meet the conditions set by the court?
  - c) Has anyone been refused bail, but their circumstances have changed – which allows them a fresh application? (eg. charge reduced, surety found, relatives found, evidence weaker than first thought, witness dead etc)
  - d) Who has been here the longest? (and next? etc)
1. Compile a list under each heading to forward to the court/prosecution
Assist participants who wish to complete a bail form
  2. Compile a list of those charged with serious offences who have overstayed in custody, or have not been produced before a court in recent times and refer their cases to a friendly lawyer.
As concerns juveniles:
    - e) do parents/guardians know the whereabouts of the juvenile?
    - f) do their parents/guardians come and visit?
    - g) does the judicial body responsible for young persons in custody visit?
    - h) do they have access to legal advice and assistance?
  3. Compile lists of juveniles -
    - who are not in contact with their parents/guardians and FOLLOW UP INDIVIDUALLY
    - refer the names to the judicial body responsible for young persons in custody
    - refer serious cases to friendly local lawyers for pro bono (free) assistance
    - refer overstayers and those who do not appear to satisfy the criteria for detention to the local case management committee and / or senior judicial officer for action

SECTION 2, Part 2

Introduction to Criminal Procedure



First Appearance - Court Structure and Layout

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- Hierarchy of the courts
- Sentencing powers of the magistrate
- Who is who in court
- Where people are in court

GAMES: GUESS THE STATUS
GUESS THE FAMILY MEMBER
IMAGE GAME
BOMB AND SHIELD GAME



MATERIALS: FLIP CHART
PAPER
SPOTS OR PAPER MARKERS
CHAIRS/BENCHES



ACTIVITY 1: INTRODUCING BAIL

- C** **Country specific:** Adapt the name/order of the courts as required in each country
- ✓ **Learning point:** Hierarchy of the courts
- A** **Paralegal Action:** Brief discussion
Frozen Picture Image / Call and Response game



STEP 1: DISCUSSION

- 1 Fire questions and get a discussion going – Do not answer for the participants!

Which court do you first go to in all criminal matters?	Magistrates court/other
Where do all cases start (civil or criminal)?	Magistrates court/other
What type of case does the High Court try?	Capital Criminal cases and serious civil matters/other
Which is the court of appeal from the magistrates court?	High Court/other
Which is the court of appeal from the High Court?	Supreme Court/other
Which is the highest court?	Supreme Court/other
Which court do juveniles go to?	Child Justice Court/other

- 2 Repeat the questions, speed it up, and build the energy.
- 3 Keep going until all participants are answering

Encourage participants to shout out the answer as soon as they know it, and ALL TOGETHER.

VARIATION

Use the ball to throw out into the audience to take participants by surprise.



TIP

Once you have gone through the questions a few times – shorten them to make the exchange quicker. Eg;

First court?
High Court tries what?
Court of appeal from High Court?
Juveniles?

Cases start?
Court of appeal from Magistrate/other?
Highest court?



STEP 2: FROZEN PICTURE IMAGES

- 1 When you are satisfied that enough participants are confident in knowing the different courts, move on.
- 2 Find different actions and/or frozen picture images for the three types of court.
Take ideas from the participants. Encourage images that demonstrate the idea that the magistrate's court is lowest, High Court is middle, Supreme Court is highest. For example:
  - fist on the floor for magistrate,
  - fist in the air at waist level for High Court,
  - fist held up above the head for Supreme Court



TIP Take the first ideas you are given. Encourage participants to be as imaginative as possible to come up with their action or image – they do not have to be literal. And do not give them suggestions unless no one is coming up with ideas. You can either take a group from the audience to come into the space to play the game – or you can use simpler gestures and do the game with all participants.

- 3 When the images have been chosen, call 'Magistrate' and ask the group to make the frozen picture image. Next call 'High Court' and ask the group to make the next frozen picture image for 'High Court' and finally do the same for Supreme Court.

 **NOTE: Get the rhythm going, repeating in sequence – change the sequence and try to catch people out. Speed it up.**

- 4 Putting words and action together. Next ask the group to call for themselves what the three different images are, repeating the corresponding actions.
- 5 When the group is doing it on their own, play the game by calling out certain statements – each relates to a different court. Play knock-out if people get the image or action wrong. Tell participants to shout out the type of court as they make the frozen picture image or action.

All criminal matters	(Magistrate/other)
Capital crimes and serious civil matters	(High Court/other)
Ultimate court of appeal	(Supreme Court/other)
Under 18s	(Child Justice Court/other)

 **NOTE: Again, get a rhythm going – build the confidence of participants – repeat until participants know the pattern – then change the order and play knock-out.**

VARIATION

- Where every case starts (Magistrate/other)
- Court of appeal for magistrates court (High Court/other)
- Tries capital cases (High Court/other)

DEVELOPMENT

- C Instead of calling the full sentence, abbreviate your call to 'Criminal' 'Capital' 'Ultimate Appeal' or find the local language equivalent and adapt to national context.

VARIATION

- Split the participants into two groups. One group calls (eg: all criminal matters) the other group responds (Magistrate)

DEVELOPMENT

A group or an individual decides which court they are going 'to be'. And they make an image or an action, the audience has to guess what court they are.



PARALEGAL NOTES: HIERARCHY OF COURTS

Court hierarchy:

C Adapted as above to national context

- The Supreme Court is the highest court and ultimate court of appeal.
- The High Court tries all capital criminal cases and serious civil matters. It also acts as the Court of Appeal from the magistrates court.
- The Magistrates Court is the court of first instance in all criminal matters (ie every case starts at the Magistrates Court).
- The Juvenile Court (or child justice) handles all matters relating to young persons under the age of 18 who are in conflict with the law.

ACTIVITY 2: GUESS THE SENTENCE



Learning point: Sentencing powers of magistrate
Paralegal Action: Game
Competition
Brief discussion



STEP 1: INTRODUCTORY GAME

Ask the audience to guess what type of magistrate an 'actor' is being. Ask the actor to use their body, voice, gestures or 'poses' to demonstrate how POWERFUL their magistrate is. Use a participant as the 'actor' or a facilitator can do it.

KEY POINT

You will need to outline, briefly the sentencing powers of the different magistrates before playing the following competition. C This will vary from country to country.



STEP 2: COMPETITION

Can you work out how powerful the magistrates are?

- 1 Invite volunteers to the front. Ask the audience to determine who is the most powerful magistrate and the next most powerful and so on.
- 2 Tell each of the actors what their sentencing powers are, without the audience hearing.
- 3 If you're working in twos, one PL can talk to the actors, while the other splits the group of participants into 5/6 teams – depending on numbers.
- 4 Each of the actors playing magistrates should be asked to strike a pose for their magistrate, performing how powerful their magistrate is. They should also say as dramatically as possible, the name of the grade of their magistrate C (adapt to national context). Repeat.

 **NOTE: The aim of each team is to guess the sentencing powers of each magistrate. They must ask the 'magistrates' questions with only YES or NO answers. Eg:**

- Can you give sentences that are more than x years?
- Can you give a fine over y amount?
- Can you give a sentence up to z months?

Give examples of questions

- Each team gets one question to one magistrate at a time.
- If the magistrate gets the answer wrong, jump in with the correction!

 **TIP** Do not worry if the teams are getting the answers wrong, continue playing, keep the energy high, and through repetition and posing different questions, the participants will work it out.

- Change magistrates and repeat the game (take one magistrate from each team).
- Keep going until the teams are getting the answers right quickly. Keep the score on a flip chart.
- When the game is over, fire questions at the audience to test their knowledge of the sentencing powers of the various magistrates
  - Up to how many years can a magistrate sentence?
  - What is the maximum fine s/he can impose?
  - What is the longest sentence a (more junior) magistrate can impose?
  - What is the maximum fine s/he can impose? etc

VARIATION

Instead of having the participants telling the audience what type of magistrate they are, have them tell the audience what their sentencing powers are, and the game becomes about guessing what type of magistrate has those powers.



STEP 3: QUICK DISCUSSION

...based on paralegal notes  (again adapt to the national context).

- Q: What are lay magistrates?
 Q: How many kinds/levels of magistrate are there?
 Q: What cases can a magistrate NOT try? (ie: murder/treason/manslaughter)

ACTIVITY 3: WHO IS WHO AND WHERE ARE THEY?



Learning point:

Layout of magistrates court and who is who



Paralegal Action:

Who is who status game

Who is who song

Energising – 'race to the place' game



STEP 1: INTRODUCTORY GAME

You need pre-written pieces of paper with all people in the court written on them.
 Eg: 4 magistrates, 4 witnesses, 4 accused, 4 prosecuting policemen, 4 clerks, 4 ushers.

C Adapt according to national context

 **NOTE:** You can draw symbols for the people instead of writing their names eg: a hammer to represent the magistrate, glasses to represent the witnesses.

1 Invite 12 participants to come into the space (or any number that is a multiple of 6 – or you can choose less characters, missing out policemen or clerks for example).

2 Ask them to pick a piece of paper and keep what is written on it to themselves.



TIP

They must now become the character on the piece of paper. How do you walk? Stand? Sit? What physical actions does this character make? Walk around the space, be in the market, at a bus stage, in a bottle store or bar, in court ...

3 Ask participants to find someone else who is the same character. Count down from 10 to 1 – tell participants they must make pairs by the time you get to 1.

4 FREEZE! Ask the characters in each pair to reveal themselves to the audience.

5 Get the papers back and give different papers back to the group. Repeat as above.

6 Ask participants to make groups of people that make up a court – IN SILENCE – participants must organise themselves into 'courts' – participants must concentrate on who is in their 'court' – not where they stand.

7 Count down again. When all participants have arranged themselves into groups of courts, ask the characters of each 'court' to reveal who they are.

The first time, do this without talking.

The second time, do this allowing participants to talk to each other – they are allowed to say anything apart from the name of their character. NO CHEATING!

 **NOTE:** the fun of this exercise lies in what is 'revealed' to the audience. Ask actors to keep their 'pose' and 'present' to the audience who they are supposed to represent. If necessary, give examples of how to 'demonstrate' an action that could represent, for example, a clerk or usher or accused or whatever.

VARIATION

Invite only 6 participants. Carry out steps 1 – 3. Ask the characters to strike a pose and freeze in front of the audience. Invite the audience to guess who is who.



STEP 2: SONG - Who is Who

Using the '5 steps to making a song', develop a song based on one the participants know, for who is who with actions. Pre-prepare the words of the song – and invite participants to add actions to it.



STEP 3: GAME - Race to the Place Game

1 Invite two teams of four into the space. Put each team behind an imaginary line at either side of the space.

2 Spots/markers/chairs are placed in the performance space – where the magistrate sits, clerk, prosecutor, accused etc.

- 3 Call out the name 'Magistrate'. Team members take it in turns to run, the first team member to get to the right spot is the winner.
- 4 Then continue, calling out 'the dock' 'witness box' etc. until all the places in the court layout have been mentioned and the court is established.
- 5 Repeat again, change teams, give as many participants a go in the race.

VARIATION

At the start or end of the clinic play the BOMB/SHIELD game but use different words. Instead of 'Bomb' use 'Police', instead of 'Shield' use 'Accused'. Or use 'Judge' and 'Lawyer', or 'Prosecutor' and 'Accused', or 'Trouble' and 'Honesty'. Be creative.



Order of Events

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- The Court procedure for what happens on first appearance
- What the difference is between a plea of guilty and not guilty
- What adjournments are

GAMES: CAT AND MOUSE
TANGLES AND KNOTS



MATERIALS: FLIP CHART
MARKER PEN



ACTIVITY 1: Order of Events

- ✓ **Learning point:** What happens – court procedure
Paralegal Action: Instant forum theatre / competition
Copy & Add



STEP 1: DISCUSSION

Fire questions about what happens when the accused is produced at court. Draw the information from the audience. Try to keep the procedure in order with guiding questions but don't simply tell the participants how it goes.



TIP You can turn this into a brief competition. There are a lot of facts to remember and the procedure is very detailed. Some of the participants will have been through the court procedure and may have had different experiences. Try to keep it light: the point here is to demystify the procedure, not to get caught up in the detail of when the accused stands or sits.

C Adapt to the national context.

1. PRODUCTION AT COURT

- What happens first? .....> The accused is identified
Who identifies the accused? .....> The clerk/other
After identifying the accused, what does the clerk/other do? .....> The clerk/other reads the charge out to the accused
Then, what does the prosecution do? .....> Either, the prosecution asks for the charge to be put, or asks for an adjournment

2. ENTERING A PLEA – IF A CHARGE IS PUT

- If the charge is put, what does the clerk/other do? .....> S/he asks the accused to stand, reads the charge, and invites the accused to enter a plea of guilty or not guilty.
What is the accused supposed to do next? .....> Decide whether s/he is ready to enter a plea.
If the accused does not understand the charge or wants legal advice, what can the accused do? .....> The accused can ask for an adjournment.
Why would the accused ask for an adjournment? .....> To consider the matter and take legal advice.
If the accused understands the charge fully what does the accused do? .....> If the accused is ready, s/he will say 'guilty' or 'not guilty'.

3. ASKING FOR AN ADJOURNMENT

- Why would the prosecution request an adjournment?.....> To continue their enquiries or prepare the papers for trial/committal to a higher court
- What does adjournment mean? .....> To put the case off to another date
- How long can the accused be kept in custody? .....> Not longer than 15 days/or other time period
- Can the accused ask for an adjournment? .....> Yes, as above

4. ASKING FOR BAIL

- At this point, before the accused is taken back into .....> The status of bail should be reviewed custody what should happen?
- This is the time for what? .....> For the accused to make a bail application
- If the accused has had a bail application refused.....> The accused can argue change of circumstances what can s/he do?

5. SUMMARISE ORDER OF EVENTS

1. The accused is identified by the clerk/other
2. The charge is read
3. The prosecution either asks for the charge to be put or requests an adjournment
4. If the charge is put, the accused will be asked to enter a plea
5. If the accused understands the charge s/he can enter a plea of Guilty or Not Guilty
6. If the accused requires legal advice, s/he can request an adjournment
7. The status of bail is reviewed
8. The accused makes his / her bail application
9. If the accused has had a bail application refused, the accused can argue a change in circumstances.



STEP 2: INSTANT FORUM THEATRE / COMPETITION - How far can you get?

- 1 Invite a player up. S/he plays the accused, and talks his/her way through the process by saying 'firstly, I am identified' 'Second, the charge is read' etc.. The aim of the 'player' is to get through the court proceedings without making a mistake.
- 2 Invite the audience to listen carefully, and to shout 'FREEZE' if they feel a mistake has been made, or a part of the procedure missed out.
- 3 Invite the accused to admit if s/he knows that a mistake has been made. Anyone who notices a mistake then jumps in and takes over from the point at which the 'player' made a mistake.

DEVELOPMENT: Leave the rest of the court in place and invite the participants to act out the part of the procedure the 'player' has started.



TIP Encourage the participants playing clerk, judge etc. to act out their parts as dramatically as possible and to be creative.

For example, when identifying the accused give him/her an imaginative name; or when reading the charge, make up an elaborate, or detailed crime (eg: that you stole a suitcase from a MP while the MP was visiting his sick grandmother)

You don't have to get all the way through the procedure the first time you play the game.

VARIATION

Set up the court, and throw out questions to the audience, so that they determine the next step in the procedure.



STEP 3: COPY AND ADD

- Invite a group of 10 into the space. The first begins, eg:
- At my first appearance in court I will: be identified by a clerk
  - The second follows, repeating the sentence by the first person, and adding, eg:
At my first appearance in court I will: be identified by a clerk, then sit down,
  - The third follows, repeating and adding, eg:
At my first appearance in court I will: be identified by a clerk, then sit down, then the prosecution will either ask for the charge to be put; or for an adjournment

VARIATIONS

There are many games you can play with this order of events. You can invite groups or teams to perform the order in a dramatic way, through freeze frame images, or through a song, hold a competition and judge the best group.

Adapt the activity for proceedings in the Juvenile / Child Justice Court.

ACTIVITY 2: GUILTY OR NOT GUILTY?

- **Learning point:**
- What happens if a plea of Guilty or Not Guilty is entered?
- **Paralegal Action:**
- Brief discussion
Guessing game



STEP 1: DISCUSSION

Fire questions at the participants:

Guilty Plea

- What happens if the accused enters a Guilty plea?.....➤

What happens if you disagree with the facts as .....➤
read out? ie. it didn't happen in precisely that way

When does this happen? .....➤

What is your purpose when you address the court? .....➤

At what point can the magistrate proceed .....➤
to sentence?
- The prosecution opens the facts of the case.

You wait until the prosecution has finished and tell the court your version of events. If your version amounts to a defence, the charge will be put again so that a Not Guilty plea is recorded and the matter adjourned for trial. If your version otherwise disagrees with the prosecution who is making you / the offence out to be worse than you are / it was, you need to correct that impression (see paralegal notes below).

After the prosecution has finished, you will be asked if you have anything to say.

To put your side of things, tell the court about yourself and future prospects and persuade the court not to send you to prison or to argue for a reduced prison sentence.

After you have addressed the court in your 'plea in mitigation' and when the sentencer feels s/he knows enough about you.



NOTE: In juvenile / child justice court proceedings, a report should be prepared by the relevant body (probation or social services) giving the background to the offence and home circumstances of the young person.

Not Guilty Plea

- What happens if the accused enters a Not Guilty plea? .....➤
- The case is adjourned for trial
- Why might there be further adjournments? .....➤
- Witnesses/lawyers/magistrates fail to appear, or the case is not ready.

STEP 2: SUMMARY

If plea is Guilty

The accused or prosecution open the facts before the judge/magistrate
The defence enters plea in mitigation
The magistrate/judge proceeds to sentence; or adjourns to allow time to prepare a report; or for additional information to be provided.

If plea is Not Guilty

There will be a trial
The matter will be adjourned to another day
A date for trial will be fixed.



STEP 3: ACTORS CHOICE ROLE PLAY

- 1 Invite 6 participants up. Split them into groups of 2. One accused, one policeman, one magistrate.
- 2 Each group decides if the accused in the group has just entered a plea of Guilty, or Not Guilty.
- 3 Then each group acts out for the audience what happens AFTER the plea has been taken.
- 4 The audience must shout out as soon as they have guessed what the plea was, 'it was Not Guilty.'
- 5 The next three must then do the same, until both groups have acted out their pleas.
- 6 Encourage the game to move fast. Ask the performers to run into the centre, act out their small piece of court procedure, and as soon as the audience has guessed correctly they run out and sit down.
- 7 Invite another 6 and repeat.



STEP 4: DISCUSSION

Adjournments

There may be any number of adjournments because:

a) you are not produced at court by the police/prison;

b) witnesses fail to appear;

c) prosecution is not ready; or any other

If the adjournment is not your fault and there appears to be no progress, you should APPLY FOR BAIL since it is outside your control and constitutes a change of circumstances.



PARALEGAL NOTES: GUILTY PLEA

1. If a person admits to the offence charged then there is no need to hold a trial. The trial is for the purpose of establishing guilt or non guilt.
2. A plea of Guilty means that the person accepts the prosecution version of events. It is therefore important to know what the prosecution version is. If there is any disagreement with parts of it ('I did not say that' – 'it did not happen quite like that') but agreement with the substance ('there was a fight and I did hit him over the head in the course of it') then the details can be corrected by the lawyer in mitigation, or the defendant where s/he has no lawyer
3. Mitigation is quite technical and very important. The accused should be represented in serious matters (ie: rape, armed robbery or other offences attracting long sentences). It should not be rushed and the content should include all relevant details (see PLC 5)

Making a Plea in Mitigation

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What is a Plea in Mitigation
- The good points to make in a Plea in Mitigation

GAMES: CAT AND MOUSE
TANGLES AND KNOTS



MATERIALS: FLIP CHART
MARKER PEN



ACTIVITY 1: Plea in Mitigation

✓ **Learning point:** The good points to make, and how to make a plea in mitigation
Paralegal Action: Various role-plays



OPTION 1: COMPETITION ROLE PLAY

If the group numbers less than 50 proceed as follows.

- 1 Divide participants into smaller groups. The group EITHER has to create / agree on the circumstances of the crime and then come up with what the accused must say in court OR you can use the examples below.
- 2 Each group nominates an 'actor'. Give the groups 5/10 minutes to decide what the actor will say in making the BEST POSSIBLE Plea in Mitigation.
- 3 One at a time, invite each group to perform. The other group members take other roles in the court.
- 4 Establish the facts of the story for the audience by asking the group key questions about the why/when/where/what and hows, or by using the example scenarios.
- 5 PLAY!
- 6 The audience rates each plea after each group has performed. PLs also rate each plea against the 'paralegal notes' which they use to declare a winner at the end of the exercise.
- 7 Finish with asking participants to shout out the 'good points to make' in a plea of mitigation. Don't prompt them. Keep asking, is there anything else s/he can say? What else can help or 'aid' his/her plea in mitigation?



TIP

Only focus on the moment when the accused makes his/her plea. Do not worry about court proceedings before or after.

EXAMPLE SCENARIOS**1 THEFT:**

I was in the bar, I saw a wallet on the table, and I picked it up.

Ingredients for mitigation:

I have never done anything like this before.
 I saw an easy opportunity
 I regret what I did
 I fully admitted everything to the police
 The property was restored OR I used the money to feed my family

Personal circumstances:

I have a job
 I have a family
 I will never do anything like this again.

2 COMMON ASSAULT:

I was in the bar, I was drinking, so was the victim, we had an argument. We had a fight.

Ingredients for mitigation:

I am not normally a violent man.
 I made full admissions to the police
 I am sorry it happened.

Personal circumstances:

As above + it was a bad day: I had received bad news/family member was very ill/argument with boss/spouse/etc

3 BURGLARY/HOUSEBREAKING:

A group of friends were passing a house at night – the lights were off. Someone said let's go and see what they've got – we entered we took a TV, HI-FI. We sold them all and split the proceeds.

Ingredients for mitigation:

First offence
 Full admissions
 I used the money to feed my family
 I regret
 I offer compensation
 I call the head teacher/the chief/elder (other respectable members of the community) to say this act was out of character and what a good person I really am.

Personal circumstances:

As above.

**OPTION 2: INSTANT FORUM THEATRE**

For any number of participants:

- 1** Invite a participant to play the part of the accused. Draw the facts of the case from the audience.
- 2** Once the facts are established invite the actor playing the accused to begin making his/her plea. Invite the audience members to shout 'stop' if they feel a mistake has been made.
- 3** Any audience member that shouts stop, should first state what they thought was wrong, then jump up and take the role and continue.

- 4 When the 'actor' has finished, ask the audience if they are satisfied. If any one can think of anything else that the 'accused' can say in his/her plea, they jump up and continue the 'plea'.
- 5 Repeat this a number of times with different 'actors' and different cases.



OPTION 3: GAME - BUZZ COMPETITION

- 1 Split the group into two or more teams. Give each team a 'buzzer' noise that they can use to stop the action – (beep, baa, meh, woof, or any word – apple, mother, the President's name etc...)
- 2 You, the facilitator, then act out a Plea in Mitigation, making deliberate mistakes such as 'I am not sorry for what I did' or 'I have no family' or 'I don't intend to get a job'.
- 3 Ask the teams to 'buzz' as soon as they notice the mistake – they state what it is and if it is right they get a point. Record scores on flipchart.



TIP

You can use Option 3 to emphasise certain good points or 'aids' that have not been mentioned. It doesn't matter if you are obvious, eg: 'There is no way I would ever ask a respectable member of the community to write a letter to the court for me.' Or 'I would never want a witness to tell the court that I'm a good person.' Be careful that such statements don't emphasise the bleak situation for some prisoners – eg: 'No one would ever write a letter for me.' You can make the examples a little ridiculous, so that you are sensitive to the harsh reality some participants face.



PARALEGAL NOTES: MAKING A PLEA IN MITIGATION

Link with PLC 18 on sentencing and community service, making it clear that these good points would support an alternative sentence of community service in place of a term of imprisonment.

HOW TO MAKE A PLEA IN MITIGATION

Style of address: Your worship/other **C**

Good points to make in mitigation

- this is a **first offence** (therefore out of character, not the way you usually behave)
- I am **in work** (set out the job you have and income you bring home and how long you have had it and what the effects of imprisonment will be – ie you will lose your job; if you are a farmer or work for yourself, say so)
- I am a **family man** (wife, state number of children and other dependants, their ages); or I am a mother of young children; or single parent head of household

NB: In this PLC, try to cover a wide range of cases, establishing some of the facts yourself if necessary. The examples above cover minor/common offences. More serious offences involving violence/breach of trust, where an apology and evidence of remorse are especially important, as well as cases where several charges are involved are not dealt with here. These serious cases should be referred to a lawyer as the circumstances surrounding the offence will need to be explained and character witnesses produced. Eg:

Circumstances of the offence – this could involve a whole range of factors, such as:

- **Financial pressure** – if so go into the surrounding facts and circumstances in which the offence was committed: ie: need not greed – did not profit from the offence – had debts to pay
- **Degree of provocation** – if violence was used, the degree of provocation (remember being drunk is neither an excuse nor very good mitigation); or emphasise the use of violence was not excessive (ie you hit him once and that was it).

Remorse

I am sorry for what I did (and a Guilty plea indicates remorse). This sounds better if it is supported by evidence that you have made an offer of compensation to the victim, or at least an apology in writing. Saying it in court is better than not at all. In sexual offences, this is especially important.

Where several offences are involved:

Argue for concurrent terms (ie to run together) as they were all linked (ie you are a burglar and stole from a number of houses over a period of time and as a result, you face three or four charges. You should argue that since the nature of the offence is the same and you have admitted them all, the court should roll the sentence into one rather than impose consecutive terms – see below).

Aids:

- pay or offer restitution/compensation in advance if possible or at the time if not
- offer an apology (better if it was already made prior to plea – as above)
- letter to the court from a respected local member of the community
- call witnesses to come and tell the court what a good person you really are; how surprised everyone is and that this offence is entirely unlike you (out of character)

Sentence: concurrent or consecutive – if there is more than one offence to sentence on, the magistrate/judge must indicate whether the terms of imprisonment s/he has imposed should follow one after the other (consecutively: ie theft 2 years, burglary 4 years and manslaughter 10 years = 16 years) or be rolled up into one sentence and run together (concurrently), therefore making a total of 10 years.

When should the sentence start: from the date of arrest or judgment of the court? Normally when the magistrate/judge passes sentence s/he will indicate when the sentence should start from. Your lawyer should make it clear if there is any doubt. For if the matter is not clearly stated on the committal warrant (ie the document setting out the length of sentence authorizing the person's detention in prison), then the prison authorities will start the sentence from the day of judgment, rather than from the day you were first incarcerated.

Legal representation: it is a requirement under IHRL that every person who is detained, including every sentenced prisoner shall have the right to consult confidentially with a legal practitioner of his or her choice to be informed of this right promptly and where the interest of justice so requires to be provided with such services of a legal practitioner by the state (ICCPR Art 14). In homicide cases it is mandatory for the state to do so unless otherwise so decided by the accused.

ACTIVITY 2: GOOD POINTS TO MAKE**SONG: Good points to make**

Finish with a song on the good points to make in mitigation.

Use the 5 steps to create a song with the whole group, or invite smaller groups to create their own.

Include the following points:

MY FIRST OFFENCE
I AM IN WORK
A FAMILY MAN WITH DEPENDENTS
I WAS NOT AS WRONG AS IT APPEARS
I AM SORRY
IF MANY OFFENCES, PASS ONE SENTENCE
I'VE PAID COMPENSATION

I OFFERED AN APOLOGY
A LETTER FROM A RESPECTED PERSON
PEOPLE WILL SAY I'M A GOOD PERSON

VARIATION - USE "COPY & ADD" FOR THE ABOVE POINTS

ACTIVITY 3: WHAT SENTENCE WOULD YOU PASS?



Learning point: How mitigation affects sentencing
Paralegal Action: Instant theatre role-plays



INSTANT THEATRE ROLE PLAY

- 1 **Outline scenario:** A man is out of work, his family are hungry, he steals 3 chickens.
- 2 **Set up scene in court.** Ask for 2 volunteers: one prosecutor, one accused
- 3 **PL 1** takes prosecutor aside and provides the facts s/he is going to summarise.
PL 2 takes accused aside and reminds him of the good points to make in mitigation.
- 4 **PL reads the charge,** eg: Theft of three chickens
Q (to the audience): what sentence do you immediately think of?
- 5 **Prosecution summarises the facts**
What sentence do you think of now?
- 6 **Accused enters plea in mitigation.**
What sentence do you think of now?
Has the sentence gone up or down at any stage? Why?
Does anyone hold a strongly different view to everyone else? Why?
- 7 **Repeat the above with the other situations, eg:**
  1. Theft by a civil servant. A large sum of money was stolen (PL to include: in a position of trust, large sum of money, no recovery, spent on luxury items).
  2. Serious violence: Grievous bodily harm with intent (savage beating, almost died, unprovoked, vicious).
  3. Other...

PLC Action:

Identify those participants going to court shortly and who intend to enter a plea of guilty, and invite them, if they wish to practise their pleas in mitigation after the PLC.

Encourage them to write down their points and rehearse them in groups in their own time.

Note juvenile offenders charged with a serious offence and refer their cases to friendly lawyers willing to take on pro bono work.

Summary Trial - Order of Events

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- The events that take place in a summary trial and their order
- What each event in the trial means

👉 **NOTE:** this PLC may be conducted in two separate though consecutive sessions

GAMES: FISH FOCUS



MATERIALS: FLASH CARDS PRE-PREPARED WITH DETAILS OF THE IMPORTANT DETAILS OF EACH EVENT. WRITTEN IN ENGLISH AND VERNACULAR LANGUAGES, AND/OR SYMBOLS – SEE PARALEGAL NOTES BELOW



ACTIVITY 1: THE ORDER OF EVENTS

- ✓ **Learning point:** What happens in a summary trial
- A **Paralegal Action:** Your choice
Song
Activities you can use, from PLC 4, Activity 1:
How far can you get, Player Leads, Copy and Add, Image

👉 **NOTE:** Point out that the group has looked at what happens in a plea of Guilty. Now you are looking at what happens when a plea of Not Guilty is entered and the matter is listed for trial.

STEP 1: PROCEDURE ACTIVITIES

Use the activities in PLC 4 listed above and use the questions below to explore and strengthen the group's knowledge of the following procedure.

- 1 Prosecution case
  - i. The police/prosecution open the facts of the case.
  - ii. Calling the evidence – a witness enters the witness box to give his/her account of what happened.
  - iii. Cross-examination of witness – this is your turn to put questions to the witness.
  - iv. Re-examination of the same witness – the prosecution can ask the witness further questions to clarify any of the answers to your questions.
  - v. Prosecution 'closes' his case
- 2 Defence case
  - i. The accused gives evidence – tells his/her story of what happened
  - ii. Calling witnesses – First ask for their account. Then they will be cross-examined by the prosecution, and re-examined by you
  - iii. Defence closes case
- 3 Closure
  - i. Final Speeches – Both prosecution and defence sum up their case
  - ii. The Magistrate/Judge considers his/her verdict.

Example questions

To lead participants through the procedure (questions directed at "accused")

How does the prosecution start?	S/he opens the facts of the case
How does s/he prove the case?	S/he calls witnesses
How do you test what the witness is saying?	Cross-examining them (asking them questions)
How does the prosecution deal with any confusion that may have been created?	By re-examination (asking them questions)
When the prosecution has finished with his/her witnesses, what does s/he do?	S/he closes the case
How do you prove your case?	By calling witnesses (starting with myself)
How does the prosecution test your story?	Cross-examines you/your witnesses
How do you deal with confusion the prosecution has created?	By re-examination (asking them questions)
How do you finish your case?	I close it
How does the procedure end?	The prosecution summarises the evidence in a final speech followed by the defence, who does the same
And finally:	The magistrate retires to consider his/her verdict.



STEP 2: SONG

Use this list to make a song with the participants, putting actions to each stage. Repeat until learnt. Use again.

1. Open facts
2. Prosecution witnesses
3. Cross-examination
4. Re-examination
5. Prosecution closes case
6. Defence witnesses
7. Cross-examination & re-examination
8. Defence closes case
9. Speeches
10. Verdict

Once the steps are known by the participants, repeat 'HOW FAR CAN YOU GET?' or other.

DEVELOPMENTS

1 FREEZE AND QUESTION

1. Whilst participants are going through the procedure, call 'FREEZE' at important moments. (See games in PLC 4.1)
2. Ask the actor 'why is this important?' Throw the question to the audience if s/he struggles. Or during the section of Calling the Evidence – you could ask the actor playing the accused 'What are you not allowed to do here?' This draws attention to key information that participants must know. See paralegal notes in PLC 8.

2 IMAGE SEQUENCE

1. Ask a group of 5 to find images for each step
2. These images can then be performed in a sequence with either one person or the whole group announcing the title of each image. ie 'Calling Witnesses.' Encourage participants to be as creative as possible – they do not have to make the image of the picture in court. The image does not have to have any literal or obvious meaning. Eg. The group could crouch on the ground and be frogs for 'special witnesses.'

 **NOTE: Break the first session here, if you wish.**

ACTIVITY 2: THE EVENTS OF A TRIAL



Learning point: The details of each event in a summary trial



Paralegal Action: Group performances



GROUP PERFORMANCES

- 1 Split the group into smaller groups of 10.
- 2 Give each group member, or 'actor' a pre-prepared flash card, each with the details of a 'step' on it.
- 3 Each actor has one STEP that s/he is in charge of. This means that they can choose what the other 9 actors will do and/or say for that step.
- 4 Each actor directs the rest of the group as to what image or action they are to perform during that step. Encourage creativity by reminding the groups that they do not have to show exactly what happens in court. They can be as imaginative as possible – they can make a dance out of the 'steps', they can create strange images and/or use voices different to their own chanting etc. The only thing they must do is get the key information across.
- 5 Give the groups 15 minutes to prepare what they are going to perform. Encourage participants to move from one step to another swiftly – the idea is to give the audience something interesting to watch. Once they know what they are doing, advise the groups to run through their sequence a couple of times.
- 6 When the groups are ready: watch and encourage the audience to applaud each group.



TIP

Encourage participants to use the following for the different steps:

- actions they can repeat during each step, or do as a group (eg pointing at the audience, stamping, jumping, turning, crouching etc.)
- use as much of the acting space as possible
- different speeds: from running to walking very slowly
- different levels: from lying on the floor to standing tall
- different actions: that do not have to make any logical sense
- different voices: from chanting to singing; from loud to soft
- repetition: the actor in charge of the step can ask the rest of the group to repeat certain key words



Summary Trial - Order of Events



EXAMPLE (act this out with your fellow paralegals and a few volunteers):

FLASHCARD ONE

Actor, standing tall facing the audience moving up on to his tip-toes, chants loudly:	'Step 1: the police or prosecution open the facts of the case. This will be a summary of the allegation and the witnesses that will be called to prove the case'
The rest of the group, crouching around him rhythmically pointing their fingers at the audience, or at the 'actor', repeats in a whisper:	'prosecution opens with summary and witnesses' Or more simply: 'Summary and witnesses'

FLASHCARD TWO

Actor, sweeping arms in a grand welcoming gesture sings in high pitched melody:	'Step 2: Calling the evidence'
The rest of the group stands as closely behind the 'actor' as possible and poke their heads out to repeat:	'Evidence'

FLASHCARD THREE

Actor shakes head from side to side, stamps feet and spits out the words as quickly as physically possible:	'The police calls the first witness. S/he enters the witness box and takes an oath. S/he 'swears to tell the truth the whole truth and nothing but the TRUTH'
The rest of the group tiptoes as quickly as they can, echoing in a whisper:	'nothing but the TRUTH!' or, 'truth' 'truth' 'truth!'

And so on...



Don't spend too much time explaining – let the groups get on with creating their own performances. You can go round each group and help if ideas are getting stuck. Remember there is no right or wrong. Watch out for the natural leaders in each group – make sure that each actor is the one deciding what the rest of the group should do for his 'step.'

Once participants have done it a few times, their ideas will flow more easily.



NOTE: the aim of this activity is not to 'act' out what happens exactly in court – the aim is simply to learn the significance of each event. This is an opportunity for participants to be creative.

VARIATION - WORKING WITH A THEME:

You repeat but this time give the troupe of 10 something to BE for the duration of their performance, for example – elephants – trees – dogs – old men – young girls – minibus drivers, for example. This is meant to be funny.

FLASHCARDS

- Step 1

The police/prosecution open the facts of the case
This is a summary of the allegation and the witnesses they will call to prove the case.
- Step 2

Calling the evidence
A witness is called to the box.
She 'swears to tell the truth the whole truth and nothing but the truth'.
The witness gives her account of events.
IMPORTANT: The accused must not say anything at this stage.

- Step 3

Cross-examination

The accused puts questions to the witness. This is very important

The accused must put forward his/her account

Cast doubt on the prosecution's version

Show the witness is inaccurate/wrong/lying/mistaken
- Step 4

Re-examination

The prosecution may ask more questions to clarify a confused/confusing point; or to limit damage caused by the cross-examination
- Step 5

Special witnesses

Usually police officers or doctors, or other experts

Often with an exhibit – eg. A knife or interview, photograph or blood stain
- Step 6

The prosecution 'closes' his case – after calling all evidence
- Step 7

Defence case

The accused gives evidence

S/he does not have to – but it is best to as a general rule in the magistrate's court
- Step 8

Calling witnesses

Call them in one at a time

Ask them to give their account

Let them be cross-examined by the prosecution

Re-examine the witness to clarify some of his/her answers
- Step 9

Final speeches

The prosecution summarises the case

The accused summarises his/her case
- Step 10

The magistrate retires

To consider his/her verdict and write up the judgment



TIP

Encourage participants to look for other phrases to express the steps. Eg: Re- examination: Clear the mist.



Finish the PLC with song + actions





PARALEGAL NOTES: STEPS IN A SUMMARY TRIAL

- Step 1**   **The police/prosecution open the facts of the case**
This will be a summary of the allegation and the witnesses they will call to prove the case
- Step 2**   **Calling the evidence**
The police will call the first witness. S/he will enter the witness box and take the oath (depending on his/her religion). S/he 'swears to tell the truth the whole truth and nothing but the truth'. The prosecution will then ask the witness to give his/her account of what happened. You are not allowed to ask any questions or say anything at this stage (however monstrous the lie/story being told by the witness). When the witness has finished giving his/her account, then it is your turn
- Step 3**   **Cross-examination**
This is your turn to put questions to the witness. This is very important. It is at this time you must put forward your account, so that the magistrate hears your side, takes a note of it and can observe the reactions of the witness and what s/he says in response to the matters you ask or put to the witness. It is also the time when you cast doubt on the prosecution version of events: to show that the witness is inaccurate, confused or mistaken in his/her recollection and therefore cannot be relied on to the standard of proof required in criminal courts (satisfied beyond all reasonable doubt)
- Step 4**   **Re-examination**
This simply means the prosecution can ask questions to clarify those you asked and which may have cast doubt. Once this is over, the witness leaves and another enters and the same procedure is repeated. This goes on until the witnesses are exhausted
- Step 5**   **Special witnesses**
Some (usually police officers or doctors) are called to produce an exhibit (such as a knife or interview). Again you have the opportunity to question them.
- Step 6**   At the end of calling his evidence, the prosecution 'closes' his/her case.
- Step 7**   **Defence case**
This usually starts with you giving evidence. You do not have to give evidence. You can remain silent and simply say the prosecution has not proved its case. You may need to be a lawyer to be sure of that, however, so it is best (in magistrates courts) to give evidence
- Step 8**   **Calling witnesses**
As with the prosecution, you can call your own witnesses. Call them in one at a time. Ask them to give their account and then leave them to be cross-examined by the prosecution. Make sure they cover the important points of your story and support the account you have given (eg: they were with you and you could not therefore have been at the scene of the crime; or the light was very bad and there was a lot of confusion, so it was impossible to say who was doing what). Once the prosecution have cross-examined the witness, then ask further questions by way of re-examination to clarify or explain any doubt or confusion cast by the prosecution's cross-examination
- Step 9**   **Final speeches**
The prosecution can then sum up the case to the magistrate or not. Then it is your turn. If the case is short, your address will be short too. There is no point repeating facts/evidence that were heard minutes before. The purpose of the speech is to summarise the evidence in your favour and show it in its best possible light. Point out doubts in the prosecution case or aspects that appeared uncertain and claim the benefit of these doubts/uncertainties
- Step 10**   The magistrate will then retire to consider his/her verdict and write up his/her judgement.

Cross Examination (XX)

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- How to conduct a cross examination (XX)
- Model cross-examinations of witnesses

GAMES: CALL AND RESPONSE
SIMON/JOHN SAYS
MIRROR EXERCISE



MATERIALS: FLIP CHART



ACTIVITY 1: RECAP OF SUMMARY TRIAL

- ✓ **Learning point:** Steps in a Summary Trial
Paralegal Action: Call and Response Discussion



DISCUSSION

Ask what happens during each step of a Summary Trial



TIP

Keep your questions brief. Eg: What happens next? What else? And?

ACTIVITY 2: XX MODEL

- ✓ **Learning point:** How to XX a witness
Paralegal Action: Call and Response
Paralegal demonstration of XX Model



STEP 1: CALL & RESPONSE

Repeat the following until all participants have learnt it (use actions)

Purpose of trial: To find out what really happened

Purpose of XX is ONE: Cast doubt on the prosecution's version of events.
TWO: Put your version of the events by casting doubt and putting your challenges.

Simply, XX is:
ONE: Casting doubt
TWO: Putting your challenges



STEP 2: DEMONSTRATION

PART 1. CASTING DOUBT

- 1 Paralegals act out the following model for the accused conducting XX. One PL XXs, the other takes the role of the witness. Ask audience to observe.

Outline the allegation:

I am identified as the person who started the fight at night in a bar. The prosecution witness has given evidence to say he saw me go over to the victim and punch him in the face and then sit down again.

**TIP**

Fire questions at speed (so rehearse it well)

a. Scene Setting:

How many people were there?
Was it noisy?
What time of day was it?
Do you go there often?
Are you a regular drinker?
How far were you away from the fight?
In paces? Metres?

b. Credibility of the witness:

Had you been working that day?
Were you tired?
Had you been drinking?
How much?
Were you drunk?
Do you have a clear recollection, or were you hazy from the drink, the late hour?
Were you with friends?
Or drinking alone? Or with someone else?
Are you married? Were you with your wife?
Were you looking around you all the time, or chatting to your friends, or the people around you?

c. Detail:

What was the lighting like?
Could you see clearly?
Was it strip lighting?
How many lights were there?
Have you seen me before?
Do you know me?
You say you have a clear recollection: what was I wearing that night?
What was I carrying?
Who was I with?
Where was I sitting?
Why did you notice me?
Did you watch me all the time?

2

Ask participants, what just happened?

Is the witness's version of events as clear as it seemed in the beginning?

3

Repeat the questioning as above. This time, stop after each stage and ask the audience, what am I doing?



You, the facilitator must be aware of why you are asking the questions. Summarise how you have cast doubt on a) the scene; b) the credibility of the witness; and c) the detail

PART 2: PUTTING CHALLENGES

As well as casting doubt, you need to put your 'challenges' to the prosecution's version of events when they conflict with yours.



GOOD POINT TO MAKE

THIS IS THE MOST IMPORTANT PART OF XX – EVEN IF YOU DO NOT CAST DOUBT, YOU MUST CHALLENGE THE PROSECUTION CASE, IE PUT YOUR OWN VERSION OF EVENTS SO THAT THE MAGISTRATE CAN SEE HOW THE WITNESS RESPONDS.

- 1 PL plays accused giving XX, audience now plays witness – using the same bar scene as above. Ask (to re-cap):
What was the atmosphere like? (noisy)
What was the lighting like? (dark)
How would you have described the situation (confused/drunken/disorderly)
- 2 PL informs audience – now I'm going to put my challenges:
I suggest it was too noisy to have heard any one person above any other. Wasn't it?
I suggest it was dark, smoky, crowded; the situation was confused. Wasn't it?
I suggest you were too far away to get a clear idea of what was going on. Weren't you?
I suggest you were distracted and not paying attention. Weren't you?
I suggest you were drunk, or in a state of drink, and your recollection cannot be relied on. Can it?
You could not have seen these events as clearly as you pretend. Could you?
You did not see me hit anyone. Did you?
You are a reasonable person, you will agree with me that there is room for doubt. Isn't there?
- 3 Ask the audience what happened? Draw attention to how the questions were courteous, but by painting a detailed picture proved the situation was MORE confused and doubt-filled than the prosecution had originally claimed.

KEY POINT

MAKE IT VERY CLEAR WHY EACH PROCESS NEEDS TO HAPPEN. ENCOURAGE THOSE THAT WILL HAVE TO CONDUCT THEIR OWN CROSS EXAMINATION, THAT THEY SHOULD DEMAND A PEN AND PAPER IN COURT.

ACTIVITY 3: GETTING BETTER AT XX



- Learning point: How to XX a witness
- Paralegal Action: Game: Developing powers of description
Instant forum theatre



NOTE: This will take careful preparation and rehearsal.



STEP 1: GAME - Developing powers of description

Ask, at random various different participants, the following questions focussing on light, space, distance, measurement, numbers, sudden action:

- How many people are here?
- How many people in your cell?
- How big is your cell?
- How many windows does it have?
- What's the lighting like in the day time? At night?
- What's the weather like today?

You, describe what that person is wearing?
 What does he look like (distinguishing features)
 How far is he away from you?
 How far is he away from me?
 What just happened over there (someone waved a hand/moved away/someone pushed someone/someone laughed)
 (note to paralegal, run across space) How fast did I just move?
 What is the atmosphere like?



STEP 2: NARRATED ROLE PLAY

- 1 Narrate the following story – invite participants to act it out.
 It is raining, early evening, a group of 6 are leaving a football match, their team has just lost, they are walking down the street, a couple of them are drinking from cartons, another two people run towards them, one takes something from the pocket of one of group – the two run off round a corner, the six give chase.
- 2 FREEZE the action, ask the actors to relax and sit down.
- 3 Ask participants questions to re-create the scene – focussing on the following:
  - Time of day – Light
  - Weather
  - Number of people – confusion/distractions
  - Distances (where relevant – ie. where witnesses were in relation to the act)
  - Speed of events
  - Atmosphere – presence of alcohol or drugs or mood
- 4 Now, continuing the story, someone is arrested. Invite a participant to play the accused in court. Invite one of the six to play the witness. Take the accused to one side, and explain the following:
  - You are innocent
  - A crowd ran round the corner
  - You were running home and had nothing to do with the incident
  - The crowd grabbed you and took you to the police, where you were arrested
  - The police forced a confession out of you.
- 5 Tell the accused: you have three minutes to ask questions that cast doubt on what happened
 Begin the XX.
- 6 When 3 minutes are up, invite the audience to comment on the XX: what was good, bad or could have been done better. PL take over the XX if the participant is struggling.



NOTE: Keep going over the two aims of XX.



STEP 3: INSTANT FORUM THEATRE

- 1 Invite a group up to play the parts in the court, plus a volunteer to play the 'accused'.
- 2 Set the scene and establish the facts of the crime from the audience.
- 3 PLAY! Conduct XX
- 4 Invite the audience to say 'stop' if they think something is wrong/or could have been done better.
- 5 If an audience member does this, they must state what they think was wrong and continue the action. Keep a mental note of anything that goes wrong that no one notices.
- 6 Continue to play, with new scenarios, until you feel that the important points about conducting a XX have been covered.

ACTIVITY 4: ELEMENTS OF CONDUCT

- **Learning point:** How to act during cross examination
- **Paralegal Action:** Demonstration
Actors Choice



STEP 1: DEMONSTRATION

- 1 Either a PL, or a participant acts out the following elements of conduct in each scene.
- 2 First time deliberately doing it wrong, the second time doing it right.

SCENE 1: Tone

- Scene: Court.
- Facts: You are XX-ing the policeman who beat you in custody. You are challenging his account of events.
- Wrong: The actor screams and rants:
You ....! You beat me! You forced me to sign a confession! You kept me without water in a stinking cell, you wouldn't let me go to the toilet, you didn't feed me! Look at these scars.... You ... liar!
- Ask: WHAT IS WRONG WITH THAT?



KEY POINT

It is important, however angry you may be, to keep your voice measured and steady and to try and remain polite and calm.

- Better: The actor carefully says in a calm and courteous voice:
- Thank you officer, I know this is difficult for you and you will not find it easy to answer my questions because I suggest to you that your account is a lie. Isnt it?
- I suggest you forced me to sign my confession, didn't you?
- I suggest you beat me, didn't you?
- I suggest you caused these injuries, didn't you?
- I suggest you deprived me of water, access to a toilet, and forced me to sleep in poor conditions without food or bedding, didn't you?

SCENE 2: Speeches & Questions

- Scene: Court
- Facts: You are XX-ing a witness who is a known enemy of yours, who claims you committed some offence or other
- Wrong: Making an angry speech
- You have always been the same, since I've known you you've hated me and had it in for me. You've tried to get me into trouble before. You weren't even there, you only heard what happened from someone else.
- Ask: WHAT IS WRONG WITH THAT?

NOTE: Avoid Speeches. Put your points into questions. Your time will come for this at the end, now keep questions short. You can ask as many as you like, so avoid wrapping a number into one.

Better: We've known each other for a long time, haven't we?
 I think it's fair to say that we don't like each other that much, do we?
 You could say we have a history, couldn't you?
 I suggest you were never there, were you?
 I suggest you heard this from someone else, didn't you?
 Let's be clear, you've got it in for me, and this is a chance to settle old scores, isn't it?

SCENE 3: Repetition

Wrong: You weren't there (yes I was)
 You're lying (no I'm not)
 Yes you are, you didn't see anything (yes I did)
 Why aren't you telling the truth! (I am)
 YOU'RE LYING!!!! You know I had nothing to do with this !!! (yes you did)

Ask: WHAT IS WRONG WITH THAT?



KEY POINT

If the witness says s/he is not lying, there is no point insisting that s/he is. Therefore put the challenge and leave it at that.

Better: I suggest you are lying, aren't you?
 I suggest you didn't see anything, simply because you weren't there, were you?

SCENE 4: Stick to the point

Wrong: It was really very dark that night, and you don't even know me do you?
 And I didn't do it, and you were too far away anyway weren't you and you're lying.

Ask: WHAT IS WRONG WITH THAT?

NOTE: Don't go firing off questions all over the place. Finish one point before moving on to another

Better: What time of day was it?
 What was the lighting like?
 For how long have you worn glasses?
 Was it raining hard?
 How far away would you say you were?
 I suggest you couldn't see anything clearly, could you?

Ask: WHAT POINT AM I STICKING TO?

Final points to make:

Making challenges: Where the witness says you did something and you are emphatic you did not, then you must say so – eg: this did not happen; or I did not do that; or it was not like that at all, what happened was this ... If you want to add: you are lying, then do so.

Suggestions & Courtesy: are a good idea – eg: it was a long time ago and you cannot be sure now can you?
 Or: do you agree that it could have happened another way and that you might have forgotten?

**STEP 2: ACTOR'S CHOICE - Do's and Dont's**

This makes an energising re-cap, and gives participants the chance to practise their conduct during XX (ie manner/expression/tone)

- 1 Put the audience into teams. Give them each a 'buzz'
- 2 After setting the scene, give the actor playing the accused the choice between the right 'tone' and the wrong 'tone' – don't tell the audience what choice you are giving the actor. You might have to involve the actor playing the witness and give them a 'choice' also.
- 3 The audience 'buzz' as soon as the actor is doing 'right' or 'wrong'
- 4 Go through all the do's and dont's in this way.

PLC Action:

1. Encourage prisoners in groups to rehearse their XX using the model, in their own time.
2. Find out who is defending themselves, and who needs disclosure from the prosecution lawyer, prioritise young persons and women.

PLC 7B CROSS-EXAMINING A POLICE OFFICER ON THE ADMISSIBILITY OF A CONFESSION

This can be done as a separate PLC

ACTIVITY 5: INSTANT THEATRE - 'He beat it out of me'



DEMONSTRATION

- 1 Use the same outline as in Activity 1 and 2. The paralegal facilitator demonstrates 'the model', playing the accused, followed by handing the role play over to the participants.

Example scenario of conducting XX of police officer.

The police have said your confession was genuine and you signed the statement voluntarily. You claim you were beaten and so scared you would have signed anything to stop the intimidation and beatings.

NOTE: Tone is very important here: be calm and respectful

PART 1 - Scene setting

Number of people present at the interview	who else was in the interview room apart from yourself and myself – there are two other police officers – why so many?
Time of the interview	what time did it take place – why so late at night – what was so urgent?
Length of time	if my confession was voluntary, which I deny, why did it take so long to record?
Independent observer	did you ask me if I wanted a lawyer/paralegal present or someone else? Did you give me the opportunity to contact my family? Am I suspected of being a terrorist or something – why was this denied?

PART 2 - Challenges

Put them at the outset

- This confession was extracted from me through fear and physical assault
- You beat me and shouted at me and threatened me with worse if I did not confess to this
- There was another officer present who witnessed your conduct (name him)
- I totally refute your version of events: I signed this statement because I was terrified of you and what you would do to me.

Lead into a series of questions stating what you allege the police officer did to you.

- Did you not shout at me and call me names?
- Did you not threaten to arrest my relatives and hold them hostage if I did not confess?
- Did you not hit me in the face a number of times?
- Did you not strike me with a stick on my back a number of times?
- Did you not threaten to injure me?
- If not, can you explain how I received these injuries and that they were noted by prison officers when I was produced at prison?

- 2 Ask participants, what just happened? Is the policeman as confident now as he was at the beginning?

- 3 Repeat the questioning as above. This time, stop after each stage and ask the audience, what am I doing?



NOTE: You, the facilitator must be aware of why you are asking the questions.
There is persistence, but no repetition.
The tone is calm and courteous, which makes the allegations all the more terrible.

- 4 Now invite participants to XX the policeman – who is now played by the facilitator.

PLC Action:

Encourage prisoners in groups to rehearse their XX using the model, in their own time.

Conducting Your Defence

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- How to conduct their defence
- How to put their case

👉 **NOTE:** These activities require careful preparation and rehearsal. It is advisable to prepare participants in advance.

GAMES: GUESS THE OBJECT



MATERIALS: FLASHCARDS



ACTIVITY 1: ALL ABOUT CONDUCTING YOUR DEFENCE

- ✓ **Learning point:** How to conduct your own defence.
A **Paralegal Action:** Game
Demonstration
Instant Theatre Role-Play



STEP 1: GAME - Guess the object

SEE Part 4, page 132



STEP 2: DEMONSTRATION - Model Defence Role-play

- 1 Narrate the following story, splitting roles between PLs and participants. PL 1 takes on the role of prosecutor and PL 2 the accused. Rehearse the role play in advance.
- 2 Make a shop using participants as shelves, the door, the till etc.
- 3 Use flashcards to read from and summarise the scripts set out below.
- 4 Demonstration as below:

PL 1 makes the allegation:
You were seen by the person on the till picking a packet of biscuits and hiding them under your shirt. You left the shop without paying and were detained.

PL 2 gives the defence account :
I am innocent
I was in a hurry
I went into the shop to buy something and forgot what it was, I saw the biscuits and I picked them up without thinking.
I didn't mean to steal them and simply forgot to pay.
They weren't under my shirt they were in my hand.
When I was stopped so rudely, I dropped them on the ground.
Of course I offered to pay, I had money, but the shop refused to accept my offer. I was angry about this.
Of course I struggled because people had gathered and I felt humiliated and was being treated like a common thief.

Prosecution XX

Immediate challenge

- PL 1 I suggest, a common thief is exactly what you are.
PL 2 No I am not, I am a respectable member of my community

Setting the scene

- PL 1 The biscuits were out of sight of the till. Weren't they?
PL 2 Don't know
PL 1 The store was busy at the time?
PL 2 Don't know
PL 1 People were coming in and out?
PL 2 Don't know
PL 1 There was only one person on the tills?
PL 2 Possibly
PL 1 There were no other staff around?
PL 2 Don't know

Details

- PL 1 Why were you looking around you in the shop all the time?
PL 2 I don't think I was, unless I was looking for something
PL 1 Why did you run out of the shop?
PL 2 I was in a hurry
PL 1 Why did you struggle when you were stopped?
PL 2 I was grabbed, and I didn't know who by
PL 1 Why were the biscuits under your shirt?
PL 2 They weren't
PL 1 Why did you not purchase anything?
PL 2 Because I couldn't find what I was looking for
PL 1 How much money did you have on you?
PL 2 I think, if I remember, enough

Put the challenges

- PL 1 You saw there was only one person there on the till.
PL 2 No
PL 1 You saw it was busy.
PL 2 No
PL 1 You took the opportunity to steal something and run.
PL 2 No
PL 1 You had money to pay.
PL 2 Yes
PL 1 You hid the biscuits under your shirt.
PL 2 No
PL 1 You struggled because you were guilty.
PL 2 Not at all

Calls witnesses

- PL 2 I call my witness, Mr AB.

- 5 PL 2 invites a member of the audience to play the witness

(enter witness who is sworn)

PL 2   Are you Mr AB? Could you give the court your address?
Where were you on the 4th of June this year?
Could you give the court your account of what you saw take place?

Witness AB   We had just been visiting my family
We were on our way back home, when the accused said he wanted to go into the shop to get something.
There were a lot of people around, and I waited outside. He came out and was suddenly seized by a
couple of people. There was a lot of shouting. I didn't know what was going on. I was told he'd stolen
something.
He's a good man, I've known him a long time, he's an old friend.
He's got a family and a job, and this isn't his style at all. He's no thief.

Prosecution XX

PL 1   How long have you been a friend of the accused?
AB   Years
PL 1   Would you say he's a good friend?
AB   Yes
PL 1   Your best friend?
AB   Yes
PL 1   So you would support him of course, if he got into trouble?
AB   Yes
PL 1   With the law?
AB   Yes
PL 1   Even give evidence in his favour?
AB   No
PL 1   Even tell lies to help him? On oath?
AB   No. Nonsense.
PL 1   What did you see?
AB   As I told you...
PL 1   How far away were you?
AB   About 5 paces.
PL 1   What time was it?
AB   Late afternoon.
PL 1   What were you doing?
AB   Just waiting. Talking to people
PL 1   It was clear the people who seized your friend were employed by the supermarket wasn't it?
AB   Not at the time. It was quite sudden.
PL 1   They were in uniform?
AB   Yes, I saw afterwards.
PL 1   Are you sure you didn't see anything fall from under his shirt?
AB   No nothing.
PL 1   You're his friend, so you would support him in good times and bad times?
AB   Yes.

Prosecution closes his/her case

PL 1   That is my case, your worship.

Final Speeches

Prosecution

PL 1   He was caught red handed
There was clear evidence of the cashier
The biscuits were found hidden under his shirt
He struggled because he was guilty

The evidence of his friend amounts to nothing, he didn't see anything.

Defence speech

PL 2   Your Worship/or other form of address, I am not a thief
 I have never stolen anything in my life
 I have a job
 I don't need to steal
 On that day, I was in a hurry
 I was distracted
 The biscuits cost X
 I didn't hide them, I was carrying them openly
 I offered to pay
 I had the money to pay – why would I lie for X?
 Everyone says the shop was busy. If the cashier was on her own, how could she have seen everything
 she says she saw, when she had so much to do herself?

- 6 One of the paralegals turns to the audience:
  - Are you sure beyond all reasonable doubt?
  - Is he Guilty or Not Guilty? Why?
  - Let a general discussion develop about the verdict, was the defence effective?
  - Was there anything else that could have been said in his defence? (note: short final speech to avoid unnecessary repetition)
- 7 The other PL takes a note of the discussion, to inform subsequent role-plays



STEP 3: INSTANT FORUM THEATRE - Conducting your defence

- 1 Invite participants one after the other to conduct their defence, call witnesses and close their case. Set the scene and establish the facts from the audience.
- 2 Take one step at a time – outlining defence, being cross examined, calling witnesses and making final speech.
- 3 Invite the audience to rate each participant (could be a mark out of 10, or good/excellent) and explain why it was good or not.



PARALEGAL NOTES: PUTTING THE DEFENCE FORWARD

- Tell your story: speak slowly and distinctly. The magistrate will take notes, so do not rush.
- When you have finished, the prosecution will then question you (cross-examination as above). S/he will suggest that his/her version is true and yours fabrication. Or s/he will say that you intended to do what you did (when your account is that you did not). Don't try and be clever. Just answer his/her questions simply and clearly.
- Call your witnesses.
- When you have finished calling your witnesses, you close your case ie you say to the magistrate words such as: 'That's my case, your worship'.

PLC Action:

Encourage prisoners in groups to rehearse a defence using the model in their own time.

Jury System (capital cases only)

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What the jury is
- What the purpose of the jury is
- Verdict
- Majority verdict
- Hung jury

C Adapt this PLC to the national context

GAMES: COMPETITION
CALL AND RESPONSE



ACTIVITY 1: WHAT AND WHO ARE THE JURY?

- ✓ **Learning point:** Main facts about the Jury
- A** **Paralegal Action:** Discussion
Song



STEP 1: DISCUSSION

1 Begin by throwing questions at the participants based on the paralegal notes below.

Eg:

- How are murder cases tried?
- How do jurors learn their duties?
- How does the jury decide if the accused is guilty or not guilty?
- How does the jury reach a verdict?



STEP 2: SONG

Use the 5 steps to co-creating a song. Key facts to put into a song: (the idea here is that the song would be built around a call and response format. It does not have to be! Be creative – make your own lyrics.)

What does a jury do?	A jury tries all murder cases
Who is the jury?	The jury is made up of 12 ordinary citizens
How do the jury swear to do their job?	They take a solemn oath
How do the jury make up their minds?	The jury will look at the evidence and THE FACTS
What must the jury be?	The jury must be fair and neutral
Who applies the law?	The Judge applies the LAW
How does the jury agree a verdict?	The jury must all agree or by a majority



TIP

Allow the participants time to learn the lyrics, and get the tune of the song. It is worth spending time finding the right song, that has the appropriate feel to it.

ALTERNATIVE: COMPETITION

Use the above questions, or vary as you wish.

ACTIVITY 2: HOW A JURY REACHES A VERDICT

- **Learning point:** Understanding more deeply how the Jury reaches a verdict.
- **Paralegal Action:** Instant theatre role-play
Song



STEP 1: INSTANT THEATRE ROLE PLAY

 **NOTE: this does not have to be played as if in a court situation.**

- 1 Invite 12 participants to play the jury.
- 2 Use the case studies in Section 2, Part 5 or pick the facts from the audience, or create your own stories.
- 3 Let the jury hear the facts of the case.
- 4 The scene takes place in the jury's room. Let the jury discuss their opinion, and vote until all are agreed or there is a majority verdict. The paralegal facilitator plays THE CHAIR, and must help with any facts that are unclear.

FACTS NEEDED BEFORE THE DRAMA CAN BEGIN:

The circumstances of the crime and the main details of the case.

- 5 The jury must decide their verdict in front of the audience.
- 6 Repeat with new cases.

**TIP**

Encourage the actors playing members of the jury to act out as realistically as possible how they would think and feel about the facts of the case. What more do they need to know? Also encourage the actors to be aware of performing for their audience. Every one must hear what they are saying. To help this – you can position actors who are playing the jury, one metre apart.



PARALEGAL NOTES:

- Q: If the accused knows someone on the jury panel and knows that he bears a grudge against the accused; or if the accused recognizes someone to be related to the family of the victim or to a police officer what should the accused do?

A: The accused challenges their presence in the jury and request that they stand down (by giving the reasons)
- Q: But jurors know nothing about the law, why should they be trusted?

A: They do not need to know anything about the law. This is the function of the judge. Their job is to listen to the account given by both sides, through the evidence in the form of witnesses, or real objects (ie a knife, club etc) and come to a view whether they are satisfied so that they are sure the person accused of the crime is guilty of it.

ACTIVITY 3: VERDICT



Learning point: Understanding what a verdict is
Paralegal Action: Call and Response knock-out competition



STEP 1: CALL AND RESPONSE

- 1 Call various 'verdicts'
- 2 Invite participants to shout 'Not Guilty' or 'Guilty' or 'Hung'
- C** Adapt to national context

11:1 say s/he's Guilty: GUILTY
 10:2 say s/he's Not Guilty: NOT GUILTY
 9:3 say s/he's Not Guilty: HUNG
 8:4 says s/he's Guilty: HUNG
 7:3 says s/he's Guilty: HUNG

- 3 When participants are getting the answers quickly – add actions, and play KNOCK-OUT!

DEVELOPMENT

Repeat the same as Activity 2. This time, give three of the actors the job of disagreeing with the majority verdict.



PARALEGAL NOTES: JURY SYSTEM

1. All murder trials are tried by the jury.
2. Jurors are non-lawyers. They are ordinary citizens who are oriented before they try any one.
3. They are formally sworn in as jurors. They take a solemn oath to determine the case on the evidence and act impartially.
4. The jury tries the FACTS in the case.
5. The judge applies the LAW.
6. The jury must take the law from the judge; the judge must take the findings on the facts from the jury.
7. The jury reach a VERDICT ie an agreement among themselves on the accused's guilt or non-guilt. At the end of the trial, the jury is asked if they have agreed on their verdict if they answer yes, then the foreman stands and is asked what is the verdict of the jury. He will answer either Guilty or Not Guilty.
8. It may be the foreman indicates that they cannot agree on a verdict in which case the judge will either give them more time (and reach a majority verdict), or s/he will discharge the jury and order a re-trial at a later date.
9. A majority verdict differs from country to country (see Appendix) **C**
10. If the judge disagrees with a jury's verdict, there is nothing s/he can do. They alone judge the facts.

Discussion point:

Do you think the jury system is fair? Why not? What would you recommend in its place?
 (Paralegals note the observations made to inform policy development/change).

SECTION 2, Part 3

Introduction to Criminal Law



Definition of a Crime

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What is a crime?
- What makes an act criminal under the law
- Criminal intent

GAMES: TANGLES AND KNOTS



GUESS THE OBJECT

MAKING LARGE OBJECTS FROM THE LANDSCAPE

SLOW MOTION RACE AND FIGHT COMPETITION

ACTIVITY 1: WHAT IS A CRIME?



Learning point:

The difference between an act prohibited by law and an accident.

Paralegal Action:

Short Discussion

Narrated role plays



STEP 1: SHORT DISCUSSION

- 1 Begin with an open discussion:

What is a crime? (see KEY POINT below)

- 2 Encourage as many responses as possible, don't give an answer yet.



STEP 2: NARRATED ROLE PLAYS - Is it a crime?

- 1 Invite your 'players' into the acting space.
- 2 Narrate a series of role plays that include firstly, children under 7, an insane person and dramatic ACTION demonstrations – that are accidents, but not crimes. Ask the audience to watch each one and note if any amount to a crime. Don't explain what you are about to do, just do it!
- 3 Review each situation and ask if any amounted to 'crimes'. Encourage the discussion. At the end of each one, provide the answer. For example:
  - A 6 year old girl stabs her brother with a knife. PLAY!
  - A mad person walks into a shop, takes a tube of toothpaste and leaves without paying for it. PLAY!
  - A crashing ladder on building (encourage participants to play the parts of objects) and falling bricks injures someone underneath. PLAY!
  - On a busy bridge, a person is pushed and losing balance, falls against another person who falls into the river. PLAY!
  - Your dog attacks another person. PLAY!
  - You chop down a tree which lands on someone's head. PLAY!
- 4 None of the above amount to crimes. All were accidents save the first two which are not capable of being crimes as the girl is under the age of criminal liability and incapable of knowing right from wrong as she is too young; and the person in the second example is insane and therefore incapable of knowing right from wrong.



NOTE: Certain acts may carry **CIVIL** liability (ie a claim for damages) but on the facts above, none of the examples amount to a **CRIME**.

- 5 Narrate a series of dramatic action demonstrations involving real crimes.
- 6 Always ask 'Is this a crime?' after each act. For example:
  - A person goes up to another and punches him to the ground
  - Someone picks the pocket of another
  - Four men march into a bank, with guns, spray the place with bullets, take the money and run.

KEY POINT

A crime is an act which is prohibited by law and which a person commits knowing what s/he is doing to be wrong and nevertheless goes on to do the act.
So, you must **DO** something which is **WRONG** and which you **KNOW** is wrong, and **INTEND** the consequences.

ACTIVITY 2: A CRIMINAL ACT

- ✓ **Learning point:** The act must be wrong in law, and cause some harm (whether physical, financial, social or otherwise) and be intended.
- A** **Paralegal Action:** Re-cap
Instant theatre role plays

STEP 1: RE-CAP

Let's look at the criminal act – repeat: you must **DO** something which is **WRONG**, and which you **KNOW** to be wrong and **INTEND** the consequences



NOTE: vernacular translations need to be checked for accuracy and standardised in use



STEP 2: INSTANT THEATRE ROLE PLAY

- 1 Invite an actor to 'commit an act'. Invite others to be in the scene.
- 2 Set the scene and establish the facts using the examples below.
- 3 Some examples give actors a choice, some don't: follow the steps.
- 4 Invite the audience to observe the action to see if the 'actor' commits a 'crime'.
- 5 **PLAY!**
- 6 Repeat with different actors and new scenarios.

EXAMPLES

Examples of role-plays to give actors – sometimes it might be necessary to ask actors to work together to decide whether the act will cause harm or not.

- 1. Invite 6 people up. Stand them in a line, close together: this is the queue for the minibus. The paralegal at one end is closest to the road. The person at the far end pushes his neighbour, who falls against his neighbour etc. And the paralegal at the end falls into a road and is knocked down by the oncoming car (acted out by the other paralegal).

What happened?	Someone died.
Who caused the death?	The man who pushed at the head of the line or the one next to the deceased.
Was a crime committed?	No, because neither INTENDED harm, nor could either have KNOWN the fatal consequences of what happened.

2. You are in a bar and you enter into an argument with someone. The argument becomes heated. The person suddenly attacks you when you have offered no violence or threat of violence towards him

Has the person committed a crime? **Yes, he has committed the offence of assault.**

3. Football match: you are in the upper stand, by the railing and in your excitement you jump up push someone over the wall and s/he is severely injured

Did you commit a crime? **No, because you didn't INTEND harm, nor could you have KNOWN the fatal consequences of your actions.**

4. You are driving an ox-cart through the village and making the oxen run faster and faster. Someone shouts: 'hey, watch out!' But you carry on whipping up the oxen. A child is in the way and you cannot stop them in time and a child is run over

Did you commit a crime? **Yes. You did not intend to run over the child, but you must have known there was a risk of someone being hurt by such driving. Someone called out and you took no notice.**

5. A lends B his jacket. B finds cellphone in jacket pocket. B puts the cellphone in his own pocket. A comes up to him and asks 'was my cellphone in the jacket pocket?' B says 'no'.

Did he commit a crime? **Yes. It started as innocent, but when he discovered the phone he did not give it back and when he was asked, he denied ever seeing it. This amounts to theft.**

 **NOTE: Make sure you advise participants to ACT any harmful act, and to be careful not to actually cause harm! Use slow motion.**

 PARALEGAL NOTES: CIVIL VS CRIMINAL LAW (SEE **A)**

Where an act does not amount to a criminal offence is not to say there is no fault or liability in law. The question is: which law – criminal or civil? In the examples given, there may well be a cause of action in civil law (ie in tort) for damages/compensation. But it is advisable not to get drawn into this discussion unless you have to as this is a matter for expert legal advice.



STEP 3: SUMMARY THROUGH DISCUSSION

- Drawing upon the points raised above eg:
- Can a child under 7 commit a crime?
  - Can someone who has a mental illness commit a crime?
  - Is ignorance of the law a defence?
  - Etc



STEP 4: SONG/CHANT

For a crime to be committed there must be what?

Participants: **an act**

PL: Which is?

Participants: **wrong**

PL: And?

PT: **causes harm**

PL: And which you

PT: **know is wrong**

PL: and?

PT: **intended**



PARALEGAL NOTES:

- The act must be wrong and directly cause the harm. Most people generally know what is a criminal act. The law usually follows common sense. Everyone knows theft is wrong and if your conscience tells you what you are doing is dishonest, that is a good guide. Sometimes an act starts quite innocently then ends in a crime – when a person goes too far.
- No act is sufficient by itself. It must be accompanied by a guilty mind.
- You must intend the consequences of your act; or go ahead and don't give a thought to the consequences. Pleading ignorance of the law ('I didn't know what I did was wrong') is no defence.

In summary:

- A crime is made up of two parts: the act (actus reus) and the guilty mind (mens rea). Unless these two parts are present, no offence is made out.
- The principle is simple to state and more complex to apply. There is no certain answer to anything which is why judges are so fond of saying 'each case must be tried on the merits'.
- Further, the act must directly cause the harm complained of.
- When in doubt, refer to a lawyer rather than guess otherwise you may mislead.



Evidence

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What is evidence?
- Different types of evidence
- Why use evidence as proof?

GAMES:



- FISH FOCUS
- IMAGE GAME
- GUESS THE OBJECT
- CHANGE THE OBJECT
- MAKING LARGE OBJECTS FROM THE LANDSCAPE (WHAT AM I?)
- SLOW MOTION FIGHT COMPETITION

ACTIVITY 1: PICKING APART A CRIME SCENE



- Learning point:** What evidence is
- Paralegal Action:** Discussion
Instant Theatre role-play
Character questioning
Discussion



STEP 1: DISCUSSION

Throw questions:

What proves a crime was committed?	Evidence
What is evidence?	The testimony of the witness, the wound, the knife, the photo, the blood sample etc



STEP 2: INSTANT THEATRE ROLE PLAY

- 1 Invite participants up to act out a typical murder scene
- 2 Invite the rest of the group to set the scene and establish the facts. Encourage participants to add colour to the scene – including details such as the time of day, the mood of the characters, the relationship between characters, what was going through the minds of those characters, the details of the action
- 3 Allocate enough character parts so you have witnesses, people who didn't see anything, but heard what happened, two potential suspects who were, for example, involved in the fight. Other community members who are prominent figures but were not there at the time
- 4 Ask the audience to watch the action carefully, to SPOT THE EVIDENCE



NOTE: Remember, it is what people actually saw happen that can amount to evidence.

- 5 PLAY!
- 6 FREEZE the action
- 7 Ask the audience to remember the evidence they saw

- 8 New scene, same story: Later that week, there is gossip in the village about the crime and lots of people accusing certain people who have bad reputations. PLAY!
- 9 FREEZE the action and ask whether this is evidence against 'the accused?'

 **NOTE: This is HEARSAY and NOT evidence**

- 10 New scene: Look at 'the body' - imagine and describe the marks on it.
  - Q: Where should these be noted?
  - A: **In the post-mortem.**
  - Q: What is the significance of the marks and why is it important whether there was one blow or a series of marks?
  - A: **The number of wounds and location of the wounds can either assist the defence or hinder it** (eg: if the defence was self-defence and the wounds were in the back of the deceased - this may present some difficulty; however if the accused showed that he had wounds to his hands and wrists from defending himself against a knife, these would obviously assist his case).



STEP 3: CHARACTER QUESTIONING

Maintaining the same scene

- 1 Discuss the crime scene with the participants. Keep the actors in character in the acting space - so that questions can be thrown back to them.
  - o What evidence was there?
  - o Where did the weapon come from?
  - o Where is it now?
  - o Who saw what?
  - o From which angle did you (particular witness) see the crime take place?
  - etc...

- 2 You can ask the actors to 'rewind' and perform the act in 'slow motion' if certain moments are unclear.
- 3 Repeat a few times with different scenarios to bring out the learning in the paralegal notes below.



TIP Encourage participants to add colour and reality to the story and then unravel it bit by bit, and consider what is capable of being evidence and what is not - eg: the knife, the club, gun, bullets and fingerprints (see below under real evidence)

VARIATION: NARRATED ROLE-PLAY

- 1 Invite 20 participants into the space.
- 2 PL narrates story. Create narrated role plays that tell a story where there is a number of different types of evidence, including hard evidence and witnesses - some more reliable than others.
- 3 Also throw in a number of other things that could be mistaken for evidence, such as 'I heard' or community gossip, or a weapon with someone else's fingerprints on it.
- 4 Ask the audience to call out 'stop' if they see or hear something that could be used in evidence as proof of a crime.
- 5 Change the exercise, by stating that certain things amount to evidence when they clearly do not.
- 6 Invite the audience to shout 'stop' when they think you are wrong.

ACTIVITY 2: NAME THE EVIDENCE

**Learning point:** Confirmation of learning of different types of evidence**Paralegal Action:** Competition

STEP 1: COMPETITION

Decide teams, and 'buzz' words or sounds (eg: Stop! Vroom! Beep!)

State the crime

Invite the teams to buzz, if they can think of evidence that proves guilt.

EXAMPLE

Armed robbery (saw it take place, heard the shots, guns found on suspects, bullets in bodies matching the guns);

assault (saw it take place, bruise/blood);

dishonesty (saw it/heard it first hand, accused found in possession of stolen item).

Discussion points

- What do people think about this law? Do they think people should be protected by such rules?
- What do they think about traditional justice? Do they think customary law is more just or more fair than the formal courts? Why (encourage discussion and note the observations)?



PARALEGAL NOTES: EVIDENCE

In criminal cases everyone is presumed innocent until they are proved guilty. At the center of proof lies evidence. It is the evidence against an accused that convicts him/her of the crime.

Evidence is anything that is relevant to proving what really happened AND is produced at court AND is admissible against the accused. Some matters may be highly relevant but NOT admissible as evidence – eg: the reputation of the accused (nasty piece of work). Other 'evidence' may have been obtained through pressure (ie police treatment to obtain a confession) and therefore inadmissible.

The purpose of evidence rules is to ensure so far as possible that the case is tried on the facts and objectively verifiable truth. The rules are there to protect the accused from arbitrary judgement. If the police do their work, they should gather the evidence to prove the case against an accused. If they do not, then the accused will be acquitted (including those who are guilty).

The Laws of Evidence are complex and this is not the place to go into them in detail. Accused persons will need to consult with their lawyer who will advise them. Anything may or may not be evidence depending on the purpose for which it is being put forward.

Real evidence

The knife used to stab, the club used to beat, the gun and bullets to shoot the person – these are real objects and are called 'real' evidence. They are 'exhibited' in court (ie physically produced).

Police can conduct tests on these objects to see if they really were the weapon used to inflict the injuries – they can test the blood to see if it matches the victim/accused; they can test for fingerprints to see if they match those of the accused; they can test the gun (ballistics) to see if the bullet found in the deceased matches the gun found on the accused etc. The development of science in this area has gone a long way to prove conclusive guilt in some cases eg: rape – whether the DNA in the semen stain matches the accused; the issue then turns on consent. In the case of burglary, a single fingerprint can prove conclusively that the accused was there – the burden on him is then to establish he was there for innocent purposes, and so on.

Burden and Standard of Proof

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- The role of the prosecution
- What is proof?
- The burden of proof
- The standard of proof

GAMES: IMAGE GAME
A SCALE IN THE SPACE



MATERIALS: MARKER / LARGE PIECE OF PAPER
BALL EG. SCRUNCHED UP PAPER
PRE-PREPARED & REHEARSED SCRIPT FOR ACTIVITY 2



ACTIVITY 1: WHAT IS PROOF?

✓ **Learning point:** How a person is proved guilty
The Burden and Standard of Proof

A Paralegal Action: Preparatory game
Short discussion
Song
Narrated & Instant Theatre role plays



STEP 1: REPRESENTING THE 'STATE' OF A HUMAN MIND

- 1 What does a human mind do?
- 2 Invite a group to be impulsive performers – their task is to respond with their bodies and voices to represent the different 'states' you will describe.
- 3 Demonstrate an example first – PL1 plays the person who is IN the situation, PL2 'REPRESENTS' the 'STATE' of the mind.

PL1 I've just had an AMAZING idea!

PL2 uses his/her body and voice to FIZZ and POP like a fizzy drink – for example, stamps legs as wide as possible, makes fast sweeping motion with arms, and flicking/shaking of hands and fingers with explosion noises.

- 4 Describe the following states – and encourage the 'impulsive actors' to respond as WILDLY, EXTREMELY and IMAGINATIVELY as possible.
  - You are thinking so hard your brain feels like it will explode
  - You are working out a puzzle but do not know the answer
  - You have just discovered something wonderful
  - You have just had the shock of your life
  - You are extremely worried about something
  - You are certain of the answer



STEP 2: DISCUSSION

What is the role of the prosecution?

- The role of the prosecution is to bring the case against you, on behalf of the people of the state or the Republic.

What is the prosecution interested in?

- The prosecution is not interested in your guilt or innocence but in the justice of the matter.

What happens if the prosecution finds evidence in your favour?

- If s/he finds evidence in your favour, s/he should pass it over to you or your lawyer.

What if the prosecution uncovers evidence that proves your innocence?

- If s/he uncovers evidence of your innocence, s/he should immediately stop proceedings.

How does the prosecutor prove his/her case? What does s/he bring to the court to prove it? Eg:

- Witnesses
- Confession statement
- Weapons
- Other illegal items/objects
- Photographs
- Fingerprints
- Ballistics
- Medical samples
- Clothing
- Rope etc

What do these amount to?

- Evidence
- After this evidence has been examined, looked at, inspected, questioned, it PROVES the case.



STEP 3: SONG

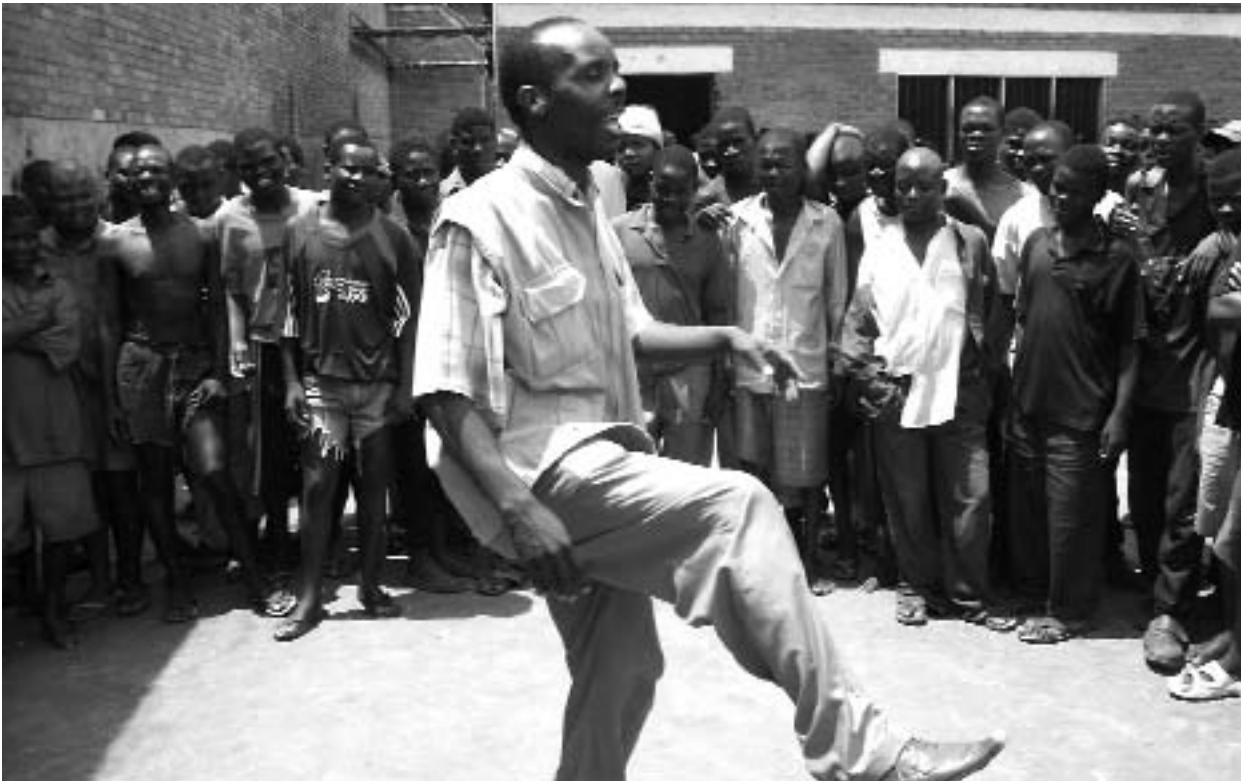
Suggested lyrics are: **Brings case, produces evidence, amounts to proof**



STEP 4: NARRATED ROLE PLAY

The idea is now to ACT and realise how someone's state of mind can change.





Looking at how the human mind moves from:

the state of **DENIAL**

through **QUESTIONING**

DOUBT

SUSPICION

SERIOUS DOUBT

CERTAINTY

- 1 Invite everyone to play 'A Scale in the Space'.
- 2 Once participants have the idea, invite an actor to play 'the human mind' of a certain male character – of your choice (eg: The kindest/wickedest chief ever known). Position him at the left side of the space. Characterise the whole audience as being the BODY, HEART and SOUL of this character.
- 3 Place markers in the across the space – representing: denial, questioning, doubt, suspicion, serious doubt, and the final marker for CERTAINTY. If 'the human mind' is getting too close to the 'certainty' marker and he's not near the state of certainty, move it away from him.
- 4 Narrate the story below – and throw the question to the audience about what the state the mind is in, at each stage of the story. Each time the audience move to a new stage, 'the human mind' takes a step forward. You will need to guide this.

STORYLINE



NOTE: Emphasise throughout this story that the husband and wife have had no previous problems in their marriage, they love each other very much, and have always trusted each other.



TIP

If the mind / body doesn't react to each stage of the story as the answer suggests, reiterate the point, ask more guiding questions – and if the mind / body are certain of the 'state' the mind is in, go with it.

5 Narrate the story to the audience:

A: You and your wife love each other very much, and you trust each other.
Someone tells you your wife is cheating on you with another man.
What is your reaction?

There's NO WAY she would do that!
DENIAL – human mind stays standing still

B: Two friends you trust then say to you, you know your wife is cheating on you?
Would you ask her?

YES
QUESTIONING – human mind moves one step forward

And if she says no, do you believe her?
YES

C: Others say they have heard rumours. You have noticed she has been acting strangely of late.
Do you really believe her, or are you beginning to doubt her?

Well...
DOUBT – human mind moves another step forward

D: Your wife tells you she's going to visit a relative. That relative then comes to see you, and has not seen the wife.
What do you think now?

She's lied to me! I suspect she might be having an affair.
SUSPICION – human mind moves one step

E: She comes back home, you ask if she found her relative. She says yes.
Is your reaction still one of suspicion – or is it something else?

Yes. She lied.
SERIOUS DOUBT – human mind moves one step

6 BRIEF TIME-OUT

Ask the participants:
Who thinks the wife is cheating?

Remind all participants of the couple's love for each other.
Ask everyone: How many of you now think she is cheating on you (most should raise their hands)

Keeping hands raised. How many of you are certain? Why?

Is any one not certain? Why? (or, if no-one, ask if anyone has a single doubt)
How could you be absolutely sure?
She might have been doing something else in secret, earning extra money, or planning a surprise for the husband's birthday, for example

7 What event would make you 100% sure?

Catching her in the act! You come home and find her in bed with a man.
CERTAINTY – human mind takes the final step across the marker

Q: Is there anyone who now doubts whether or not she was cheating?
A: No of course not you caught her red-handed, in the act.

KEY POINT

Up to the moment of catching the person in the act, there was the possibility of a doubt. In the example, even if she lied about her relative, there could there have been an innocent explanation (she was planning something, she was buying something, she was up to something quite innocent which she did not want you to know about). Whispering, gossip and rumour – even strange coincidences – may be suspicious, even highly suspicious, but they do not amount to being sure and this is the standard of proof required in criminal matters: beyond any reasonable doubt – so that you are sure.

ANOTHER EXAMPLE

Theft by a long-standing, trustworthy house-worker – stages to follow

- 1. Find item missing – question
- 2. Guard reports odd activity by house worker – doubt
- 3. More items go missing – suspicion
- 4. Money left out. Only person in the house is house-worker. Money goes missing – serious doubt
- 5. Stolen property found in house of house-worker – certainty

Create your own example

VARIATION

The whole group of participants plays the 'human mind' of the husband. Different areas in the space represent the different stages, with one end being certainty, and one end being denial. All participants must move along this scale according to how close they are to certainty, or how close they are to denial.

ACTIVITY 2: BURDEN OF PROOF



Learning point: Burden of proof
Paralegal Action: Paralegal led ball throwing, following pre-prepared script
Game



STEP 1: DEMONSTRATION

- 1 PL states: the burden of proof in criminal cases is always on the prosecution to prove the case beyond reasonable doubt. In other words, the prosecution carries the **RESPONSIBILITY** of **PROVING** the **TRUTH**

The defence do not have to answer the evidence. They can say: 'Prove it! I am not saying anything. What you have amounts to suspicion and not to proof.' However where evidence is introduced by the prosecution, the evidential burden shifts to the defence to cast doubt on, rebut or otherwise answer that piece of evidence.

- 2 Holding a ball in your hand, tell the audience it represents 'the evidential burden' or 'responsibility'.
- 3 PLs face each other a few meters apart. One is the prosecution, one is the accused.
- 4 The prosecution holds the ball. He announces to the audience:

PL 1: I am the prosecution, I must prove the case, and the burden of proving it lies with me.

PL 2: (Playing the accused) **I am the accused, I am presumed innocent and do not have to prove anything.** (folding arms)

- 5 With each line – the PL throws the ball, the **evidential burden**, or **responsibility** to the other:

PL 1: I say you did (throws)

PL 2: **I deny it** (throws it back)

PL 1: This witness says he saw you

PL 2: **That witness is lying**

PL 1: This other witness also saw you

PL 2: **That witness was too far away and couldn't have seen anything**

PL 1: This witness was with you when you did it

PL 2: **I have a witness who will say I was with them, miles away, at the time.**

PL 1: This witness said you confessed to doing it

PL 2: **That witness forced me. I didn't do it**

- 6 Get rid of the ball. Repeat the same, elaborate as much as you like, but keep it short and quick. Invite the audience to assess on the evidence put forward whether the person is Guilty or Not Guilty?

KEY POINT

If the accused does not challenge, or cast doubt on what prosecution claims happened then the accused has failed to defend himself, and the assumption is that the allegation is right.

VARIATIONS

- a. Throw the ball at audience members, (who play the accused) in the same way as above
- b. Do the same with a summarised version of the court process – throwing the ball once from prosecution to defence, highlighting the point at which the burden shifts to the defence.



PARALEGAL NOTES:

Presumption of innocence

The criminal law is based on the presumption that a person is innocent until proved guilty (see Article 14(2) ICCPR). Any doubt must be resolved in favour of the accused. Presumption of innocence means the person must be treated as if s/he were innocent – therefore the press and authorities should not make comments or issue statements that prejudice the issue.

The burden of proof is always on the prosecution. However it is not static. The evidential burden can and does switch to the defence in the course of a case. For example, if a witness is called to prove the prosecution case and the witness is credible, then the defence will have to cast doubt on the accuracy of the witness' testimony if s/he is to be acquitted. It is no good sitting still and saying nothing when the prosecution are bringing forward damning evidence. The ball thrown into your court has to be thrown back.

Alibi: an alibi defence is where you say you were not at the scene of the crime and therefore could not have committed the offence alleged. The burden is on the defence to prove the alibi, ie you have to call the witness who will stand in court and testify that you were a thousand miles away at the time.

The standard is higher than civil proceedings where it is on 'a balance of probabilities'.



Common Defences - Absolute Defences

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What is a defence?
- Difference between absolute defence and partial defence
- The three absolute defences: Self defence, Insanity, Alibi.

GAMES: SLOW MOTION RACE
SLOW MOTION FIGHT COMPETITION
SIMON / JOHN SAYS
MIRROR GAME
WALK/RUN/SIT/FREEZE



MATERIALS: BASEBALL CAP
FLASH CARDS



ACTIVITY 1: INTRODUCING DEFENCE

- ✓ **Learning point:** What is a defence?
Difference between absolute defence and partial defence
Three absolute defences
- A** **Paralegal Action:** Demonstration
Brief Discussion
Call and Response Game
Testing knowledge with questions / competition



NOTE: the following activities will take particular planning and rehearsal and aim to bring out: 1 legitimate self-defence, 2 lawful defence of another, 3 unlawful and disproportionate use of force (fist to fist, stick to stick, gun to gun)



STEP 1: DEMONSTRATION

- 1 PL 1 walks up to PL 2 and theatrically slaps him in the face
PL 2 looks surprised, does nothing
PL 1 repeats
PL 2 looks even more surprised
(repeat a few times)
PL 1 approaches in slow motion to slap again
PL 2 punches PL1 in slow motion very hard in the face
PL 1 is knocked unconscious.
Is there anything wrong with that?
- 2 Invite volunteer to take the place of PL 2.
PL1 then repeats, as above.
Immediately PL 2 jumps in to PROTECT volunteer, with full body, and punches
PL1 unconscious.
Is there anything wrong with that?
- 3 PL2 takes the same volunteer aside and tells him that the process will be repeated but when PL1 comes into slap for the third time, he will produce a gun and shoot him dead. PLAY!
Is there anything wrong with that?
- 4 Ask the audience to recount and analyse the events they have just seen.

KEY POINT

Self defence is a complete defence to a charge of violence – be it assault, be it murder.

- 5 Name two other kinds of complete defence?
Insanity Why? (because an insane person cannot tell right from wrong)
- 6 Another? Alibi When you prove that you are somewhere else at the time the offence was committed and it was physically not possible to have committed the offence



STEP 2: SONG

Summarising 'Common defences'



PARALEGAL NOTES: VARIOUS DEFENCES

What is a defence?

Defences are the arguments and/or supporting evidence that an accused person puts forward at trial to win an acquittal. It is usually along the lines of 'I did it but have reasons for doing it which justify my acquittal.' Outright denial of having anything to do with the offence is not so much a defence to the charge as a refutation of it.

Some common defences

Self defence)
Insanity) absolute defences
Alibi)

Provocation)
Intoxication) partial defences
Duress)

An absolute defence is one that if made out requires an immediate acquittal. A partial defence acts to defeat the most serious charge but may not get the accused off the hook entirely. For instance, in a charge of murder, the defence make out that the accused was provoked by the behaviour of the deceased and reacted in an understandable way. This can have the effect of reducing the charge from – or acquit the accused of – murder and substitute manslaughter.

The plea: not guilty by reason of insanity is an absolute defence.
The accused may have committed the act but lacks the guilty mind because of his/her mental state, s/he is unable to appreciate the right or wrong of what s/he did.

Earlier, you recall it was stated that a criminal act has two elements: there is the act which must be accompanied by the guilty mind. If the accused through some 'defect of reason' fails to understand that what s/he did was wrong, then s/he cannot be guilty of an offence. A medical report on the mental state of the accused is required and the person is then remanded to a mental hospital until such time as s/he is fit to be released back into society.

KEY POINT

Mentally ill persons should not be kept in prison (Rule 82, SMR), instead they should be placed in a mental hospital. However where they are kept in prison, they should be treated with special care and receive adequate treatment (see MSW section IV. paras 95-97: www.penalreform.org **A**).

ACTIVITY 2: ABSOLUTE DEFENCES: SELF DEFENCE

**Learning point:** Self defence**Paralegal Action:** A series of short narrated role-plays, some use 'actors' choice' format.

STEP 1: DISCUSSION

What is self defence?

Short discussion to gauge the level of knowledge among participants.



PARALEGAL NOTES:

Acts which can amount to self-defence:

- You assault me and I use reasonable and proportionate force to defend myself
- I think that you are about to assault me and strike first
- You assault someone else and I hit you in order to protect that person

Acts which may not amount to self-defence:

- You assault me with your fists and I produce a gun and shoot you
- You assault me with a weapon and, having disarmed you, I go to another room and fetch a weapon which I use to assault you



STEP 2: NARRATED ROLE PLAYS

- 1 Invite a team of 'actors' up into the space.
- 2 Invite the audience to watch the action carefully – they will judge at the end.
- 3 Narrate the story one sentence at a time, to allow the actors TIME to act out each bit.
- 4 PLAY!
- 5 Call FREEZE when you have finished the short story. Ask the audience what they think, and why? After a series of role-plays – get new actors up. Keep energy high.

**TIP**

Advise the actors to 'play-act' in slow motion any scenes which involve violence.

SCENARIO EXAMPLES

Create your own.

- 1 Eliza assaults Mrs X with her fists. Mrs X produces a gun and shoots Eliza.
FREEZE
Is this self defence?
- 2 Emmanuel is in a bar, he has no money and the grumpy barman will not allow him to have a beer. Emmanuel pleads with the grumpy barman. The Barman insults Emmanuel. Emmanuel strikes the bar man across the face with his empty bottle. The barman grabs the empty bottle and smashes it to the floor. The Barman marches into the side room, and returns with a large club – the barman is now very angry and swipes Emmanuel across the face, knocking him to the floor.
FREEZE
Is this self defence?

**NOTE: it may be: it depends**

- 3 A lady called Innocent is walking down the path carrying water. A young man called Happy is following her, about 10 meters behind. Happy is skipping and singing about his love with whom he has just spent the night. Another man called Darkness jumps out of the bushes and throws Innocent to the ground. Happy sprints towards them, tries to pull Darkness off her, Darkness resists, Happy punches him hard in the face.

FREEZE

Is this self defence?

- Was the response 'reasonable'?
- Was the force 'proportionate'?

Repeat the same story above and change the ending to Happy beating Darkness repeatedly until he is unconscious, and ask the same questions.

- 4 Invite the audience to spot the difference between the next two short stories.

a. Abraham is driving a car with two ladies, Mercy and Hope. Abraham wants Mercy to marry him. Mercy refuses. Abraham stops the car in a rage, takes a weapon and hits Mercy in the head and knocks her out. Hope is unhappy that her sister is badly hurt. Abraham turns to Hope with the weapon in his hand. Hope pulls out a gun and shoots Abraham.

FREEZE

Is this self defence?

b. Abraham is driving a car with two ladies, Mercy and Hope. Abraham wants Mercy to marry him. Mercy refuses. Abraham stops the car, takes a weapon and hits Mercy in the head and knocks her out. Abraham turns to Hope with the weapon in his hand. Lowers his hand, puts the weapon down and turns around. Hope is unhappy that her sister is badly hurt. Hope watches Abraham as he gets out of the car. Hope pulls out a gun and shoots Abraham.

FREEZE

Is this self defence?

- 5 Repeat the same two again: change the weapon from a gun, to a stick.

In the next role play, tell the actors to act in 'slow motion'. Warn the actors in advance that you will ask them to make a 'choice' during the story. This time, simply narrate the beginning of the story – then hand it over to the actors to complete.

A is cultivating a field.

B sees him and shouts, 'this is my field'

A denies it

B rushes at A with his hoe raised.

A picks up his panga knife.

As B goes to strike, A hits B with his panga knife in the neck killing him instantly.

FREEZE

Is this self defence?

Was the use of the panga knife proportionate?

Repeat with different actors, making different choices

- 6 A husband is in the kitchen with his wife. The wife has not cooked enough food for the family. The husband raises his hand, and says 'this time I'll kill you'. She picks up a knife and stabs him.

FREEZE

Is this self defence?

Was there reasonable and proportionate force?

And...

A husband is in the kitchen with his wife. The wife has not cooked enough food for the family. The husband raises his hand to strike his wife. She runs from the room, and comes back with a knife and stabs him. FREEZE
Is this self defence?

Was it a reasonable and proportionate use of force?

- 7 A group of friends are watching a football match. One of them, Luke, supports the Bullets, the others all support the Wanderers. The Bullets win. All the Wanderer supporters are extremely upset. Luke is jumping for joy. The Wanderer supporters start pushing Luke. Luke falls to the ground.
FREEZE

The next day Luke with his friends attacks them with his fists. He injures one of them.
FREEZE

Is this self defence?

Repeat the story. This time, Luke hits the Wanderers supporters after they have pushed him to the ground. Is this self-defence?

- 8 Two men are seen with knives holding up a woman on a bicycle. A group gather. The two men flee. The group give chase and catch them. They beat them unconscious and one from the group lights a fire and pulls one of the men on top of it who dies.
Is this lawful?

- 9 A man beats his wife until she is bruised. He is accused of assault. He says he did not know it was illegal to beat his wife.
FREEZE
Is this self defence?

 **NOTE: Ignorance of the law is no defence.**



TIP

If a scenario sparks an interesting debate because there is disagreement, allow the discussion to take place, refer back to your paralegal notes but keep the activity in mind. Try a similar scenario to see if things become clearer for participants. Remember: People learn through doing, more than talking.



STEP 3: COMPETITION

Test learning using the main points in the paralegal notes below.



PARALEGAL NOTES: SELF DEFENCE

Self defence is an absolute defence and entitles the accused to be acquitted of the charge. It is a pure example of natural justice, if you like (only saints or madmen actually 'turn the other cheek'). Self defence should be distinguished from 'tit for tat' or an 'eye for an eye': this is revenge or 'reprisal'.

Whether or not self-defence succeeds will depend on all the facts and circumstances of the case. There are certain ingredients to guide you in determining whether or not it may succeed:

- **Reasonable belief that an attack is imminent**

It is contrary to common sense to suggest that you have to wait to be attacked before defending yourself. It may be justified to strike a person who stands in front of you, obstructing your path, gesticulating and making threatening noises. It would be better if possible to walk away, however.

Also it is commendable (and public spirited) to go to the defence of someone else. The law does not require you to, but if you go to assist someone who is being robbed and knock that person out, you are acting in defence of another and so acting lawfully.

- Reasonable and proportionate force

If a person hits you with an open hand, it is hardly proportionate to stab him with a knife. The degree of violence offered and the injury sustained do not justify such a use of force.

However (there are always ‘however’s’), no-one would suggest you can measure precisely the degree of force to use to defend yourself in the heat of the moment. The person assaulting with his open hand may be a husband who has done this many times before and accompanied his assault with verbal threats (‘this time I am going to kill you’) and I as a beaten wife this time pick up a knife to defend myself. In such circumstances, self-defence may well be made out even if the force I used does not appear to be proportionate.

- The events take place at the same time (ie there is no cooling off period)

When events happen very fast in a climate of violence, then it can be argued that if with hindsight I did over react in the amount of force I used, it was understandable in the circumstances at the time (as in the wife beating example above). What is less easy to argue is if the event has effectively stopped and the threat is passed and I then deliberately produce a weapon or commit a further act, rather than walk away – can this still be argued as self-defence? It is unlikely.

Cases of ‘mob justice’ fall under this heading for the person is no longer a threat and yet two or more people take it on themselves to cause serious injury to someone, often with fatal consequences. This constitutes the offence of murder or manslaughter, depending on the circumstances.

ACTIVITY 3: ABSOLUTE DEFENCES: ALIBI & INSANITY

- ✓ Learning point: Alibi
Insanity
- A Paralegal Action: Discussion
Narrated Role Play



STEP 1: DISCUSSION

- 1 Begin by asking

What is an Alibi?

Short discussion to gauge the level of knowledge among participants.



STEP 2: NARRATED ROLE PLAY

Set up two scenarios:

- 1 A: A burglary takes place in one part of town. M is charged with the burglary, he says he was in PINKO's bar all night in another part of town. The barman gives a statement that this is true, that he was there all night, he recalls he tried to pick up a girl (and failed) and got very drunk.
FREEZE
Is this a good alibi?

B: Victor, who is wearing a disguise, (put base-ball cap on the actor's head – playing Victor) steals a car from a car park. FREEZE. Meanwhile, Gladson is playing a game with his brother. FREEZE. Back in the car park, the owner of the car comes out of the supermarket to see Victor driving off in it. When Victor is outside the town and heading for the border, he throws the base-ball cap disguise out of the car window. FREEZE. Later that afternoon Gladson finds the baseball cap, he likes it very much and puts it on. Gladson is arrested. Gladson says he was with his brother.
Is this a good alibi?



NOTE: the FREEZE in B arrests the action and allows another action to start.

**PARALEGAL NOTES: ALIBI**

To prove an alibi, the burden shifts to the defence. Therefore the accused has to call evidence at his/her trial (a witness) to prove that s/he was where s/he said s/he was. A member of the accused's family is not going to be a very strong witness, because s/he will come forward and may be willing to lie for his/her family member. The best alibi witness is someone not connected to the accused but who can positively state s/he was where s/he said s/he was at the time in question. The defence of Alibi is quite technical and will require the expertise of a lawyer.

**STEP 3: NARRATED ROLE PLAY – INSANITY****1**

Narration:

A drunk man staggers into a shop, chanting and ranting, shaking his head, sweeping his arms, knocks many items from the shelf.

A shop assistant tells him to pay for the things he broke.

The drunk man refuses and then knocks the shop assistant to the floor, she cracks her head on a tin.

Later, the drunk man claims he can't remember and that he didn't know what he was doing.

Is this insanity? Can this be used as an ABSOLUTE defence?

No.

2

Q: What is Insanity?

A: It is a 'disease of the mind'

**PARALEGAL NOTES:**

A person who is insane is presumed in law to be incapable of knowing right from wrong.

To raise insanity as a defence requires a medical certificate stating that the accused is indeed insane and unfit to enter a plea.

Q: Can a person who is mad with rage raise a defence of insanity?

A: No, this is not a disease of the mind, but a temporary state which may lead to a partial defence of provocation (as in a jealous fit)

Q: A person who is very drunk and acts in a mad way, can he raise the defence of insanity?

A: No, for the same reason as above.

Q: What if a person commits a crime while sleep walking?

A: This raises the defence of automatism and the defendant will have to satisfy the judge or jury that s/he committed the offence while in this state, not an easy defence to run.

Common Defences - Partial Defences

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- Provocation
- Intoxication
- Duress

GAMES: COMPETITION



ACTIVITY 1: PARTIAL DEFENCES - AN INTRODUCTION

- ✓ **Learning point:** What partial defences are
Paralegal Action: Demonstration role plays
Discussion/gathering stories and experience from participants.



STEP 1: DEMONSTRATING PROVOCATION (see also PLC17)

- 1 PL1 provokes PL2 by prodding, wagging finger in face, making aggressive facial gestures. PL2 has enough and smacks him
- 2 Ask the following:
Is there anything wrong with this? (he asked for it)
But did he threaten actual violence? (no)
Could PL2 have moved away? (yes)
Was the assault justified? (no)
But was it understandable in the circumstances? (yes)
So Guilty of Assault – but mitigate on the basis of provocation (he was asking for it)
- 3 Invite a volunteer to be a wife. Instruct the 'wife' to be aggressive and complaining, wagging finger at husband (PL2) let this run until husband slaps her in the face.
- 4 Ask the same questions as above
- 5 Man and wife, walking down street, another man walks towards them, man stops and makes a comment 'leave that man, come with me'. Husband strikes man in face
- 6 Ask the same questions as above



STEP 2: INSTANT THEATRE – INTOXICATION

- 1 Invite volunteers to play two people in a bar, both drinking, argument starts, one strangles the other.
- 2 Invite volunteer to play the accused. A man is asleep in his bedroom – he wakes up with bodies all around him and a bloody panga knife in his hand, looking utterly confused.

Is there a defence in either of these cases?



PARALEGAL NOTES:

If a person is drugged, s/he has a defence. If the person was so drunk s/he cannot remember what happened, s/he has no defence.



STEP 3: INSTANT THEATRE – DURESS

- 1 Three men are walking along. They stop outside a house. One says to another. "Go inside that house and get me the TV and the Stereo, or we will beat you up."
- 2 Two terrorists tell a man to plant a bomb or they will kill his family.

Is there a defence in either of these cases?

ACTIVITY 2: HE ASKED FOR IT



Learning point: Provocation, in greater detail
Paralegal Action: Narrated role play
Actors choice role play



STEP 1: NARRATED ROLE PLAY

Dramatise the two examples below. Always throw the question of what happened to the audience once the action is over.

A: A man is drunk in the bottle store and being a general nuisance, insulting people. You step up and ask him to leave. He does not and you strike him.

- Q: Was an offence committed?
- A: Yes
- Q: Do you have a defence?
- A: The facts disclose an assault.

You cannot argue self-defence on these brief facts. But you could enter mitigation that you were seeking in good faith to defuse the situation and assist avoid unpleasantness, thus either the police would not press charges or the sentence (depending on the injuries sustained) would be light (eg: a discharge).

B: A husband (Brave) comes home unexpected at night and finds another man (Peter) in his house alone with his wife. In the emotion of the moment, Brave picks up a stick that is near at hand and strikes Peter on the head and kills him instantly.

- Q: Was an offence committed?
- A: Yes
- Q: Does Brave have a defence?
- A: Yes.

The proper charge in such circumstances (if there were no other aggravating features) would be manslaughter, since he acted on the spur of the moment when the circumstances clouded his reason.

KEY POINT

Provocation is a common defence to the charge of murder in domestic cases and is discussed further in PLC17.

STEP 2: ACTOR'S CHOICE ROLE PLAY

- 1 Set the scene and establish the facts from the audience.
- 2 Ask the actor who plays the person accused of a crime to choose if s/he will wait to be 'provoked' before s/he commits his/her crime.
- 3 Ask the actor who plays the person who 'provokes' a reaction from the 'accused' to choose if s/he will in fact 'provoke'
- 4 Ask the audience what happened at the end.



TIP

Encourage the actors to slow the action down so the audience can see precisely what happens. If the action happens too fast and you think it was not clear repeat in slow motion.



PARALEGAL NOTES: PROVOCATION

The defence 'I was provoked' acts to reduce the seriousness of the offence as it takes 'intent' out of the equation. In other words, you did not act 'in cold blood' or gratuitously, you acted because of the circumstances prevailing at the time and brought about because of the anti-social / offensive behaviour of another which would have provoked any reasonable person to react. The facts should suggest that the victim 'brought it on himself'. Therefore, if provocation does not acquit you of the offence, it does offer an excuse which can be entered in mitigation of sentence.

ACTIVITY 3: BUT I WAS VERY VERY DRUNK SIR



Learning point: Intoxication
Paralegal Action: Narrated role play

Create a couple of scenarios:

One that depicts somebody committing a crime, that they cannot remember committing because they were extremely drunk.

The second, where the person's drink was spiked with drugs.

Examples:

A: Man staggers out of a bar with his lady friend and attempts love-making. She pushes him away. He slaps her. He is arrested the next morning. He says he cannot remember doing anything.

Q: Does he have a defence?

A: No.

B: Man 1 in a bar wants some juice. Man 2 gives him the juice, winks at the audience and whispers 'with cane spirit!' Man 1 drinks it all, drives home drunk, kills pedestrian.

Q: Does he have a defence?

A: Yes



PARALEGAL NOTES: INTOXICATION

To say I cannot remember what happened as I was too drunk; or I did not mean to do what I did, but I was drunk, is not a defence nor an excuse.

(continued overleaf)

A person who voluntarily consumes alcohol or drugs, and because of that engages in criminal conduct, is just as guilty as the person who commits an offence while sober.

However, an accused person who **involuntarily** consumes drugs or alcohol and commits a crime under that state is not guilty. Involuntary consumption of drugs or alcohol is manifested when an accused person through no fault of his/her own consumes drugs or alcohol, ie s/he is tricked. This defence rarely succeeds.

ACTIVITY 4: DO THIS, OR ELSE!



Learning point: Duress



Paralegal Action: Narrated role play

- 1 Create scenarios where someone is forced into a crime. Eg:
I'll beat you, if you don't get me his banana
I'll tell your boss you are stealing money, if you don't steal that company computer.

Q: Is this duress?

A: Yes, if the threat is real and immediate.

Each person is caught between the devil and the deep blue sea. It's a 'No Win' situation.

A gang tells a young man to steal another man's bicycle.

Q: Is this duress?

A: No. Mere bullying or implied threat is not enough.



PARALEGAL NOTES: DURESS

Duress only really arises when you are trapped into having to choose between the lesser of two evils. Sometimes a person argues that s/he committed the offence because s/he was forced to by another who threatened harm to his/her life, limb, property or that of a relative.

This is the defence of 'duress'.

The threat must be real and immediate if it is to succeed. Accordingly it is not commonly invoked and is a very difficult defence to run successfully. You will need to seek the advice of a lawyer.

Note: it is never a defence when it involves killing someone else (it may be mitigation).

FINAL STEP: TESTING KNOWLEDGE

- 1 Invite a participant to take the stand: set the scene in court, take a few facts from the audience (eg: he stole a chicken).
- 2 Tell the actor to think of which defence he will make.
- 3 Split the audience into teams. Give each team a 'buzz'. The actor makes his defence using any word except the name of the defence. Eg:
"That day my father was beating me because he was angry that there was no food at home. He told me he would beat me until I was dead, if I didn't steal the chicken from next door."
- 4 The first team to guess what the defence is wins.
- 5 Quickly get another actor up to try a different defence. And so on.

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What is theft
- The difference between housebreaking and burglary
- Assault and degrees of violence
- Offences involving other people

GAMES: CHANGE THE OBJECT
GUESS THE OBJECT



ACTIVITY 1: THEFT



Learning point: Breaking down the definition of theft
Paralegal Action: Discussion
Instant Forum Theatre role-play – with audience interaction.



STEP 1: DISCUSSION

Begin by asking:

- Who knows the definition of theft?
- Who knows the four things that make up theft?

Dishonestly
Takes something
Belonging to someone else
Won't give it back



PARALEGAL NOTES:

Definition: A person who dishonestly appropriates property belonging to another person with the intention of permanently depriving the other of it, is guilty of theft.

Breaking this down, the prosecution must prove beyond all reasonable doubt the following:

- the act was dishonest (mistake is not dishonesty)
- there was an 'appropriation' (whether a physical act of taking, or an assumption of ownership)
- of property belonging to another (ie it was not abandoned or given away or lost)
- and the intention was to take it permanently (ie not borrow it)



STEP 2: NARRATED ROLE PLAY

1 Narrate the following story, invite actors to act out the scene, point out the moments in brackets:

Chifundo passes a car in the street with the window open. There is a cell phone on the seat. He leans in (dishonestly) and picks (takes something) the cell phone up (belonging to someone else). He walks off with it (won't give back).

- 2 Narrate another story of theft – FREEZING the action, when the four aspects of theft happen. Invite the audience to call out which aspect of the theft has just taken place.
- 3 Invite a participant up into the acting space to act out a theft. Instruct the actor to talk his way through the crime. Members of the audience must shout out 'stop' and the element of theft that has just taken place.
- 4 Keep going until participants clearly know the four elements of theft eg:
  - Man enters a shop. He takes a small can of beans. He puts it in his pocket. He walks out without paying.

Q: Is this theft?

A: Yes

Q: Why?

A: He took the can. He put it in his pocket. He left without paying
  - Woman is walking down the street, she looks into a dustbin. She sees a cellphone lying there. She walks off with it.

Q: Is this theft?

A: No

Q: Why not?

A: Because it is missing the element of dishonesty. The item was abandoned therefore it didn't belong to anyone
  - Man 'borrows' bicycle from friend says he will return it, but later, sells it.

Q: Is this theft?

A: Yes

Q: Why?

A: By selling the bicycle he assumed ownership and 'converted' the bike into cash



STEP 3: SONG

Create song with actions

Dishonestly
Taking an item

Belonging to another
Won't give back

ACTIVITY 2: SPOT THE DIFFERENCE

- C Adapt the offences here and their definitions to the country context



Learning point: House Breaking and Burglary
Paralegal Action: Instant Forum Theatre role-play – with audience guessing



STEP 1: INSTANT FORUM THEATRE / DISCUSSION

- 1 Begin by asking for 6 volunteers
- 2 Secretly tell 4 of them to create the sitting room of a house by pretending to be chairs, tables and desirable items. Ask the other two to commit a 'burglary'. Ask the audience to guess what is going on.



TIP

Don't worry if it's the first time actors have been asked to be objects – this makes the response more hilarious.



- 3 Open up the discussion:
- What is housebreaking?
  - What is burglary?
  - When has a person entered a building?
  - What must that person mean to do?
- 4 ACTORS CHOICE: Invite 4 people up and ask them to choose whether they are to act out Housebreaking or Burglary. The audience must guess which one it is.

Repeat a few times.

EXAMPLES

- Shop. Two people bring a table to smash the window, enter, take items and leave
- One person enters house by forcing the door. Takes something and leaves. Person outside house, at window, puts coat hanger or hand inside and takes handbag.



PARALEGAL NOTES: HOUSE BREAKING AND BURGLARY (see: **A**)

Definition

A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him/her is within the building.

ACTIVITY 3: ASSAULT



Learning point: Varying degrees of seriousness of assault



Paralegal Action: Demonstration
Narrated role play
Actors Choice



STEP 1: DEMONSTRATION ROLE PLAY

Kinds of assault

1. Common assault
2. Assault occasioning actual bodily harm (ABH)
3. Wounding
4. Grievous harm
5. Murder
6. Rape

- 1 Act out the examples below illustrating each degree of violence.
Common Assault (lay a hand on someone, or tap them gently)
ABH (punch someone causing bruising)
Wounding (strike someone, with stick or knife, that breaks the skin causing bleeding)
Serious harm (broken bone, or other serious injury)

Q: There are two other acts we haven't mentioned what are they? (Don't illustrate murder or rape)

A: **Homicide (murder or manslaughter) and Rape**

- 2 Invite participants up into the space. They choose what kind of assault they will demonstrate. The audience decides what kind of assault took place.

- 3 Narrated role play using the following situations:

- A man seizes you by the arm.

Q: Is this an assault?

A: **Yes it is an assault. No one can touch you, unless you agree to it.**

- A policeman seizes you by the arm.

Q: Is this an assault?

A: **Yes. His action constitutes an assault unless he acts with words of arrest or under reasonable suspicion that you have committed an offence.**

- a. Man 1 hits Man 2 with a hoe and breaks his arm.
- b. Man 1 takes the arm of Man 2 and deliberately breaks it.

Q: Are these offences the same? Is one less bad than the other? What makes them different?

A: **In situation a. he caused serious harm, (but may not have intended it) in b. he caused serious harm and certainly intended it.**

- Man and woman meet at a party. They enjoy each other's company. He escorts her back home. He pushes her into the grass. She resists and tries to reject his advances. He ignores her and forces sexual intercourse.

Q: What offence is described here?

A: **The man has committed the offence of rape.**

Q: What does the prosecution need to prove?

A: **'Penetration' without consent.**

◦ Same facts as above, but the man is interrupted by the sound of others coming back the same way and he stops before the act of penetration. The woman calls out and the man is apprehended by the returning people.

Q: Has he committed rape?

A: No, because there was no penetration.

Q: Therefore, has he committed no offence?

A: No, he was stopped from completing the offence therefore he would be charged with attempted rape. He had gone beyond preparatory stages and had her in the grass and intended to commit the act when he was interrupted.



PARALEGAL NOTES: ASSAULT

Definition: If I lay a hand on someone unlawfully, ie without the person's consent or in a manner that cannot be justified, then I am guilty of assault.

An assault varies in degrees of seriousness. The example in 1 above constitutes a common assault and would hardly amount to an offence. The degrees of assault increase in seriousness from common assault, through assault occasioning actual bodily harm (ABH), to assault on a police officer in the course of his duties through to unlawful wounding and grievous harm which constitutes a serious assault one step away from murder.

What aggravates the offence (ie what makes it more serious) is when the act is either:

- accompanied by intent ie: it is one thing for A to strike B, it is another if A keeps on hitting B – this suggests A intends to cause B really serious harm; or
- the victim is a magistrate, police or prison officer or someone acting in an official capacity

ABH involves some visible mark, such as a bruise; wounding need only involve the breaking of skin to constitute the offence; grievous harm is serious injury, such as a broken bone or knife wound or any injury hazardous to life accompanied by the intent to cause that harm.

Note: Rape is also an assault. The offence has an additional element to prove, ie penetration.

ACTIVITY 4: OFFENCES INVOLVING OTHER PEOPLE



Learning point: Offences involving other people: conspiracy / joint enterprise

Paralegal Action: Discussion
Narrated role play

STEP 1: EXPLANATION

1 When more than one person is involved in an offence, you have an agreement (or conspiracy) to embark on a criminal course of action (or joint enterprise/common purpose). One person may be the leader (principal) and the others may be there to assist (as accomplices or 'aiders and abettors'). Everyone will be guilty of the offence equally, though some may receive heavier sentences than others (the ring leader for example).

2 Provide an example of conspiracy, eg:

A group of people sit around and agree to kill X

3 Add to it an example of joint enterprise/common purpose:

The group follow X's steps, they make plans of his house, they purchase a weapon, they agree their roles, they fix a date. Etc.

**PARALEGAL NOTES:**

The crime of conspiracy to murder is committed when the original agreement is made. While it is true that at any stage of the conspiracy/common purpose/joint enterprise (prior to completion), any member can withdraw from the agreement, much depends on the role allocated to the person. For instance, those involved in planning a bombing and who take photographs of the target weeks before the bomb is planted, cannot claim they had withdrawn when the bomb goes off: they had a clear role which they accomplished.

**STEP 2: NARRATED ROLE PLAY**

Create one scenario, based on any of the situations below.

- 1 You and your friends have been drinking. On your way back home at night, one of the group suggests breaking into a shop. You are not sure about this but agree to stand outside and act as look-out. Your friends break in, steal some goods and leave. You refuse to accept your share.

Q: Have your friends committed an offence?

A: Yes – burglary

Q: Have you committed an offence?

A: Yes – burglary (even though you didn't enter the shop you joined in the agreement by acting as lookout. The fact that you didn't profit – is for mitigation)

- 2 You and your friends have been drinking. On your way back home at night, one of the group suggests breaking into a shop. You are not sure about this but agree to stand outside and act as look-out. And after a short time, you realise you are not happy with this and walk home. Your friends break in, steal some goods and leave.

Q: Have you committed an offence?

A: No, by walking off you rejected the agreement and no longer form part of the criminal act

- 3 a. You are a member of a gang who decide to rob a bank. You do not carry a gun, but the other gang members do. In the course of the robbery one of the gang kills someone.

Q: What are you going to be charged with?

A: Murder (you did not kill the person but you must have realised that by bringing along weapons there was a chance they would be used. You take the consequences of the acts of the other gang members – you are an active member and as such, in law you are an 'accessory')

b. Just before the gang member shoots, you shout out 'What are you doing? You are crazy, stop!'

Q: Does this change anything?

A: Probably not.

Q: Why not?

A: While the agreement was to rob the bank, guns were taken along and you must have realised there was a chance they would be used, but you still went along with it.

Q: What more could you (the gang member) have done to break the agreement, or 'common purpose' of the gang, which resulted in a murder?

A: Merely shouting at this stage does not go far enough. You should either go to the defence of the person, or disarm the gunman, if you are to take yourself out of the common purpose.

- 4 You are with a group of friends, late at night, you see a single man on the street, one of your friends says let's get him. The others jump on him and take his money and beat him up. You stand there and do nothing.

Q: Have you committed an offence?

A: No. You did not join in, it happened very fast, and in law you do not have to go the defence of another.

- 5 a. In the market there is a shout: 'Stop the thief!' You join the crowd chasing a person, the person is caught, you are present when people start beating the thief. You manage to punch him. Someone says 'let's kill him!' The others put a rope around his neck and hang him from a tree.

Q: Are you guilty of murder?

A: Yes, in law you are 'aiding and abetting' the full commission of a crime.

b. In the market there is a shout: 'Stop the thief!' You join the crowd chasing a person, the person is caught, you are present when people start beating the thief. You manage to punch him. Someone says; 'let's kill him!' The others put a rope around his neck, you shout; 'Stop this is wrong!' They take no notice of you and hang him.

Q: Are you guilty of murder?

A: No, by shouting stop, you were no longer a part of the crowd's purpose but you are guilty of assault.



FINAL STEP: QUICK DISCUSSION

Q: What is the difference between the mob situation (in 5) and the gang robbery (in 3)?

A: In the gang robbery they took weapons with them at the beginning, you lost your nerve, and tried to get out of the agreement when it was too late. In the mob there was no 'agreement', people were simply going along with what was happening and therefore by their presence encouraging/supporting what ever did happen: which amounts in law, to a common purpose. By shouting: 'Stop!' you took yourself outside the common purpose which had changed to killing.



Murder and Manslaughter (capital cases only)

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- The difference between murder and manslaughter
- The defences that reduce murder to manslaughter

ACTIVITY 1: WAS THERE 'MALICE AFORETHOUGHT' OR AN INTENT TO KILL?



Learning point:

The difference between murder and manslaughter: Provocation



Paralegal Action:

Actors' choice role-play, with audience interaction and character questioning.
Discussion



STEP 1: QUICK DISCUSSION

What is the difference between murder and manslaughter?



STEP 2: ACTORS' CHOICE ROLE PLAYS

...Focussing on **INTENT**

- 1 Use the audience to set the scene and establish the facts. And then give the actor who will 'kill' the choice between having intent or not. For example:
  - You do not mean to kill the person – but you go too far OR
You do mean to kill the person – that is why you go as far as you do.
  - You come in carrying a weapon OR
You do not come in carrying a weapon
- 2 Ask the audience to watch the action carefully, and then ask if there was 'intent' or not?

...Focussing on **PROVOCATION**

- 3 After setting the scene etc. Give one of the actors the choice of provocation or not.
- 4 Generate discussion based on the following questions:

Q: What if I killed the person but did so to stop him killing me?

A: **This is self-defence.** Self-defence is an **ABSOLUTE DEFENCE** to a charge of murder or manslaughter. You should therefore plead NG to the offence charged and go for a jury trial.

Q: What if the prosecution make it sound far worse than it was?

A: **Then you should tell your lawyer and make it clear that you do not accept this version. Be careful that your version does not suggest you to be innocent for then the judge will ask for the charge to be put again and enter a plea of NG and you will have to go for trial**

Q: What if the prosecution offer a lesser charge (ie manslaughter) but I am still not guilty?

A: This is very difficult. If you are charged with murder and have been in custody for five years and then the prosecution offer a charge of manslaughter on the basis that you plead G to the charge,

then the likelihood is that you will walk home from the court because the sentence will take into account the five years you have spent in prison awaiting trial. On the other hand, a jury could convict you of murder and you will be sentenced to death **C**. You need to think about this very carefully and discuss the matter with your legal adviser.

- Q: What if I admit to killing the person but did not mean to?
- A: Then you will tell your lawyer who will then offer the prosecution a plea to the lesser charge of manslaughter.



PARALEGAL NOTES: MURDER AND MANSLAUGHTER

Murder is the unlawful killing of a person with ‘malice aforethought’. This means with intent to kill the person or inflict really serious harm. So if you punch someone and then jump up and down on their head, the act goes beyond assault and becomes an effort to really harm the person – if the person dies as a result, then you are guilty of murder. It does not matter that you did not mean to kill him/her, you must have realized or ought to have realized that by stamping on their head you risked causing serious injury.

Manslaughter is the unlawful killing of a person without malice aforethought (ie without intending to kill them or cause really serious injury). For example, a person comes up to you and is rude and aggressive, you push him away and he falls into an oncoming bus and dies. Your act caused his death, though you did not intend it. This would attract a charge of manslaughter.

Murder attracts a mandatory sentence of death in some countries. While the sentence for manslaughter varies on the facts of each case. It can attract the death sentence and it can result in a discharge. For instance in the case mentioned above, the judge might well find that there was so little fault and the deceased had brought the misfortune on himself by behaving in the way he did and suspend any prison sentence or even discharge the accused.

As concerns juveniles: people under 18 shall not be sentenced to death nor to life imprisonment without possibility of release under IHRL (CRC Art 37(a)).

NB: don’t let the participants get into case studies or ‘what if’ situations until you have come to the end of the PLC when you can introduce a wide-ranging discussion. Keep the discussion structured

PLC Action:

- Invite participants to indicate whether they would consider entering a plea to the lesser charge of manslaughter (conduct a head count, note the numbers)
- Draw up a list of persons and refer the list to legal aid lawyers and the DPP or **C** equivalent.
- Request advance disclosure of case file

Committal Proceedings (capital cases only)

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- How a capital case is transferred from the magistrates court to the High Court
- The purpose of committal proceedings

C This procedure may have variations in different countries – see Appendix A

ACTIVITY 1: QUESTION AND ANSWER

✓ **Learning point:** Which court tries capital offences
Paralegal Action: Discussion

Q: Where must all criminal cases start?

A: Magistrates court/other.

Q: What cases can this court NOT try:

A: Treason, murder, manslaughter

Q: Why not?

A: They are too serious. The court does not have the power to try such cases.

Q: Who tries these matters?

A: The High Court/other

Q: What is the procedure by which these cases are sent to the High Court/other.

A: They are 'committed' from the magistrates court to the High Court.

KEY POINT

The committal proceedings are a 'screening' process which ensure those cases that are ready and suitable go to the High Court for trial so as to avoid delay or wasting court time in the higher courts.

ACTIVITY 2: WHAT HAPPENS DURING COMMITTAL PROCEEDINGS?

C Adapt to national context – see Appendix A

PL informs participants of the following.

- The file is transferred from police to the DPP (or other senior prosecuting authority).
- In homicide cases, the DPP issues a certificate to state that the case is a proper one to be tried by the High Court. Once the court receives this certificate it can then commit the person for trial on the charge(s) as set out on the certificate.
- Notice is then served on the Registrar of the High Court and a copy goes to the DPP. The case should then be ready for trial.

- No evidence is heard – though there is provision for this. The documents are put together and handed into the court who make copies. No trial can be heard unless it has first been committed for trial from the Magistrate's Court.
- 21 days before trial, the DPP should provide the accused or representative with a list of the persons it is proposing to call to give evidence at trial and a statement of the substance of the evidence of each witness.



NOTE: This procedure is very technical, it is only for participants charged with homicide (or other capital offence) and included to complete the criminal justice process.

Sentencing

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- How the court determines a sentence
- The reasoning behind prison
- Community Service Orders

GAMES: STORY TELLING & APPLAUSE EXERCISE
FINDING CHARACTER USING
STEREOTYPES



MATERIALS: PROPS OF YOUR CHOICE TO DENOTE
CHARACTERS IN THE STORY (EG,
PAPER HATS / PHONE)



ACTIVITY 1: DRAMATISING OF THE FOUR SENTENCING PRINCIPLES



Learning point: Sentencing principle
Paralegal Action: Narrated role-play, with audience interaction and character questioning.
Discussion session with characters from role-play



STEP 1: NARRATED ROLE PLAY

- 1 Invite participants to play the following characters:
  - 2 burglars
  - Community members: Village Chief, Elders, Mother, Father, Sons and Daughters, Aunts and Uncles (as many as you like) – these play community members of the different communities also.
  - A tree
  - TV presenter
  - Neighbourhood Watch
  - Judge or Magistrate
  - 4 policemen
- 2 Tell the following story, in stages, allowing the actors to fully act out each scene.
The story here is in its simplest form. Embellish the story wherever you like to bring out the ideas. Be as creative as possible.

Encourage participants to really imagine themselves in the situation you describe, what would it feel like to be these characters, what would these characters think, say and do? This is important for bringing out the ideas behind sentencing.



TIP

If actors are reluctant to jump in and play the moments you describe, help them by physically bringing them into the scene. Or say, 'let's see it' or 'let's have YOU as the sleeping father, HERE.'

1. The village of xxxx was a peaceful place. Everyone was happy. The Boo family are particularly happy because they have just bought a TV set. After watching some programmes together, they go to sleep.
2. In the middle of the night 2 burglars break into the Boo house. They sneak in and steal the prize Boo possession: their TV. The Boo's wake up and realise they are being robbed, but the burglars sneak away, snatching as much as they can as they go.
3. A month later the village chief calls a meeting with the whole community. He announces a great problem with burglars in the area. They have stolen from nearly every house. The chief asks the community what they should do.
4. (After allowing the community to answer) They decide that the neighbourhood watch must set a trap for the burglars.
5. Later that night, the community is sleeping. The watch prowls the area outside the Haa house.
6. The burglars come and break into the Haa house. The watch wait outside. As the burglars come out, the watch then catch them.
7. The watch put the burglars under A TREE. And place a wooden fence around them.
8. FREEZE. The community gather around the burglars, they explain the effect their burglaries are having and ask them to stop. The two burglars apologize and agree to stop if they will be released. The community release them.
9. A month later, in a different community, they continue burgling many houses.
10. This community gets together and asks 'The Judiciary' to join them. Meanwhile the burglars are driving very expensive cars and laughing at their success. The community asks the judiciary what punishment there is for these crimes.
11. The judiciary says that the sentence is only 1 year for burglary.
12. FREEZE Ask the community how they feel about a one year punishment for the crimes that these burglars have committed. Is it enough? Why?
13. That night when the community is sleeping, the burglars are out again. The community is terrorised by them, afraid to sleep, scared for their safety and the safety of their families.
14. This continues for many months until there is NATIONAL UPROAR. We hear the story on TV of communities pleading with the judiciary and the government to increase the sentence for these crimes.
15. The judiciary announces that the sentence has been increased to death and life imprisonment. The community rejoices. But they still have to catch the burglars.
16. Four policemen prowls the area at night waiting for the slightest stirring from the burglars. They appear and the policemen jump on them. THEY ARE CAUGHT!!!
17. The two burglars are tried and sentenced to prison for life.



NOTE: summarise the story at certain points, as you narrate – so that everyone keeps up with the story.

3

Bring the community to face the burglars. Generate group discussion around the following points, using the paralegal notes overleaf.

1. Ask the community if they feel safer. Why? Because the sentence is high, or the criminals have been caught?
2. Ask the burglars if the sentence would have deterred them from committing any offences? Do they fear the sentence or capture?
3. Ask the audience if they think the sentence is likely to deter crime and make everyone safer?

Continue with guiding questions to bring out the learning points.

To community: Do you want to stop these burglars from committing further crimes?
 To audience: Do you think the sentence will deter the burglars from committing further crimes?
 To robbers: Will it?



PARALEGAL NOTES: DETERRENCE

The first aim of punishment is to deter future crimes. By punishing the offender the theory is that s/he will be deterred from any future offending and others in society will be deterred by the sentence passed by the court.

Optional discussion points

- Does this theory hold true?
- Does anyone think of the likely consequences (ie the sentence of the court) before they commit an offence?
- Is not the likelihood of arrest a stronger deterrent?
- Does the death penalty, for instance, actively deter people from crime (ie murder, rape, armed robbery?)

Continue your guiding questions:

To the community: How to stop the burglars committing crimes?
 To the robbers: What would stop you physically committing crimes?
 To the audience: What do you think?



PARALEGAL NOTES: INCAPACITATION

By keeping the offender in prison for a number of months/ years, it becomes physically impossible for him/her to commit further crimes and pose any threat to society.

Optional discussion points

- Does it make sense to incapacitate everyone – whatever the offence?
- It may be the person who robs others is a threat and needs to be incapacitated so that normal people can get on with their lives without fear; but someone who steals because s/he is hungry – or someone who is unable to pay a fine – is that person a threat to other people and to be kept in isolation from others?

Continue guiding questions:

To the community: How can these two become useful members of the community?
 To the robbers: What needs to happen for you to give up crime and lead a normal life?
 To the audience: What would you do to reform these two?

**PARALEGAL NOTES: REHABILITATION**

There is a saying: people go to prison as punishment and not for punishment. The justification for prison is to keep a person in a safe place where s/he can receive education, skills training and other assistance that will turn the person into a 'more useful' member of the community. On his/her release, the person is equipped to lead a life without needing to commit further offences.

Optional discussion points:

- What rehabilitation programmes exist in prison?
- Do you learn skills that will assist you on release?
- What sort of programmes would you like to see? Can you help yourselves in anyway – how?

Continue guiding questions:

- To the community: What sort of justice do you want to right the wrongs done to you?
What would need to happen to invite these two back into your community?
- To the robbers: What do you think you deserve?
How could you convince the community to invite you back to live with them?
- To the audience: How does the community feel?
Do you think it is possible for these two to live in harmony with the community?

**PARALEGAL NOTES: RETRIBUTION**

This is society's response to the offender: punishment - officially sanctioned and administered by the courts. Mob justice is the unofficial sanction of society when the formal justice system fails to deliver.

Optional discussion points

- Do these principles strike chords with you or do they appear alien and strange?
- The approach seems to be punitive – do you agree with this?
- Or should the approach be more restorative – for instance, a wrong has been done, now what can be done to compensate the victim and community for what has been done and restore the balance and harmony that existed before?

VARIATION

Set up smaller instant forum theatre role plays that each bring out one of the principles of sentencing.
For example:

Principle 1: Deterrence

Set up petty crime scenario, and ask the audience to fill in all the background details of the character. Play the action of the crime. FREEZE.

Q: (to the offender): what are you thinking about?

Q: (to the audience): while in this act, is s/he thinking about what punishment s/he might get if s/he is caught?

Principle 2: Incapacitation

Set up two different scenarios, one which tells the story of a professional criminal who steals for a living; another where a man steals flour from a shop to feed his family.

Q: (to the audience): do both pose an equal threat to society?

Principle 3: Rehabilitation

Set up a scenario of a man coming out of prison after 5 years. He cannot get a job.

Q: (to the ex-offender): what do you do?

A: Reoffend

Q: If you succeeded in getting a job, would you re-offend?

A: No

Principle 4: Retribution

Set up a scenario where person A punches person B causing him pain and to lose a week's work and wages.

Q: How does B feel? What does he want to see happen?

ACTIVITY 2: SINGING ABOUT SENTENCING



Learning point: Confirming learning about sentencing principles



Paralegal Action: Song

SONG

Create a song with the participants.

Suggestion for Lyrics:

Sentencing has four reasons:

- Deterrence: to put people off crime
- Incapacitation: to put people inside, to make it physically impossible
- Rehabilitation: to be more useful
- Retribution: to punish the offender

ACTIVITY 3: COMMUNITY SERVICE ORDER



Learning point: Community Service – a restorative approach to justice



Paralegal Action: Discussion

DISCUSSION

- C This is an opportunity for bringing in officials charged with the implementation of Community Service to explain to participants what it is and how it works.

Or generate discussion around the following notes:



PARALEGAL NOTES: COMMUNITY SERVICE (see pg144: A)

Community Service is an Order of the Court whereby the offender is offered the opportunity to compensate society for the wrong done by performing unpaid work within the community for the benefit of the community. Community Service is only available for certain types of offences and for certain types of offender. Of course, serious offenders who are a risk to the community will not satisfy the criteria for a Community Service Order.

Community-based sanctions, if properly structured, offer many advantages to victims, to the public, and to offenders and their families. Some of those advantages include the following:

- Community Service is cheaper;
- Families ties are preserved, which in turn will enhance the likelihood of success of rehabilitative endeavours;
- Community Service saves government resources. It costs the government money to feed prisoners;

- Community Service helps to reduce the prison population, thereby easing conditions in prisons;
- The offender has the opportunity to have counselling to discuss issues that may have resulted in offending;
- Offenders will be openly seen by the community carrying out their punishment rather than incarcerated and forgotten;
- By serving their sentences in the community, offenders can avoid the criminogenic influences that seem to prevail in prisons; and
- Public placement institutions receive free services, therefore making financial savings.

Persons working under a Community Service Order are sent to a public institution such as hospital, health clinic, school, etc to carry out voluntary work for a number of hours. Before a Community Service Order is made, the offender is critically examined by the Court as to his/her personal circumstances so that the Court is satisfied that the offender is willing and able to complete the Order. If the offender absconds or re-offends s/he will be brought back to court to answer and to be punished.



Appeal

✓ **LEARNING POINTS:** By the end of this PLC participants will know:

- What is appeal?
- How to appeal

GAMES: HOW FAR CAN YOU GET?
COPY AND ADD
IMAGE



MATERIALS: FLIP CHART AND MARKER



ACTIVITY 1: WHAT THE RIGHT TO APPEAL MEANS

✓ **Learning point:** What is 'appeal'?
Paralegal Action: Discussion



DISCUSSION

Ask participants

- What does 'appeal' mean?
- Do prison officers explain when you come to prison?
- Can you appeal against a conviction or a sentence?
- On what legal grounds can you appeal?
- Can you appeal a conviction after entering a plea of Guilty?



PARALEGAL NOTES (see pg144: **A**)

You can appeal against conviction and/or sentence. You can appeal against conviction on a matter of law (technical) or on new facts that have emerged since the trial to establish innocence (eg an alibi or other important witness that could not be found before the trial). You cannot appeal a conviction after entering a plea of Guilty (though you can appeal the sentence).

ACTIVITY 2: WHEN TO APPEAL

✓ **Learning point:** When can you appeal?
Paralegal Action: Discussion



DISCUSSION

Ask participants:

- how do you start an appeal?
- does it have to be fairly soon after the trial/sentence?
- what form should it be in?
- what should it contain?
- can you make an appeal on your own?



PARALEGAL NOTES:

C See appendix and relevant time and other provisions set down in your country **A**



ACTIVITY 3: HOW TO APPEAL AGAINST SENTENCE

-  **Learning point:** Types of Appeal
-  **Paralegal Action:** Discussion

State the following examples, invite audience to answer:

1. You have been sentenced to 18 months for theft by a magistrate whose maximum powers of sentencing stops at 12 months.

Q: What is the ground for appeal?

A: The Magistrate sentenced in excess of his or her powers.
2. You have been convicted of assault and sentenced to 18 months to start on the date of your conviction. You have already spent 2 years on remand.

Q: What is the ground for appeal?

A: The time spent on remand was not taken into account when passing sentence / or the sentence should have been back-dated to the date of first remand.
3. You pleaded guilty to a series of burglaries that took place around the same time and were sentenced to 2 years, 2 years + 2 years to run consecutively (ie one after the other: totalling 6 years).

Q: What is the ground for appeal?

A: The sentences should have been ordered to run concurrently, ie: all together making a total of 2 years.
4. You are a first offender with a job, family and the offence was not serious.

Q: What is the ground for appeal?

A: Insufficient consideration was given to these personal circumstances and/or no consideration was given to a Community Service Order.



PARALEGAL NOTES: APPEAL AGAINST CONVICTION

An appeal against conviction is more complex and requires expert legal advice. Paralegals should stress this to participants, advise them that in an appeal against conviction they should contact a lawyer, or request the paralegals to put them in touch with a lawyer who can assist.

ACTIVITY 4: WHAT HAPPENS AFTER YOUR APPEAL IS LODGED WITH THE COURT?

-  **Country specific:** Adapt to national context – see 
-  **Learning point:** Appeal process
-  **Paralegal Action:** Discussion



DISCUSSION

Outline the following points:

1. From here, your appeal is lodged at the criminal registry.

2. The registrar calls for the original file from the Magistrates court.

3. The file is then reviewed by a High Court judge.

4. The judge will review the grounds of appeal and if they are 'frivolous' (not serious) or 'vexatious' (ie abuses the magistrate / police / judge / jury etc) then it will be dismissed.

5. If not, then a date will be set for hearing and the file papers have then to be typed up.

6. There will be a full hearing in the High Court/other, in your presence, on the grounds of appeal.

7. The appeal court can then reverse the finding of the lower court and order the appellant to be released, order a retrial, and reduce or increase the sentence of the court.

What can the paralegal do?

- Help you fill in any pre-agreed form
- Lodge the form with the registry (who should then inform you that your form has been received and lodged).

DEVELOPMENT

Create a 'pass-the-file' chain of events to visualise the journey of the file, using any of the following:

HOW FAR CAN YOU GET? / PLAYER LEADS

COPY & ADD / IMAGE

Ask participants to pass the file each time a different stage in the process is mentioned.

ADDITIONAL ACTIVITY

Set up a competition based on all the questions you have asked. Split the groups into teams and record scores.

PLC Action:

Establish how many sentenced prisoners wish to appeal:

- a) sentence;
- b) conviction

List and refer the cases to friendly lawyers

Priority should be given to women and young persons.



✓ **LEARNING POINTS:** This PLC encourages participants to:

- Acquire basic information on HIV and AIDS including:
  - Basic facts: what HIV is and how AIDS is different
  - How HIV is transmitted and how the virus affects the body
  - Protecting yourself against HIV and STDs
  - Knowing your HIV status
- Know myths and truths in common perceptions around HIV and AIDS
- Understand situations and behaviour that put people at a high risk of infection
- Analyse how HIV and AIDS can be prevented in the prison community

GAMES: BOMBS AND SHIELDS, substituting the 'bomb for HIV and the shield for a condom
RABBIT SPEAR WALL
GUESS THE FAMILY MEMBER
GUESS THE STATUS

C HIV infection rates in prisons are alarmingly high in developing countries. Paralegals are in a unique position, given the level of access and time spent with prison communities, to provide information and clarify misunderstandings that may help save lives; generate discussion and help people develop skills to address the issues and encourage decisions that protect health.

Before addressing the issue of HIV and AIDS you should find out whether the group feels comfortable talking openly about HIV and AIDS. Make is very clear that no single person's status needs to be known, that you are there to provide information about the issue, and if any individual has concerns you can refer them to the prison hospital staff.

The session is not compulsory, and if anybody feels uncomfortable with the discussions or activities, they are free to leave. However, that there is a need to talk openly about this sensitive issue. Some of the topics may be difficult to talk freely about because they involve sex. However, because HIV AIDS is killing many people it is important to discuss and address the issues involved.

Encourage the group to participate as fully as they would in a normal PLC – that this is a forum to raise any questions or ideas concerning the issue.

ACTIVITY 1: INTRODUCING HIV AND AIDS

- ✓ **Learning point:** Introduction only
A **Paralegal Action:** Games



GAME - RABBIT SPEAR WALL, using the following instead

Abstinence
Reckless body & mind
HIV

Abstinence beats HIV – because the body is protected against it
Reckless body & mind beats abstinence – because a reckless person takes high risks and cannot abstain
HIV beats the reckless body – because HIV kills it

To symbolise abstinence – hands can shield the body, saying softly 'no no no!'

To symbolize HIV – make frightening monster claws with hands and roar

To symbolize a reckless body and mind – make a star pose with the body, throwing arms backwards proclaiming 'I don't care!' in vernacular.

ACTIVITY 2: BASIC FACTS ABOUT HIV AND AIDS



Learning points: Basic information about HIV and AIDS



Paralegal Action: Discussion
Instant theatre game
Quick fire competition

STEP 1: ESTABLISHING GROUP KNOWLEDGE

Establish the level of knowledge about HIV and AIDS, and perception of HIV as a problem – use the answers to refer back to during the session. Don't correct people at this stage. Simply bounce answers back to other participants – i.e. 'do you agree?', 'what do you think?' etc.

- What are the words or phrases that describe HIV and AIDS in the vernacular?
- Does anyone know what HIV stands for in English?
- How does the human body protect itself against any illness?
- How is HIV transmitted from person to person?
  - How does the virus attack the body?
  - What does AIDS mean?
  - How can a person protect him/herself from becoming infected with HIV?
  - Can you catch HIV from kissing?
- Can you tell if a person is HIV positive from the way they appear?
  - How can a person find out if s/he is HIV positive?

Draw upon the paralegal notes for further questions, if necessary...



STEP 2: INSTANT THEATRE GAME - Battle of the body

Establish that the human body protects itself against infection, illness, using a defence system. In the same way that a country protects itself from external hostile forces using a defence force or an army. This is the immune system.

- 1 Invite 10-20 participants (this is really up to what you can manage)
- 2 Split the group up – 8 to play BODY CELLS, to make up the immune system.
- 3 Split the rest of the group up in to the following:
  - Flu
  - Cough
  - HIV
  - (create your own as you wish)

These are to play the 'invaders'.

- 4 Give each of these characters an action that they can use in battle, make sure all participants are aware of the actions you've given: Even ask the audience to suggest which action each should have:
  - Flu: pokes in the nose and rubs the head.
  - Cough: pats the chest.
  - HIV: tickles the actors playing immune system body cells all over.

- 5 PL1 and 2 split up and each secretly instruct the players on the following:
- 6 The HIV actors should attach themselves to the body cells once they weaken, The BODY CELL actors are only to weaken if they are tickled. Once weakened, they can allow the cough and flu actors to destroy them all together.
- 7 Encourage the BODY CELLS to think of protective actions / responses to the Flu and the Cough actions.

The Battle of the Body

- 8 Mark out a battle area in the sand, or with chalk on the tarmac.
- 9 Ask the body cells to practise strong powerful steps and poses, and to make a wall at one side of the space.



TIP Encourage the audience to give the action a 'battle beat' clapping a rhythm and perhaps chanting words such as, "THE BODY FIGHTS THE INVADERS!!"

PL1 is Captain of the BODY
PL2 is Captain of the INVADERS

- 10 Explain that the INVADERS must listen to their captain – and respond to calls FLU CHARGE! FLU RETREAT! (charge means attack, retreat means return to base)

 **NOTE: The OBJECT of the ATTACK is for the INVADERS to disable the BODY CELLS.**

- 11 PLAY!

FLU CHARGE!	Allow action	FLU RETREAT!
COUGH CHARGE!	Allow action	COUGH RETREAT!
HIV CHARGE!	Allow action	(body cells should weaken)
COUGH CHARGE!	Allow action	(body cells should weaken further)
FLU CHARGE!	Allow action	(body cells should allow themselves to be destroyed)

 **NOTE: The more you repeat it – the more familiar some participants will be.**

- 12 Ask:
What happened?
How were the flu and cough Invaders able to destroy the body cells?
Why is the body weak?
Can anyone think of anything that would help the body in this battle?
Would the body benefit from having a weapon, to fight off the cause of weakness, HIV?
OK! THE BODY NEEDS A SECRET WEAPON.
- 13 Invite 5 extra players to the battle, to play the body's secret weapon.
- 14 PL1 secretly informs them of their role. They are to play condoms. They must protect the body cells. They stop HIV from tickling the body cells, by stretching out hands and facing their palms at HIV players.
- 15 PL2 secretly informs the HIV players that if there is a CONDOM character it will stop them tickling the body cells.
- 16 Encourage the play to be as dramatic and large as possible – meaning actors actions are big and deliberate, and in slow motion.
- 17 PLAY!
- 18 This may have been chaotic. Gauge understanding of events by asking audience to recount what happened.

Repeat again, to strengthen understanding.

- 19 Repeat from step 12 giving an infected body the weapon of ARVs to increase the survival of the body cells against cough and flu.

FLU CHARGE!	Allow action	FLU RETREAT!
COUGH CHARGE!	Allow action	COUGH RETREAT!
HIV CHARGE!		
(As quickly as possible...) CONDOM'S CHARGE!		
Allow action		
HIV RETREAT!		
CONDOMS RETREAT!		
COUGH CHARGE!	Allow action	(body cells should not weaken)
FLU CHARGE!	Allow action	(body cells should not weaken)
THE BODY HAS WON THE BATTLE!		



STEP 3: DISCUSSION

Has the battle helped participants to understand the way in which HIV affects the body?

Ask:

- What did the HIV players do to the body cells?
- What happened to the body cell players after the HIV players tickled them?
- Did the cough and flu players have any affect on the body before the HIV players invaded?
- What affect did the cough and flu players have on the body cells AFTER the HIV players invaded?
- What saved the body the second time the battle was run?
- Can anyone explain the difference between HIV and AIDS?

Using what happened to the BODY CELL players as an imaginative aid, and the paralegal notes below, explain the difference between HIV and AIDS.

Make clear that the game indicates the main idea of how HIV works on the body.
That it was not a REALISTIC portrayal of how the HI VIRUS affects the body.
You cannot even see the virus with the naked human eye.



PARALEGAL NOTES: WHAT IS HIV? AND WHAT IS AIDS? THE FACTS:

- Human Immuno-deficiency Virus – this is the virus that causes AIDS. The virus attacks the biological system in the human body that protects us against disease, infection, illness.
- When HIV enters your body, it increases in number and weakens the defence system that helps your body fight against diseases. As a result of this, people with HIV in their bodies get sick easily.
- As the body grows weaker, at some point it will lose the power to be able to fight diseases. This is when a person becomes very sick. This stage is call AIDS, which is short for Acquired Immune Deficiency Syndrome.
- HIV weakens the body's defences so that is it easier to get infections such as tuberculosis and pneumonia. People die from these illnesses because their bodies have no way to fight them.
- There is no cure for HIV/AIDS at this time.
- HIV is similar to termites eating away at a house. The house looks strong on the outside, but is eaten away inside. When a wind comes, the house blows away.
- There are some medicines available, Anti-Retrovirals that can bring a person with AIDS back to better health or keep an HIV positive person more healthy.
- There are four ways that you can get infected with HIV
- The most common is by having sex with an infected person without using a condom. You can also get other sexually transmitted diseases like HERPES, SYPHILIS, GONORRHEA. If a person already has an STD, the risk of infection through unprotected sex is even higher.

- HIV infected blood transfusions, blood products and transplanted organs, though the risk may be minimal as all blood donated is screened for HIV.
- Sharing sharp objects like razor blades and needles when piercing your ears or getting a tattoo or during drug use for example.
- Mother to child transmission occurs when an infected mother passes the virus on to her child in her womb, at birth, or during breast feeding.
- A person may look and feel well when he or she is HIV positive, but can still pass the virus to others. The way to find out if a person is HIV-positive is with a blood test.

Protection from Sexual Transmission

- Abstinence, or not having sex. This means delaying having sex until you have chosen one faithful partner.
- Mutual faithfulness. Only having sex with one uninfected partner and being sure that your partner is only having sex with you.
- Condoms. If you cannot practise abstinence or mutual faithfulness, use a condom every time you have sex.

Protection from Blood-to-Blood transmission

- Make sure that clinics or hospitals you visit use new or sterilized needles with giving injections and that they test blood for HIV before giving transfusions.
- Insist that razors/cutting instruments/tattoo needles be properly cleaned after they have been used on each person.

Protection from Mother to Child transmission

- There is a 30 percent chance that HIV will be passed from mother to child during pregnancy, at delivery, or through breastfeeding.
- Children with HIV/AIDS will die.
- Pregnancy can be difficult for a woman who is HIV-positive. It weakens her body and she can develop AIDS earlier.
- Children of parents with AIDS are orphaned when their parents die.



STEP 4: QUICK FIRE COMPETITION

Split the group in to teams, give each a 'buzz'.



NOTE: There is more than one answer to many of these questions. Give points for every correct answer – if the general idea is correct, but the words used to describe are not scientific, still award points.

- What is HIV?
Possible correct answers:
A virus
Something that weakens the body's immune system
Something transmitted from person to person during sexual intercourse
- What does HIV attack in the body?
- Name the ways in which someone get HIV?
- How can someone protect themselves against infection?
- Name other ways of protecting yourself against infection, apart from using a condom?
- What is the difference between HIV and AIDS?
- Is there a cure for HIV?

Answers in Paralegal notes

ACTIVITY 3: MYTHS ABOUT HIV AND AIDS

- ✓ Learning points: Understanding myths about HIV and AIDS
- A Paralegal Action: Competition

 **NOTE: Your participants may know the basic facts about HIV. Judge whether or not such an exercise is appropriate from your earlier activities.**

True or false

- Traditional healers can cure someone of HIV and AIDS **F**
- You can catch HIV from kissing **F**
- You can catch HIV from Mosquitos **F**
- Mothers can transmit HIV to their babies during pregnancy **T**
- Sleeping with a virgin will cure me of HIV **F**
- I cannot catch HIV if I only sleep with young girls. **F**
- It is possible to catch HIV from infected needles. **T**
- I cannot catch HIV from Masturbation **T**
- Condoms protect me against HIV **T**
- It is better protection to wear two condoms. **F**
- Mothers can transmit HIV to their children through breastfeeding **T**
- If I wash my private parts with spirits after having sex I will not become infected. **F**
- A person is more likely to become infected with HIV if they have unprotected sex and already have an STI **T**
- I can tell if someone has HIV from the way they look **F**
- It is possible to catch HIV through only having sex once with an infected person **T**

ACTIVITY 4: HIGH RISK SITUATIONS

- ✓ Learning points: Understanding situations and behaviour that put people at a high risk of infection
- A Paralegal Action: Discussions, Instant Forum Theatre



STEP 1: DISCUSSION - How do you feel about HIV?

 **NOTE: The aim here is simply to encourage people to talk as freely as they wish to about their experience of the ways in which HIV and AIDS has affected their communities and families. The intention is to acknowledge that this is a shared problem, and that the fears associated with the issue are also shared.**

Begin by asking the following but let the conversation develop as the group wishes.

- What worries you about HIV?
- How has HIV affected your home communities?
- What kind of problems has HIV caused in your home communities?
- Do you think it is possible for people to keep themselves safe from infection?
- What do you think prevents people keeping themselves safe from infection?



STEP 2: INSTANT THEATRE

Stories allow us to plot out human action and make sense of it. In the following situations,

- 1 How would you advise your daughter about HIV/AIDS? Show me.
  - Invite someone to play the part of the daughter.

- What do you tell your daughter about handling men?
- Imagine. Your daughter is 14, and going out with a 21 year old. He has a solid income, and seems to have a bright future ahead of him – you feel that EVENTUALLY this might be a good match for your daughter. But you fear that RIGHT NOW he will be able to take advantage of her, given her age. You haven't discussed relationships, sex or HIV with her before. You want to advise her on how to handle her relationship.
- What might you say to the 21 year old?
- Slightly changing the situation: You don't care about this man having a descent living. You don't want your daughter to marry until she's at least 20. You've told her she must stop seeing this man and she has agreed, but you worry that he will pursue her. What do you advise her?

2 Your brother is married and having relationships with 4 other women. What would you advise him? Show me.

- Ask someone to play the part of the brother.
- Let the scene unfold then ask for comments from the audience. Do you agree with the advice? If so why? If not why not?

3 You are at work. You notice that the boss is having an affair with one of your female colleagues. You know that your boss is HIV positive. What do you say to your colleague? Show me.

- Continue as above.

4 Can you name other situations where people are at risk?

5 How can you advise the people who are entering into risky situations?

6 Continue to develop your own situations...



STEP 3: DISCUSSION

- What do you think about a person putting someone else at risk of infection or HIV or STDs?
- In your lifetime, have you heard stories of people getting themselves into risky situations?
- How do you think it is possible to stop people from behaving like this?
- Why do people put others at risk of infection?
- How can you be sure that you yourself are not putting others at risk when you have sex?



STEP 4: INSTANT FORUM THEATRE - Taking less risks and taking control

This exercise is about observing 'intention' in body language and human action, developing an understanding of putting oneself in high risk situations, and developing the ability of taking control.

There are many stages involved in the process building up to an act of penetrative, unprotected sex. Using the following basic outlines of scenarios, encourage the audience to notice at what point the characters are entering into a 'risky' situation.

Before we DO things, or TAKE ACTION, we have thoughts that COME FIRST. These thoughts may include feelings, hopes and desires, and if they result in a person taking action of some kind, they can be said to be 'Intentions'. These intentions may not be spoken, but they may be 'visible' in the body, face, gestures or in other spoken words.

Narrate the following and encourage audience to spot the 'intentions' – we're watching out for how much the person becomes at risk.

This is a stop start exercise. Invite two actors to play a girl and a chief.

- 1** A 20 year old young woman is walking back to her house with food for the evening meal.
Freeze

Is she at any risk?

No. (But it would be safer if she wasn't walking alone)

- 2 There are a number of other people walking along the same route. A chief walks towards her. They stop and greet each other.

Freeze

Is she at any risk?

No, there are other people around.

Can you read any 'intention' in this chief's body language, or facial expression?

The chief offers to help the girl carry the bags of food.

Freeze

Is she at risk?

No, the chief is just being friendly.

Again – ask the audience to observe and comment on body language, eye contact, gesture and tone of voice to discern if there any 'intentions' – if necessary ask the couple of actors to repeat their exchange.

The girl accepts the chief's help, and they begin walking home. The chief asks many things about the woman's family and life.

Is she at risk?

This will depend upon what kind of 'intentions' the actor playing the chief is revealing.

- 3 Continue the story in the same way, stopping and starting where you feel its appropriate.

The chief begins to look at the young woman's physical shape. He suggests that the young woman comes to his house, to meet his son. She goes with him, and when she arrives at the chief's house, it is very clear that there is no one there. The chief invites the young woman into the house. The chief says he'd like to talk to the young woman about her future in the community. They talk. The chief mentions what he knows about the young woman's family being on the vulnerable household list. He says that he would like to help her family with extra food aid this year. He doesn't mind arranging it, he says.

What might **motivate** the chief to talk about this?

The chief moves a little closer to the young woman.

Is the chief's intention clear?

What does the young woman think now? What should she do?

The chief puts his hand on the young woman's leg.

Is the chief's intention clear now?

How can the young woman get out of this situation?

How could this young woman have avoided entering into the risky situation in the first place?

- 4 Invite audience members to play the part of the girl to help her get out of this high risk situation.

- 5 Ask participants to provide other stories that show people entering into high risk situations and explore how they can be avoided.

OTHER HIGH RISK SCENARIOS

Repeat as above – break the scenarios down into detailed step-by-step scenes.

- 1 Your sister has been married to a man called Thomas for two years. They do not have any children. A year ago your sister discovered she had a sexually transmitted infection (an STI) called syphilis. She has been faithful to Thomas, so she knew that disease must have come from him and that he must have other partners. When your sister asked Thomas about his, he denied it at first but eventually admitted that he has other sex partners. Thomas agreed to wear a condom until they had been treated and cured of the STI. Your sister is still worried because she suspects that Thomas has not changed his behaviour and is still having sex with other women.

What advice can you give your sister and Thomas about protecting themselves from getting HIV/AIDS? *(Be tested to learn their status. If negative, be mutually faithful. If either is positive, use a condom every time they have sex)*

- 2 A wife and husband are in bed. The wife suspects her husband has been having sex with many other women. What can she do?

Invite participants to help the actor playing the wife.

Encourage participants to think of how the wife can negotiate with the husband to use a condom.

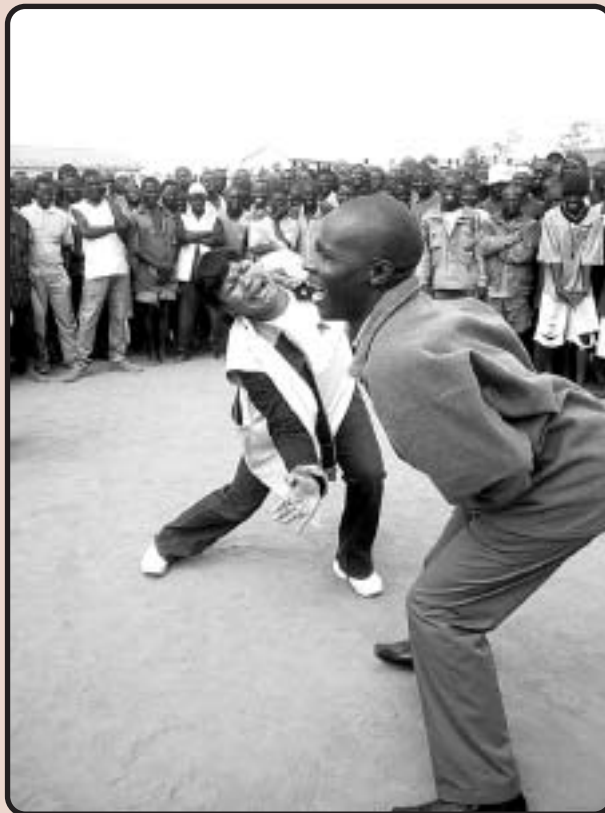
- 3 A young girl who has just been through initiation is approached by an older man. What can she do to stop the man's advances?



NOTE: Remember these are culturally loaded and sensitive scenarios. Try to keep the group focussed on the serious effort of helping the women (often played by men) stay SAFE from infection.

SECTION 2, Part 4

Games





Bombs and shields

10 minutes – energiser – introduction to a theme

Ask everyone to secretly decide (without telling anyone who it is) on one person in the group who is their 'bomb'. Then ask them to choose someone to be their shield, again without letting anyone know who they've chosen. Explain that you are going to count down from 20, and when you reach zero the bomb will explode, at which time everyone must stop where they are and not move. The only way to survive is to make sure that your shield is between you and your bomb. When your count reaches zero, say "BANG!!" and remind everyone to stay where they are. All those who have kept their shield in between them and their bomb are safe. All those who have not kept their shield in between them and their bomb are dead. Cheating defeats the object of the game!



Call and response

1 minute – energiser, group engagement and attention.

This works to the very simple principle: you call one thing, the group responds with another. This could be anything, for example Zikomo, Kwambiri. Here we use the example, Kaboom Kaching;

You call:		the group calls:
KABOOM ----->		KACHING
KACHING ----->		KABOOM
KABOOM KABOOM ----->		KACHING KACHING
KABOOM KACHING ----->		KACHING KABOOM
KABOOM KABOOM KACHING ----->		KACHING KACHING KABOOM

You can vary this in anyway you want, using different words – try thinking of words appropriate to your session. Whatever you call, the group calls the opposite. You can build the group's energy by building the volume and speed. Make your calls louder and faster and more complicated as you go on. The group will grow more excited as the energy grows.



Cat and mouse

10 minutes – energiser.

This is a version of a chase or 'tag' game. The aim of the person playing the 'cat' is to catch the 'mouse'. When the 'mouse' is caught, that person then becomes the 'cat'. The mouse must try as hard as possible to run away from the cat and avoid getting caught. But the mouse can also SAVE itself by hiding. Ask the rest of the group to stand in the space, shoulder to shoulder in units of 3. The mouse can 'hide' by standing shoulder to shoulder at the end of any of the units. If the mouse does this, the person at the other end of the unit becomes the mouse, and can no longer be in the unit. This new mouse must now run away from the cat. And so on. You could rename the cat and the mouse – policeman/robber.



Change the action

10 minutes – energiser.

Ask the group to stand in a circle. A volunteer enters the circle and begins to mime an action. The next person enters the circle and has to copy the action and then change the context of mime, for example the action of climbing a ladder could be changed to someone doing aerobics. Continue until everyone has had a go.



Change the object

10 minutes

Ask the group to stand in a circle. Introduce an object, such as a chair, to the circle and ask people one by one to enter the circle and mime a use for the object which is different from its real use, for example as a typewriter or a piano or a shoe. Encourage people to be as imaginative as they can and not to censor their own ideas.

DEVELOPMENT: You can focus the exercise by giving the object a status, for example it is valuable/dangerous etc. Encourage people to express an emotion in their mime.



Clapping

1 minute – energiser, endgame

A very simple game. This is perfect for quickly bringing the group together in the middle of a session – it can be repeated throughout the session and is also useful for closing. Call out a number: eg. 2 everyone must then clap that number (two times). For the end of the session you can finish by calling out a large number (say 68). The group starts clapping and it soon turns into applause, at which point you can take a bow!



Finding character using stereotypes

10 minutes

Invite 5 actors into the space. Secretly give the actors the following characters and activities, for instance:

- An angry robber putting on the trainers he has just stolen
- A kind and gentle nurse giving an injection to a baby
- A construction worker building a house, who is ashamed
- An arrogant bank teller serving a customer in a bored manner
- A bossy manager who is counting money which his subordinate has just given him

Give the actors a few minutes to act out their character and their action. Encourage the actors to explore their emotion to the full – let it go further.

Ask the actors to carry on their task, showing off their character and feeling the emotion. Ask the audience, which one is the angry robber? Which one is the kind and gentle nurse? Which one is the construction worker? And so on.

Repeat with different characters and emotions.



Fish Focus

5 minutes – group cohesion

A group of between 5 and 10 participants enter the space. Bunch up together as closely as possible. The person at the front of the collection of people, is the 'head'. The rest of the group are the 'fish body'. The group's task is to move smoothly around the space, changing direction, as a fish would. The group – the fish body, follow very closely behind the fish's head. If the fish head decides that the fish should move in a different direction, s/he turns. The rest of the group must turn to face the same 'new' direction. When this happens, the person at the front is automatically the NEW fish 'head' leader... and so on.

Once this pattern has been established so that the fish moves smoothly in the space, the fish head leader can determine the TYPE of movement that the rest of the group must follow. Fast, slow, crawling, side stepping, hopping, swooping... etc.



Fizz-buzz

10 minutes – focus and concentration

In a circle, the group attempt to count to 35. Going round the circle, the first person starts at 1, the next 2, and so on. The only rules are that when the number is a multiple of 5, instead of saying the number, the participant says 'fizz'. If the number is a multiple of 7, the participant says 'buzz'. If the number is a multiple of both 5 and 7, then it is 'fizz-buzz'. More difficult than it sounds, this is excellent for settling everyone down after a break.



Greet, Argue and Make up

10 minutes – improvisation – building energy – preparation for acting scenes – releasing emotion

Ask participants to walk freely in the space. Find a partner. Greet the partner as if they are a long-lost friend. Shake hands vigorously. Hug. Ask how they are, how their family is. When you call 'stop' participants continue walking in the space again. Ask participants to meet a new partner, and have a huge argument with this 'character'. Call 'stop' and then 'walk on'. This third time, the participants should meet someone new, and have a new argument, this should go completely over the top, totally exaggerated. Ask participants to take this third argument to the point of 'forgiveness' – with participants literally on their knees begging for mercy! Ask one pair to show the rest of the group a greeting, an argument, and making up, without words – just using the image of the body.



Note: emphasise that this is a way of releasing tension, and preparing for acting in scenes, that the arguments are not real.



Guess the family member

15 minutes – preparation for acting positions in the court hierarchy

Secretly give each participant a family member – mother, father, son, daughter. Without talking, each participant must find repeated actions, that express which family member they are – rocking a baby, counting money, kicking a football, for example. Ask the group to walk among each other in the space, repeating their gestures and actions. Counting down from 10 to 1, tell the group they have to find all the other family members who are the same as

them – all the mothers must get into a group – all the fathers must find each other etc. Call FREEZE when you reach 1. Ask each participant to reveal who they are – and see if they got it right.

Repeat the game – giving each participant different family-member characters. This time – the group must form complete families of 4 on the countdown.



Note: encourage participants to exaggerate their gestures and movements to make their characters as CLEAR as possible.



Guess the object

10 minutes – body transformation – preparation for becoming the 'setting' for a scene indoors

Invite 5 participants into the space. Ask each of them to choose an object from the home (chair, cooking pot, teapot, table, TV, bed, a pumping HI-FI system etc.) One by one ask the actors to demonstrate their object to the audience – who must guess what each actor represents.



Guess the status

15 minutes – use gesture and repeated body action to express character (You need to prepare small pieces of paper with numbers from 1 – 10 on each)

Ask participants to enter the space – give each a piece of paper that has a number between 1 and 10 on it. Ask them to keep the number secret. The number tells the actors what 'level' their status is – with 10 being the highest most important status, 1 the lowest. Get an improvisation going set at a party. Each participant must find ways to 'act' their status without ever saying what number they are. After the group have interacted at the party call FREEZE! And ask them to strike a position, a 'pose' that expresses their status. Go to each person and ask the rest of the group to guess what status level they are.



Image Game – Wander, Grab, Tab

10 minutes

Ask the group to 'WANDER' about the room. Then ask them to get into groups of two, three, four, or whatever – 'GRAB'. In their groups, give them an idea, issue, object or location, which they have to express in a frozen picture or tableau 'TAB'. Examples might be: the number six, the letter K, a football match, a party, parent and child, teacher and pupil, friendship, home, trust, conflict, etc.

Ask the groups to stay frozen, while you quickly move around checking and affirming their work, highlighting any aspects you can immediately see. Repeat four or five times, using different words and different sized groups.



Making large objects from the landscape. Bridges, trees, a ladder, shapes

10 minutes – body transformation – preparation for becoming the 'setting' for a scene outdoors

Same as 'Guess the object', but ask participants to work in groups of 4 or 5. Then ask participants to choose large objects from the landscape – tree, bridge, building, road, for example. What am I?



Mirror exercise

10 minutes – Responsiveness – non-verbal communication – trust

Get the group into pairs. Standing opposite each other, one person in each pair is the 'leader' and starts a slow movement, which the other copies or mirrors – that is, as if looking in a mirror. The movements can gradually be built to be more complicated, but not faster. Ask the pairs to swap leaders, without breaking the movement. Ask one pair to show their mirroring to the audience. The pair must change who is leading the movement – without the audience noticing. Ask the audience to work out who is leading the movement and when the leader changes over.



Name Game: slap clap click click

5 minutes – Ice-breaker / endgame – co-ordination & rhythm

In a circle, all participants begin the rhythm that follows four beats:

Beat one: Slap thighs. Beat two: Clap hands. Beat three: Click with right hand. Beat four: Click with left hand.

Once the rhythm has been established, ask participants to call out their name one by one on the first click (beat 3). This can either be done in the order that people are sitting or randomly. Participants can be seated in any arrangement for this game.

DEVELOPMENT: Throw your name:

On the 1st click participants say their own name, on the second click, they call out 'to Mphatso' or whoever they choose in the circle. Once your name is called you repeat the same: Slap Clap 'Peter to Kondwani' Slap Clap 'Kondwani to Grace' Slap Clap 'Grace to Brave' Slap Clap 'Brave to Susan' etc etc.



Name game with balls

5 minutes – Icebreaker – Introducing the use of balls – Spontaneity

Ask the group to stand in a circle and throw a ball to each other. As people throw the ball they call out their own name. Change the instruction to saying the name of the person you are throwing the ball to and not your own name. Introduce a second ball and if the group are managing well, introduce a third ball. You can slow the game down or finish it subtly by taking away the balls as you catch them.

DEVELOPMENT: Throw a question with the ball.

Endgame – Confirmation of knowledge.

As a participant throws a ball, s/he can direct a question to person who will catch it. They must answer as quickly as possible, before throwing the ball on with a new question.



Name Game, with a revealing action

5 mins – Ice-breaker – Introduction to actions

All participants stand in a circle. Going round the circle one by one, each person steps forward and exclaims their name with as much pride as possible. The participant must put an action with his or her name. This can be any action. Encourage people to let go of themselves. The more extreme or strange the better. Once the participant has stepped back, all the other participants copy the action and repeat the name together. Watch out for people repeating the same action as others. Suggest that people choose something personal to them, and different to everyone else.



Passing the clap-Hep

10 minutes – Icebreaker – Coordination – Energiser

Standing in a circle. One person starts by saying 'hep' at the same time as clapping their hands in the direction of the person standing next to them. The next person then does the same, passing the 'hep' on. Once everyone has got the idea, you can start introducing more rules (listed below). When someone makes a mistake, they are out.

The rules are:

- HEP: pass a clap on round the circle: clap hands in one direction and say 'hep'.
- HAH: passes the clap back around the circle in the opposite direction. Face the person who passed you a 'hep', raise your arms, palms facing out, and say 'hah'
- POW: passes the clap across the circle. Put your hands as if firing a gun and say 'pow'
- BOING: passes the clap back across the circle, when you've been 'powed'. Push your chest out, raise your hands up with fists and say 'boing'
- SHLACK: throws the clap into the middle of the circle. Someone else must pick the clap out of the circle, claiming it with 'mine'. The first to get it carries on. Anyone who says 'mine' too late, is out, and if two or more people say 'mine' at the same time, they are out.
- DIP DIPPADI: misses out the next person in the circle. You raise your arm and make small circles in the air with a pointed your finger to indicate this, saying 'dip dippadi'.



Rabbit Spear Wall

5 minutes – Icebreaker – making images with the body

The group divides into two teams, one at each end of the space. Each team confers, and decides which group role they will take on first: Rabbit, Spear or Wall, then lines up facing the opposite team. At a signal, each team takes three steps towards each other and then at another signal take on the group role they have chosen, all making the same gesture and noise:

- rabbit: bending down, fingers by ears, sniffing and squeaking noise
- spear: leaning forward, clutching a mimed spear in right hand, making HA! noise
- wall: hands up stretched above head. Making a low HMMM! noise

How a team wins: each character 'beats' the other character like this:

- rabbit beats the wall (by climbing over it)
- spear beats the rabbit (by killing it)
- wall beats the spear (by blunting it)

Play this several times – the fun comes in trying to guess what the other team might choose. It is also possible to customise the game by choosing different characters or objects – for instance other well known versions are 'paper scissors stone' and 'wizard dwarf ogre', or 'victim crime justice'. (crime gets victim, victim gets justice, justice gets crime).



Rainstorm

5 minutes – Endgame – focusing the energy of the group – building cohesion and calm

All participants in a circle. Go through the following actions with the group.

- Rubbing the palms of hands together
- Clicking fingers
- Slapping thighs
- Stamping feet

The group should close their eyes. Tell participants that they must repeat the sound that they hear being made to their right. They must continue this sound until it changes to a new one. You begin with the first sound – rubbing your hands together. Watch it build throughout the circle, then change to clicking fingers, then slapping thighs, then stamping feet. Then go back to slapping thighs, clicking fingers and then back to rubbing hands and finally silence. The effect is of creating the build and then calm of a storm.



Note: if is a particularly large group, just ask the group to start the new sound and action when they hear it, otherwise it can take too long to wait until it has reached everyone.



Scale in the space

5 minutes – Preparation for HUMAN MIND exercise. Turning the space into a scale

Clearly state that one side of the space means 'AGREE'. The opposite side of the space means 'DISAGREE' and the middle means 'NOT SURE'. Invite 10 participants up. Make the following statements and ask the participants to respond by moving to the area of the space that explains their answer

- I love football.
- I can swim.
- I believe in God.
- Men wear skirts.
- Women can drive trucks.
- **Make up your own...**

DEVELOPMENT: This time make a line along the back of the space – 10 is at one end 1 is at the other end. 10 means YES, absolutely. 1 means NO, absolutely not. 5 means Absolutely no idea. This time participants can take up any position along the scale – in response to the following statements/questions:

- If you are caught in a room with another man's wife, are you guilty of betrayal?
- If a phone is snatched from your pocket by another man, is that man guilty of theft?
- Do all trees have green leaves?
- Is water blue?
- Are politicians good people?
- **Make up your own...**



Simon / John says

5 minutes – Icebreaker – Energiser

The facilitator says: "Simon says..." and announces an action, which is followed with his body, for example, "put your hands on your head". The participants then copy and put their hands on their head. The facilitator continues the same with different actions. If the facilitator gives an instruction WITHOUT saying "Simon says" the participants must not move. Any one who does is out.



Slow motion fight competition

10 minutes – developing safe fight-for-improvisation skills

Invite 5 pairs into the space. Each pair must perform a fight in slow motion. The audience must demonstrate the level of their appreciation for each fight with applause. The pair who get the most applause are the winners. Alternatively you can judge the fight with scores taken from the audience.



Slow motion race

10 minutes – Slow motion skills – uplifting

Participants stand behind a line. The objective of the race is to be LAST runner across the line at the opposite side of the space. This means that runners must run in slow motion. The rules for movement are that each runner must lift their legs, with their knees to hip height with each step and each step itself must be 3 feet long.



Story telling and applause exercise

5 minutes – Preparation for Narrated role plays – Developing imagination – play and audience engagement

Invite a group into the space. Tell the audience you will tell a story, and the group are going to act out WHATEVER you say, as convincingly as possible. If the audience agrees that the group has successfully acted out each sentence, the audience must reward the 'actors' with an applause.

Use the following, or create your own.

- There was a maize field (have they jumped into this image? Is it convincing? Encourage the audience to applause if it is. Do the same after each of the following sentences)
- The sun was beating down on the field
- The wind began to blow the stalks from side to side
- Thunder cracks and the rain begins to pour
- A flood runs through the maize field
- A farmer rushes out into the field
- He tries to stop the flood



Tangles and knots

10 minutes – Icebreaker – togetherness – the group working as a team

The group stands in a circle. Each person must remember who is standing on his left and his right. Ask the group to spread out around the room/space and begin to walk freely about. Call out instructions, for example 'walk with those with the same coloured trousers as you', 'those with the same coloured shirt', 'those the same gender'. Call different instructions – 'create 3 circles', or '4 squares' or '2 triangles' or 'one star' and individuals must form themselves into groups to make this happen. Next ask everyone to 'freeze' where they are standing. Ask the group to remember the original circle, and to point to the person who was standing to their right with their right hand. While still pointing with their right hand, ask them to point with their left hand to the person who was standing on their left. Without moving, ask the group to stretch very slowly and then move towards their two neighbours until the entire group are holding hands. This will be a tangle. The group must then try to untangle themselves and form a circle again, without letting go of their neighbours' hands. 9/10 times it does work!

A variation of the game is to send 1 or 2 members of the group out of the room/space. The rest of the group form a circle holding hands, then get themselves into a tangle. The people outside are then asked back in and told to untie the knot using their voices only. The tangled people follow the instructions. This usually takes some time. Then ask the whole group to form a circle and tangle themselves up. Once they're in a huge tangle ask them to untie themselves (without breaking hands!). This will often take no more than 30 seconds. **The moral is of course that problems are easier solved working together.**



Treading on feet

5 minutes – Icebreaker / energiser

Everyone takes their shoes off and forms a large square area with the shoes. The aim of the game is to touch someone's foot with your foot, without letting anyone touch your own feet. You must stay within the square marked out by the shoes. If your foot is touched by someone else's, you are out. This is an extremely amusing game which gets everyone laughing as they hop about the square space.



Walk/Run/Sit/Freeze

2 minutes – introduces freeze – Reactions

Everybody in the space must respond as quickly as possible to your instructions of run, walk, freeze, sit, freeze, run etc.



Who you are and what you do

5 minutes – Icebreaker

Similar to game 'your name and your action'. Form a circle, ask participants to go round the circle introducing themselves and what they are: 'I am Peter, I am a farmer'. The rest of the group responds enthusiastically, 'Great, a farmer'. The facilitator can choose whatever word to begin the response: WOW, Wonderful, Excellent. Advise participants that they can choose to reveal anything they like about themselves. For example, 'I am a good mother' or 'I am a talented singer' or 'I am a very bad dancer' or 'I am a terrible cook'. Can be customised – if you use it as an endgame, you could replace what you do with a fact you've learned during the session, for instance.



Wink murder

10 minutes – concentration, acting, suspense

Ask the group to sit in a circle and close their eyes. You go round the outside of the circle and tap one person on the shoulder, who then becomes the murderer. Everyone opens their eyes and are informed that there is murderer among them and if they are winked at, they have been killed and must act out a horrendous death, trying to make sure that no one can tell who the murderer is. The murderer aims to kill as many group members as possible without being found out. Throughout the game everyone tries to discover who the murderer is. When someone thinks they know, they put their hand up and make a guess. If they are right, the game ends, if not, they die (horribly) and the game continues without them.

SONGS AS ENERGISER GAMES



Fruit Salad

5 minutes

A song set to the tune of the French roundel 'Frere Jacques' (find the vernacular names for the song) with new nonsense words:

- avocado, avocado (make small round avocado shape with hands)
- papaya, papaya (make bigger round papaya shape with hands)
- chiki chiki chiki, chiki chiki chiki (wiggle from side to side)
- fruit salad, fruit salad (put hands out as if presenting a fruit salad)

You can split the group into two to face each other. One group starts. The second group starts when the first group has finished the second 'avocado'. Each line has an accompanying movement, and the sheer silliness of it has everyone laughing and energised.



Sound and fury

5 minutes. Energiser, endgame. Organic creation of music. Preparation for making songs.

Choose a participant to start a rhythm using finger clicking, clapping, stamping, voice – anything they can think of. Once the rhythm is established, point at someone else to join in with their own rhythm. Then bring in everyone else, one at a time or in groups until everyone is contributing to the music. You can then 'conduct' – raising hands to make it louder, bringing them down to make it quieter, or bringing up one side of the room and bringing down the other side finally bringing it to an end with a round of applause.

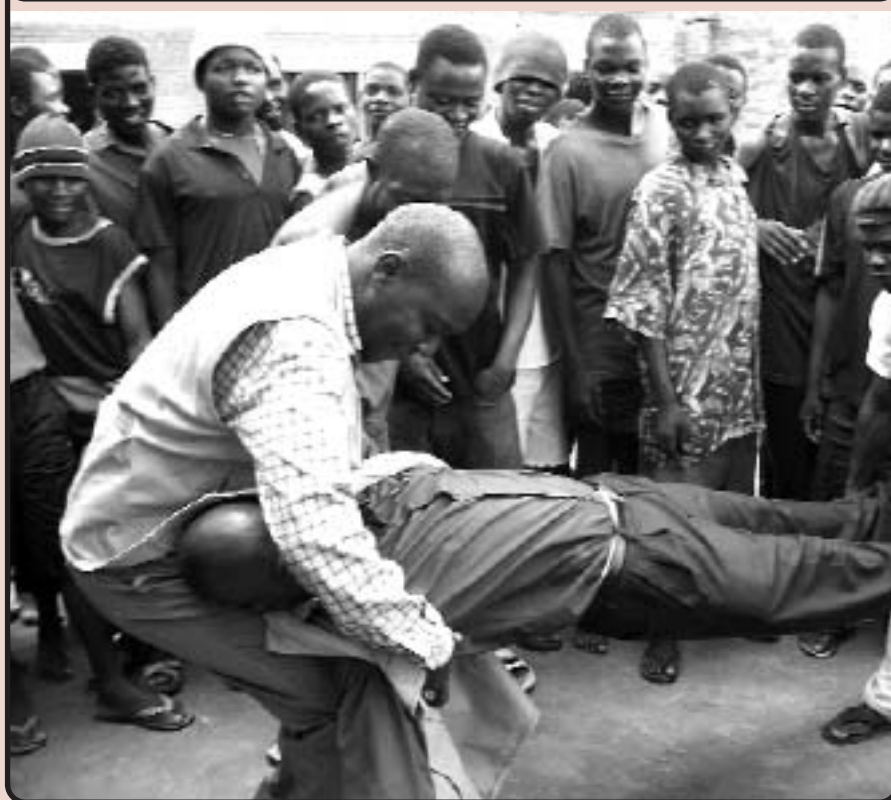


Your Own

Use your own games, from your childhood or school days, or that have been learnt in trainings. Develop your repertoire of games so that you always have a tool to spice up your sessions.

SECTION 2, Part 5

Homicide Case Studies



HOMICIDE CASE STUDIES

Peter is cutting down a branch of a tree near a busy road. While in the process of cutting the branch, the branch falls down and hits John who is passing by. John sustains head injuries and is admitted to the nearest clinic. Two hours later he is pronounced dead. Peter is then arrested. What offence is Peter likely to be charged with?

It is clear that the death of John was caused by Peter. However, it was not the intention of Peter to kill John. A reasonable person should have known that his act – without due warning to others – endangered the lives of other road users. It is, therefore, proper to charge Peter with manslaughter due to his recklessness.

George is a drunkard who usually comes home late at midnight. One day he comes home earlier than expected and finds his wife in bed with Patrick: they are both naked. George picks up a knife from his kitchen and stabs Patrick in the chest. Patrick runs away and ten days later he dies. The police arrest George.

The time lapse is long. However unless there is any other cause, it seems George caused the death of Patrick. The problem is the knife and George going to the kitchen to get it and then stab Patrick. It is not as if he turned up, saw the situation and then reacted. He saw the situation then deliberately went off to get a weapon. The proper charge on these facts would be murder.

Would the charge against George have been different if he picked the knife right there in the bedroom?

Yes, for then George could have rightly pleaded provocation and that he killed Patrick in the heat of passion therefore attracting the reduced charge of manslaughter.

Zagwa had a maize mill at Lizulu trading centre. Thieves had been troubling him by stealing valuables from his premises. To catch the thugs, he connected live electricity wires to bars covering the maize mill doors and windows. One day three kids were playing football near the building. As they were playing, one of the kids got tired and decided to go and seek shelter at the building. There he saw naked wires which were connected to the bars and thought of picking them up. Upon touching the wires, the child was electrocuted and died instantly. Is Zagwa guilty of murder or manslaughter?

Zagwa is likely to be charged with manslaughter because he caused the death of the child due to his reckless disregard for the lives of others. Zagwa had not posted any signs warning of the danger nor taken precautions to ensure innocent people were not put at risk.

A group of people are travelling to the capital by mini-bus. The mini-bus is traveling at an accelerated speed. Some passengers in the mini-bus complain about this to the driver to reduce his speed. The driver ignores the passengers and continues at speed until the mini-bus plunges into a river as it tried to cross over the bridge just after negotiating a sharp bend. Three people die on the spot, five seriously sustain injuries and eleven have minor injuries. The driver runs away and after some time is apprehended and appears in court. Is the driver guilty of murder or manslaughter?

The driver is likely to be charged with manslaughter for causing death by reckless driving. By driving at a high speed, he should have known that he was creating an unreasonable risk of death to his passengers and other road users.

A young man named Ziphindo married a girl named Zimlet. After a year of marriage the two have a baby boy. They name the baby Zampona. One day Ziphindo leaves his home for a drinking spree. He comes back at around 6:00 p.m. and asks for his son who is only 14 months old. His wife gives him the child. He plays with the child by throwing it up and down in his hands. He does this several times and his in-law pleads with him to stop because Ziphindo is excessively drunk. Ziphindo says he is proud of his son and continues throwing him up and down until he falls on the floor. The baby instantly faints and is taken to hospital. On arrival he is pronounced dead and Ziphindo is arrested by the angry family members and taken to the police. Is Ziphindo guilty of murder or manslaughter?

Ziphindo is likely to be charged with manslaughter because he caused the death of his child due to his recklessness. Ziphindo should have known that throwing his son whether drunk or sober put the child at risk. The interesting question that arises is the sentence – clearly this was accidental and the grief to the parent is punishment enough – should the judge pass a term of imprisonment or suspend that term so the father can be with the family?

Mary is a daughter of a rich man in the capital. She is assisting her father in their shop. Mary sees James, one of the customers, pick up two tablets of soap and hide them under his pants. Mary watches James closely until he gets out of the shop without paying for the soap. She shouts for help so that people in the city should assist in apprehending James. After chasing James for almost one kilometer he is apprehended by three strong young men, Ted, Jack and Petros. The three men get some petrol and set James ablaze. He dies on the spot. Are the three young men guilty of any offence?

The three young men are likely to be charged with murder because 'mob justice' is no defence. It was the duty of the three young men to take James to the nearest police station rather than taking justice into their own hands. All three men are equally guilty because they acted together, even if one took the lead.

Mabvuto is in a disco with two friends. They buy beer and start drinking. A man joins them uninvited and picks up a beer and starts drinking it. Mabvuto asks the man to replace the beer. Instead the man gets angry and beats up Mabvuto. Mabvuto picks a full beer bottle and hits the man with the bottle on the head. The man sustains injuries and dies later in Hospital. Is Mabvuto guilty of any offence?

Mabvuto appears to be acting in self-defence. If the facts are made out it is likely that he would be acquitted of any offence therefore the prosecution may recommend discharging the accused in the public interest and to avoid the unnecessary expense of a useless trial.

SECTION 3

Appendices

CODE OF CONDUCT
NATIONAL LAW AND RELEVANT CONSTITUTIONAL PROVISIONS
INTERNATIONAL HUMAN RIGHTS LAW



1. CODE OF CONDUCT FOR PARALEGALS WORKING IN PRISONS

The purpose of the Code is to provide clear guidance to, and regulate the conduct of, the paralegals in the Paralegal Advisory Service 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 with 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 recognized staff member.

Signed

2. MALAWI PLC NOTES

a. National Law References

PLC 1: Activity 2:

- list constitutional provisions guaranteeing rights of the detainee in police station
- Powers of police arrest set down in s28 CP&E

PLC 1: Activity 3:

- Art 42 (2) b) MC states the rule

PLC 2: Activity 1:

- The right to be released on bail is recognised in law see ss118-125 CP&E
- There is another objection police in Malawi can raise namely that the accused might disturb order in the community

PLC 2: Activity 2:

In Malawi the third objection to bail (that the accused may commit an offence on bail) is supplemented by an additional objection that s/he may 'endanger the safety of the community.'

A fourth objection is also added, namely 'in exceptional circumstances, the likelihood that the release of the accused will disturb public order or undermine public peace or security'. In such circumstances, the court should consider:

- community shock or outrage were the accused to be released (given the nature/circumstances of the offence)
- leading to public disorder
- safety of the accused person
- public feelings of insecurity were the accused to be released

PLC 3: Activity 2:

Competition

- Invite four volunteers to the front. Ask the audience which one should be Resident and First grade magistrate, Second Grade, Third Grade, Fourth Grade.
- Tell each of the 4 actors what their sentencing powers are, without the audience hearing.
- If you're working in twos, one can talk to the actors, while the other splits the group of participants into 5/6 teams – depending on numbers.
- Each of the 4 actors playing magistrates should be asked to strike a pose for their magistrate, performing how powerful their magistrate is. They should also say as dramatically as possible, the name of the grade of their magistrate. Repeat.
- The aim of each team is to guess the sentencing powers of each magistrate. They must ask the 'magistrates' questions with only YES or NO answers. Eg:
  - Can you give sentences that are more than 5 years?
  - Can you give a fine over MK500?
  - Can you give a sentence up to 12 months?
- Each team gets one question, to one magistrate at a time.
- If the magistrates get the answers wrong, jump in with the correction!
- When the game is over. Fire the following questions at the audience.
  - Up to how many years can a resident and first grade magistrate sentence?
  - What is the maximum fine a second grade magistrate can impose?
  - What is the longest sentence a second grade magistrate can impose?
  - What is the maximum fine a third grade magistrate can impose?
  - What is the longest sentence a third grade magistrate can impose?
  - What is the maximum fine a fourth grade magistrate can impose?
  - What is the longest sentence a fourth grade magistrate can impose?

Quick discussion, based on paralegal notes.

What are lay magistrates?

How many grades of magistrate are there?

What cases can a Resident and first grade magistrate NOT try? (murder/treason/manslaughter)

The resident magistrates and magistrates of the first and second grade can try any offence save for treason, murder and manslaughter.

Sentencing powers:

- Resident and first grade magistrate: any sentence up to 14 years
- Second grade: can impose a fine not exceeding MK1000 or a term of imprisonment not exceeding 5 years
- Third grade: maximum MK 500 fine and 12 months imprisonment
- Fourth grade: maximum MK250 and six months imprisonment

PLC 9: Activity 3

A majority verdict is one where at least 9 members of the jury are agreed, thus 11:1 say he is Guilty; or 10:2 or 9:3. Anything less than 9 means the jury are 'hung' and cannot agree and will be discharged.

PLC 11: Activity 2:

In Malawi a crime is categorised as a felony or a misdemeanour. A felony is more serious and becomes such if punishable with prison for 3 years or more. Crimes/offences are listed in the Penal Code (ss 7-20)

PLC 15: Activity 2:

Housebreaking occurs by day and burglary by night. It is committed when a person 'breaks any part, whether external, or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, flap, or other thing intended to close or cover an opening in a building, or opening giving passage from one part of a building to another, deemed to break the building'.

Section 309 of the Penal Code states that:

Any person who-

- (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or
- (b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in such building, tent or vessel, breaks out thereof, shall be guilty of a felony termed "housebreaking".

Both offences attract serious sentences if the accused person is tried and found guilty (death sentence or life imprisonment).

PLC16:

Murder and manslaughter are defined in ss208, 209 Penal Code.

PLC 18: Activity 3:

The advantages of Community Service led Malawi in 1999 to amend the Penal Code to include Community service as one of the punishments that a Court of Law can pass. Subsequently the Criminal Procedure and Evidence Code was also amended to incorporate Community Service as an option for petty offences attracting a custodial sentence of 12 months or less. It is only first time offenders that may benefit from Community Service Order.

PLC 19:

The CP&E Code states an appeal needs to be lodged within 10 days of the judgement (s349). If you tell the prison authorities this counts as sufficient notice (349b). The appeal is in the form of a petition setting out the grounds of appeal. This is technical and usually requires legal advice.

PLC 19: Activity 5:

Confirmation of sentence.

All sentences must be confirmed by a High Court Judge where it is a first offence and attracts a sentence. This means the case file should be reviewed to check that the sentence was lawful.

The law requires that a person should be released if his/her sentence has not been confirmed at the High Court. If the sentence has not been confirmed at the end of this period, further detention is no longer lawful.

As a matter of working practise, when paralegals review prison files, they should check confirmation status.

b. Malawi Constitutional Provisions

Chapter 3: Fundamental Principles

12. Constitutional Principles

- (iv) The inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect fundamental human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote.
- (v) As all persons have equal status before the law, the only justifiable limitations to lawful rights are those necessary to ensure peaceful human interaction in an open and democratic society.

Chapter 4: Human Rights

15. Protection of human rights and freedoms

- (2) Any person or group of persons with sufficient interest in the protection and enforcement of rights under this Chapter shall be entitled to the assistance of the Courts, the Ombudsman, the Human Rights Commission and other organs of Government to ensure the promotion, protection and redress of grievance in respect of those rights.

19. Human dignity and Personal Freedoms

- (1) The dignity of all persons shall be inviolable
- (2) In any judicial proceedings or in any other proceedings before any organs of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
- (3) No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment.
- (4) No person shall be subject to corporal punishment in connection with any judicial proceedings or in any other proceedings before any organ of the State.
- (5) No person shall be subjected to medical or scientific experimentation without his or her consent.
- (6) Subject to this Constitution, every person shall have the right to freedom and security of person, which shall include the right not to be;
  - a) detained without trial
  - b) detained solely by reason of his or her political or other opinions; or
  - c) imprisoned for inability to fulfill contractual obligations

27. Slavery, servitude and forced labour

- (1) No person shall be held in slavery or servitude
- (3) No person shall be subject to forced labour

41. Access to justice and legal remedies

- (1) Every person shall have a right to recognition as a person before the law
- (2) Every person shall have access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues.
- (3) Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him by this Constitution or any other law.

42. Arrest, detention and fair trial

- (1) Every person who is detained, including every sentenced prisoner, shall have the right;
  - a) to be informed of the reason for his or her detention promptly; and in a language which he or she understands
  - b) to be detained under conditions consistent with human dignity, which shall include at least the provision of reading and writing materials, adequate nutrition and medical treatment at the expense of the State
  - c) to consult confidentially with a legal practitioner of his or her choice, to be informed of this right promptly and, where the interests of justice so require, to be provided with the services of a legal practitioner by the State
  - d) to be given the means and opportunity to communicate with, and to be visited by, his or her spouse, partner, next-of-kin, relative, religion counsellor and a medical practitioner of his or her choice;
  - e) to challenge the lawfulness of his or her detention in person or through a legal practitioner before a court of law; and

- f) to be released if such detention is unlawful
- (2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right;
  - a) promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;
  - b) as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released;
  - c) not to be compelled to make a confession or admission which could be used in evidence against him or her;
  - d) save in exceptional circumstances, to be segregated from convicted persons and to be subject to separate treatment appropriate to his or her status as an un-convicted person;
  - e) to be released from detention, with or without bail unless the interests of justice require otherwise;
  - f) as an accused person, to a fair trial, which shall include the right-
    - i) to a public trial before an independent and impartial court of law within a reasonable time after having been charged;
    - ii) to be informed with sufficient particularity of the charge;
    - iii) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial
    - iv) to adduce and challenge evidence, and not to be a compellable witness against him or herself;
    - v) to be represented by a legal practitioner of his or her choice or, where it is required in the interests of justice, to be provided with legal representation at the expense of the State, and to be informed of these rights;
    - vi) not to be convicted of an offence in respect of any act or omission which was not an offence at the time when the act was committed or punishment than that which was applicable when the offence was committed;
    - vii) not to be prosecuted again for a criminal act or omission of which he or she has previously been convicted or acquitted;
    - viii) to have recourse by way of appeal or review to a higher court than the court of first instance;
    - ix) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her, at the expense of the State, into a language which he or she understands; and
    - x) to be sentenced within a reasonable time after conviction;
  - g) in addition, if that person is a child, to treatment consistent with the special needs of children, which shall include the right -
    - i) not to be sentenced to life imprisonment without possibility of release;
    - ii) to be imprisoned only as a last resort for the shortest period of time;
    - iii) to be separated from adults when imprisoned, unless it is considered to be in his or her interest not to do so, and to maintain contact with his or her family through correspondence and visits;
    - iv) to be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces respect for the rights and freedoms of others;
    - v) to be treated in a manner which takes into account his or her age and the desirability of promoting his or her reintegration into society to assume a constructive role; and
    - vi) to be dealt with in a form of legal proceedings that reflects the vulnerability of children while fully respecting human rights and legal safeguards.

45. Derogation and public emergency

- (6) Where a person is detained under a state of emergency such detention shall be subject to the following conditions -
  - a) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible and in any case not later than 48 hours of detention;
  - b) the name of every detainee and a reference to the measures in terms of which he or she is being detained shall be published in the Gazette within five days of his or her detention;
  - c) when rights entrenched in section 19 (6) (a) or section 42 (2) (b) have been suspended -
    - i) the detention of a person shall as soon as it is reasonably possible but not later than ten days after his or her detention, be reviewed by a court, and the court shall order the release of the detainee if

- it is satisfied that the detention is not necessary to restore peace and order;
  - ii) a detainee shall at any stage after the expiry of a period of five days after a review under subparagraph (i) to be entitled to apply to a court of law for further review of his or her detention and the court shall order the release of the detainee if it is satisfied that the detention is no longer necessary to restore peace or order;
  - d) the State shall for the purpose of a review referred to in paragraph (c) submit written reasons to justify the detention or further detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review.
- 7) If a court finds the grounds for the detention of a person to be unjustified or illegal it shall order his or her release and that person shall not be detained again on the same grounds unless the State shows good cause to a court prior to such re-detention.

Chapter X: The Ombudsman

123. Functions and powers

- 1) The office of the Ombudsman may investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy.

126. Remedies

Where the investigations of the Ombudsman reveal sufficient evidence to satisfy him or her that an injustice has been done, the Ombudsman shall -

- a) direct that appropriate administrative action be taken to redress the grievance;
- b) cause the appropriate authority to ensure that there are, in future, reasonably practicable remedies to redress a grievance; and
- c) refer a case to the Director of Public Prosecutions with a recommendation for prosecution

Chapter XI: Human Rights Commission

129.

There shall be a Human Rights Commission the primary function of which shall be the protection and investigation of violations of the rights accorded by this Constitution or any other law.

130.

The Human Rights Commission shall, with respect to the applications of an individual or class of persons, or on its own motion, have such powers of investigation and recommendation as are reasonably necessary for the effective promotion of the rights conferred by or under this Constitution, but shall not exercise a judicial or legislative function and shall not be given powers to do so.

Chapter XVII: Prisons

163. The Malawi Prison Service

The Malawi Prison Service shall consist of all penal institutions, labour camps, special and secure schools, and other institutions that are used to house, detain and rehabilitate persons sentenced to imprisonment in whatever form such imprisonment may take, but shall not include holding cells in police stations.

167. The Prison Service Commission

- 1) There shall be a Prisons Service Commission with the powers and functions conferred on it by this Constitution and by an Act of Parliament.
- 2) The Prison Service Commission shall have the power to appoint persons to hold or act in offices in the Prison Service of Malawi, other than the Chief Commissioner for Prisons, including the power to confirm appointments and to remove such persons from office.
- 3) The Prisons Service Commission shall, subject to this Constitution and any Act of Parliament, exercise disciplinary control over persons holding or acting in any office to which this section applies.
- 4) The Prison Service Commission may, subject to such conditions as may be laid down by an Act of Parliament, delegate powers under this section by directions in writing to any member of the Commission or to any public officer or public body, being part of the Malawi Prisons Service.

- 5) Where any person or body may, from time to time, exercise powers under this section on behalf of the Prisons Service Commission, in accordance with subsection (4), the Prisons Service Commission shall-
  - (a) require that person or body to furnish reports in such a manner or form as the Commission has specified in the directions by which it is delegated those powers;
  - (b) hear such complaints or appeals from persons in sufficient interest relating to the exercise of powers under this section and shall have the authority to -
    - (i) quash the decision of a person or body exercising such powers;
    - (ii) exercise such disciplinary powers with relation to such person or body, subject to the conditions laid down by an Act of Parliament;
    - (iii) revoke directions delegating powers to any person or body: Provided that nothing in this section shall prejudice the right of any person who is the subject of a decision made by or on behalf of the Prisons Service Commission to appeal to the High Court or the right of any person with sufficient interest in such a decision to petition the High Court for judicial review of that decision.

169. The Inspectorate of Prisons

- (1) There shall be an Inspectorate of Prisons which shall have such powers, functions and duties in relation to the Malawi Prison Service as are conferred on it by this Constitution or an Act of Parliament.
- (2) The Inspectorate of Prisons shall exercise its powers, functions and duties independent of any direction or interference by any other person or authority.
- (3) The Inspectorate of Prisons shall -
  - (a) be charged with monitoring the conditions, administration and general functioning of penal institutions taking due account of applicable international standards;
  - (b) have such powers as shall be required for it to make investigations and shall have the power to require any person to answer questions relating to such subjects as are relevant to those investigations;
  - (c) have the power to visit any and all institutions within the Malawi Prison Service with or without notice and without let or hindrance; and
  - (d) exercise such other powers as may be prescribed by an Act of Parliament.
- (6) The powers conferred on the The Inspectorate of Prisons by this section shall also be exercisable by the The Inspectorate of Prisons with respect to holding cells in police stations.

170. Composition of the Inspectorate of Prisons

- (1) The Inspectorate of Prisons shall consist of the following members -
  - (a) such Justice of Appeal or Judge as shall from time to time be nominated in that behalf by the Judicial Service Commission, who shall be chairman;
  - (b) the Chief Commissioner for Prisons or such person as he or she may nominate in that behalf being a senior member of the Malawi Prison Service;
  - (c) such member of the Prisons Service Commission, other than the Chief Commissioner of Prisons, as shall from time to time be nominated in that behalf by that Commission;
  - (d) such Magistrate as shall from time to time be nominated in that behalf by the Commission; and
  - (e) the Ombudsman
- (2) The Inspectorate of Prisons shall have the power to co-opt persons as representatives of any local or international organisations having an office in Malawi involved in the monitoring of human rights or more generally concerned with the welfare of offenders as may be approved of by the Inspectorate of Prisons.

3. INTERNATIONAL HUMAN RIGHTS LAW

SMR - Standard Minimum Rules for the Treatment of Prisoners

Full text, see <http://www.ohchr.org/english/law/treatmentprisoners.htm>

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Full text, see <http://www.un.org/documents/ga/res/43/a43r173.htm>

ICCPR - International Covenant on Civil and Political Rights – articles 9 and 14

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

CRC - Convention on the Rights of the Child – articles 3, 37, 40

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
  - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
  - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
  - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
  - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

JDL - United Nations Rules for the Protection of Juveniles Deprived of their Liberty – Rule 17

Section III. JUVENILES UNDER ARREST OR AWAITING TRIAL

Rule 17 Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

MSW - Making Standards Work - paras 94-97

Full text, see <http://www.penalreform.org/making-standards-work-en.html>

Care for mentally ill and unbalanced prisoners

94. Assuring a sufficient degree of well-being of prisoners is particularly difficult as well as important as far as insane and mentally abnormal prisoners are concerned and prisoners under serious psychological stress. Rules 82 and 83 of the SMR deal with it. They read as follows:

Rule 82 (1)

Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2)

Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3)

During their stay in a prison, such prisons shall be placed under the special supervision of a medical officer.

(4)

The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Rule 83

It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

95. The amount of prisoners in need of psychiatric care is rising in many countries. One reason often is that, psychiatric institutions and services in the community are overburdened with patients. Therefore, psychiatric patients, who have committed offences, are often not admitted. Mentally disturbed and insane persons, however, not seldom are neglected and abandoned in prison. Long term prisoners may develop mental and psychic disturbances by imprisonment itself and by being cut off from their families. Mental problems also arise and may become chronic in big prisons, where there is much overcrowding; where there are few activities; where prisoners have to stay long time in their cells in daytime; where the prison population is undifferentiated; where criminal subcultures have developed and brute domination by prisoners occurs. These situations often coincide with and are aggravated by insufficient staff to control the prison, let alone that staff have sufficient personal contacts with prisoners; that they know who are in need of specialist help and that they can exert a relaxing influence on the prison climate. Moreover cultural differences may pose special hardship and emotional confusion to foreigners and members of minority groups.

These reasons underline the necessity for prison staff to pay special attention to prisoners in psychic or mental trouble and to try and ease their situation individually. It is obviously an even bigger responsibility for medical and psychological staff.

96. To comply with **Rules 82 and 83 (para. 94)**, a relaxed atmosphere is the basic requirement. It is characterized by caring attitudes of staff, by an organization which enables staff to know prisoners and report about their needs, and by procedures ensuring that prisoners' requests and prison officers' reports (oral and written ones) are taken seriously and dealt with promptly. Only in such situation, it is possible to detect prisoners in need of psychiatric care in the first place. Only then it may be possible to try and have them allocated, according to degree of urgency, to psychiatric institutions or to provide them with all adequate help which is available in prison and possibly after release.
97. In order to guarantee proper and adequate attention and treatment it is of special importance to keep records of mentally disturbed prisoners, or those who show abnormal conduct. Prison doctors or psychologists should be charged with instructing prison staff members to report regularly about these prisoners' behaviour.

In (sections of) prisons for these categories of prisoners reporting systems and regular evaluation of reports have to be developed. Special emphasis should be put on qualified staff. It should be emphasized that even in psychiatric hospitals for prisoners practices not always are in conformity with these Rules. It happens not seldom that patients are forgotten for a long time.

Appendices

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