

Rights advice centres:
a practical guide to providing
legal advice and information
services in Malawi



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Throughout the world, but particularly in developing countries, poor people do not have access to legal information and advice and therefore lack access to justice. While the rich buy the services of a lawyer, the poor cannot. This booklet describes a project that has established rights advice and information centres in two areas in Malawi, Mangochi and Dedza and is piloting ways of delivering outreach services in rural areas.

This booklet sets out the methods and ways in which the project established its centres and outreach services to identify lessons learned. A similar legal aid project exists in Ethiopia, which was started earlier than the Malawi one, and from time to time reference is made to lessons learned which have been incorporated in the Malawi model. The experience of the project is offered as a way of informing and improving future legal advice services in Malawi.

The principles of the service

Free: advice and information is free.

Confidential: Client information is confidential to those who work in the service and information can only be disclosed with the client's permission.

Impartial: Advisers do not discriminate in deciding to whom they will give advice and they behave in a non-judgemental way, setting aside their own views and prejudices.

Independent: The advice and information given is determined by what the law says and what is written down in Government policies. The centres are independent of Government.

Empowering: The centres aim to empower people by giving them the information and advice they need to claim their entitlements.



The booklet was written by Gil Long of the Active Learning Centre, August 2012

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Paralegals in Mangochi



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Rights advice and information in Malawi: Introduction

1

The project launched in July 2010 is funded by the Scottish Government. The main partners are the Active Learning Centre, UK who are the grant holders, Malawi Centre for Advice Research and Education on Rights (Malawi CARER) and the British Council, Malawi.

The project aims to make a difference to the lives of poor people by raising awareness of their legal rights and by providing them with the means to access detailed information and advice about how to seek redress. The beneficiaries are poor people living in the peri-urban centres of Dedza and Mangochi and in the surrounding rural areas. Target groups include those that research shows are most vulnerable to poverty: women, people with disabilities, people living with HIV/AIDS, the elderly and the young. The project has created two rights advice centres where trained paralegals operate on a regular basis to give legal advice to members of the public. From these centres a total of 14 outreach services have been established based in trading centres in the surrounding rural areas. These are piloting models of providing legal aid to people who do not have access to the towns. A legal literacy campaign to raise awareness of rights and advertise the presence of the centres is delivered through radio programmes and local campaigns. The centres are staffed by full-time managers who organise and support teams of trained paralegals to deliver the rights advice and information. Each centre and outreach post is advised by a committee composed

of local government and community representatives. Clients' cases provide evidence of the types of problems and issues experienced and highlight gaps in the law or policy or lack of implementation. This information is collated and published in a briefing sheet format to advocate for reform.

Velina came to the Centre because she said she had been assaulted by her husband when she refused to undergo female genital mutilation. She related how her husband had consulted a witch doctor who had instructed him to perform FGM. When Velina refused, a struggle broke out in which she was wounded and suffered cuts on her thighs and stomach. Both parties were counselled by the Centre and the matter was referred to the police. The Centre is following up the case with the police.

The specific aims of the project are three fold:

- To ensure that poor people have access to advice and information about their legal rights and the opportunity to seek redress.
- To use the evidence gathered from the people who use the legal advice centres to feed back to government information on the impact of laws and policies and to make recommendations for improvement.
- To create public awareness of human rights and the laws of the country.

The origins of the project and its design: the links between poverty reduction and human rights

2

The project was conceived and funded with the understanding that working on human rights is fundamental to addressing poverty and development. This was the starting point and framework for the project.

Much of current development literature focuses on what is generally termed a rights based approach to poverty reduction¹. This conceptual framework owes much to Sen's work on understanding poverty as a 'deprivation of basic capabilities rather than merely a lowness of incomes'. In essence Sen argues that poverty can be seen as a denial of freedom or the lack of capability of a poor person to pursue his or her well-being. Although low income is the underlying feature of poverty, it alone does not describe or provide the reason for the condition. For instance, lack of access to basic health care leads to ill health and often results in lack of ability to earn a living. This way of understanding poverty replaces a narrow focus on low income with a multi-dimensional approach that encompasses, for example, lack of education, health, the inability to participate in society or lack of dignity. Whist Sen does not use the language of human rights, development practitioners have used his analysis and his emphasis on freedoms and capabilities to view poverty as a denial of basic human rights: for instance, the right to freedom from hunger, to an adequate standard of living, the right to health, to education etc.

Characteristics of a rights based approach

A right is something to which one is entitled by virtue of being a human being and can be distinguished from a need. Rights are fundamental to human dignity, to self worth and entail an obligation on the part of the state. By contrast, needs may express aspirations but without any obligation on the government to respond.

Rights based approaches to addressing poverty and development espouse the key principles of human rights:

Universality and indivisibility

Human rights belong equally to all human beings and provide the basis for development. Using the human rights framework recognises the interdependence and interaction of economic, social, cultural and civil and political rights. For example, having a right to an adequate standard of living may depend on having rights to farm land; exercising the right to the highest attainable standard of health may imply having rights to information and education as well as an adequate standard of living.



Poster on land rights

¹ Sen Amartya, Development as Freedom 1999, Poverty Reduction and Human Rights: a practice note, UNDP 2003, Human Development reports, 2000 and 2002, UNDP; Human Rights and poverty reduction: A conceptual framework, OHCHR, 2004

Equality and non-discrimination

Inequality and discrimination are major causes of poverty. Adopting a rights-based approach emphasises that rights are the entitlement of everyone and highlights the need to address discrimination. Human rights apply to people living in poverty as well as the rich. International law prohibits discrimination on any grounds: ethnicity or race, colour, sex, or any other social status, for example, people living with HIV/AIDS.

Participation and inclusion

An essential tenet of the human rights framework is that everyone is entitled to be an active participant in society and to enjoy civil, political, economic and social rights. In turn, this requires people to be empowered with the information and the voice to be able to participate fully in society.

Accountability and the rule of law

States have the obligation to 'respect', 'protect' and 'fulfil' the rights contained in international treaties and conventions. Respect requires states to refrain from interfering in the enjoyment of rights, for example, the right to housing would be violated if a state engaged in forced evictions. The obligation to 'protect' means the state should protect against the violation of rights by third parties, for instance, ensuring that employers comply with employment laws that set standards for fair conditions of work. 'Fulfil' requires states to enact laws and policies to progress towards realisation of rights, for example, establishing policies to address economic growth in order to provide an adequate standard of living. These principles emphasise the need for accountability and the rule of law.

Everybody is entitled to equality before the law and for disputes to be decided by an independent and fair process.

Rights based approaches focus both on the desired outcomes of development – the realisation of rights – and on the process by which these can be achieved. The approach also highlights how development has to focus not simply on service delivery but on the way in which governance and decision-making processes are integral to progress. This more integrated approach in which economic development is coupled with a focus on rights and governance is reflected in many poverty reduction strategies and also the Millennium Development Goals.

Benton was owed severance pay by the company where he had worked for 5 years. "I went there reminding them about my severance pay. I then came to the Centre. He (the paralegal) wrote me a letter on the same day it quoted some section of the law. I said to him – is there any kind of money that I have to pay for the service and he said no you don't have to pay for anything. I took the letter to the company. They called head office in Blantyre – because in the letter he (paralegal) said that if I didn't get my pay he would take court action. I got my money. I came back to the Centre to say 'thank you so much I am sorted'."

The rationale for the project: the Malawi context

Despite recent progress, Malawi has an estimated 52.4 per cent² of its 14.9 million people living below the nationally defined poverty line, the majority of whom live in rural areas. Specific groups are known to be more vulnerable to poverty than others: women, people living with HIV/AIDS, the elderly and the disabled. These groups are the targets for the project.

As described earlier, the project was conceived within the framework of a rights-based approach recognising that addressing people's needs for information and advice about their legal rights is fundamental to tackling poverty. Raising awareness of rights and offering information alone, however, is insufficient. To claim entitlements people need access to a means of redress. For example, helping women to understand their rights to freedom from abuse is only the first step. Securing the women's rights requires access to a means of ending the abuse and resolving the situation. It entails offering legal advice and a means of pursuing a complaint; only then may social justice be secured. However, the majority of poor people in Malawi are not able to secure their rights or means of redress due to poverty, ignorance of the law or illiteracy. The project therefore set out to pilot a cost effective model of providing free legal advice and information and access to redress.

Why were Mangochi and Dedza chosen for the pilot?

Mangochi and Dedza are centres of population and hubs for surrounding villages. Both places were identified as in need of legal services by the Malawi Human Rights Commission. In addition a previous project, also funded by the Scottish Government, had focused on training communities in Dedza and Mangochi specifically on women's rights issues. This had undoubtedly raised expectations: once people are more aware of their rights, seeking redress is the next logical step.

A further aim of the project was to provide feedback to government and other bodies about the impact and implementation of laws and policies. Laws aim to be comprehensive but practice often reveals gaps and anomalies. Alternatively, laws and policies may exist but not be implemented. Advocacy based on the evidence of the people using the legal advice service was therefore built into the design of the project. This entailed setting up adequate monitoring systems to capture the issues clients raise: the evidence base for advocacy. The case recording system designed to do this is described later.

² World Bank data 2012: <http://data.worldbank.org/country/malawi>

Malawi policies on human rights and legal advice and information

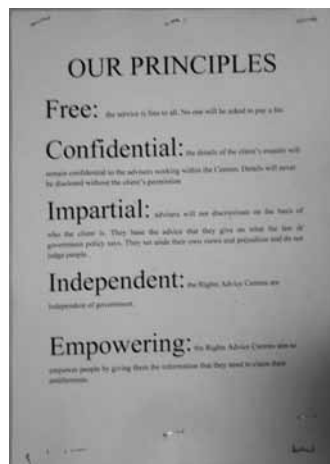
The Malawi Growth and Development Plan I, theme 5: Improving governance included the following commitments:

- Developing a strong justice system and the rule of law
- Ensuring personal security
- Promoting of human rights

The project sits firmly within this and the framework of the new Legal Aid Act that extends legal aid to cover issues of civil law and allows co-operation with other organisations involved in the promotion of human rights and provision of legal aid services. The Act also envisages the setting up of regional and district legal aid offices and the use of paralegals. However, it has to be noted that current provision falls short of ideals. At present the Legal Aid Office employs only 18 lawyers in three sites in the country, Lilongwe, Mzuzu and Blantyre, and it is estimated that a single case may take between 2 and 3 years to complete. Provision in rural areas is non-existent. The project therefore seeks to make a contribution to developing models and mechanisms for provision of service that may have wider application. The Government of Joyce Banda makes a firm commitment to focusing on marginalised groups and to the provision of human rights and access to justice.

“Many of our country men and women have lived in this country as destitute; as second class citizens... This has been either because one is a woman... because one comes from a “strange” tribe... because of age... because one is born with a disability... because one was born into a poor family. These conditions have assigned many of our citizens to punishment where our society has stopped caring for them.

Government will start conducting civic education in readiness for the 2014 tripartite elections and build capacity of Civil Society Organisations to enable them adequately to deliver governance and human rights programmes... Government will strengthen institutions that enforce and promote human rights, accountability in governance issues and access to justice...”
Joyce Banda State of the Nation Address, 2012



Principles of advice work

The project is also relevant to international commitments. Malawi, along with 189 other countries, is signatory to the Millennium Development Goals, a set of 8 time bound, quantifiable goals that focus on human development and which signatories are committed to implementing.³ UNDP in addressing the links between rights and development argues that: “The human rights framework provides an important tool for achieving the MDGs by helping to ensure the Goals are pursued in an equitable, just and sustainable manner”.⁴ Underlying the goals is the assumption that discrimination and marginalisation need to be addressed to achieve poverty reduction, for example, focusing on women and those living with HIV/AIDS.

In summary, the project design was based on analysis of the current situation in Malawi and identified need. A base line study further documented the lack of understanding of legal rights and of access to justice. The project took the definite decision to focus on social and economic rights rather than adopt a narrower definition of human rights as violations of civil and political rights. Project design was based around current development thinking about the links between rights and poverty reduction and took into account the Malawi Government’s own strategy for poverty reduction and its commitment to the Millennium Development Goals.

³ <http://www.beta.undp.org/undp/en/home/mdgoverview.html>

⁴ Human Rights and the MGDs, UNDP, 2006



Partnership and the management of the project

The project was originally a partnership between the Active Learning Centre and the British Council (Malawi). Malawi CARER became involved because the British Council decided it did not wish to line manage or employ the centre managers. In addition, previous projects in the Mangochi and Dedza areas run by Malawi CARER provided a base for starting up new activities. In the reorganisation of the management, Malawi CARER has a part-time manager and takes responsibility for the two centre managers and organising training and logistics for the centres. The British Council retains responsibility for publications and accounts and overall management and direction of the project is the responsibility of the Active Learning Centre.

In addition, the project has established a Project Advisory Committee at national level comprising government representatives of the justice sector, for example, the Office of the Ombudsman, the Human Rights Commission, the Legal Aid Office and Industrial Relations Court, human rights consultants and other NGO stakeholders. This committee meets twice a year and provides advice to the managers of the project. At local level, each centre and outreach has established a local advisory committee. These groups have a specific function and their work is described in the section on 'reaching people in rural areas'.

The partnership with the Active Learning Centre also brings skills and experience to the project as their project manager worked previously in a national rights advice organisation in the UK: Citizens Advice Bureaux. The project also drew on the experience of the sister project in Ethiopia which started 18 months in advance of Malawi. Lessons learned there have been incorporated by the Malawi team.



The project team



Advisory committee members and paralegals in Chimwala

Setting up: developing the infrastructure for the project

Setting up advice centres cannot be accomplished overnight. There is considerable work to be done in establishing the infrastructure: deciding which areas of rights are most relevant to the target population; developing the legal manuals that will be used as reference materials by the paralegals; establishing a mechanism for training the paralegals – a training of trainers; developing the training materials that will be used and identifying and setting up suitable premises which will both serve as offices for the project and spaces in which clients can be seen by the advisers. The starting point was the base-line survey.

The base line survey: terms of reference and findings

The main objective of the base line survey was to identify the key areas of rights advice and information required by poor people. The results of the survey were used for two purposes:

- To inform the legal literacy campaign to be mounted as part of the project.
- To determine the contents of the legal manuals to be used by the paralegal workers who will operate from the two advice centres envisaged by the project.

The researchers were instructed to focus on the rights and areas of law of the main target groups

for the project and to identify the key issues and problems in order to provide sufficient detail to inform the writing of the legal manuals. The research was conducted by two human rights consultants. The main findings of the survey are shown in the box below.

The main findings of the base-line survey

The researchers reported:

... serious violations of both civil and political rights, and economic, social and cultural rights, and the rights of vulnerable categories, particularly in the following areas: land and property (issues of access and possession, inheritance, housing and possession; family law (marriage and divorce, custody and maintenance of children and succession, domestic violence); education and health policy; labour and employment law and political and civil rights...

... the majority of people lack knowledge of the laws that govern their daily lives.

... low levels of awareness of law on the part of ...duty bearers

... (neither) districts have legal aid services... (or) private legal firms.

... non-formal and formal courts had not

popularised the use of the Prevention of Domestic Violence Act and the Wills and Inheritance Act
... informal justice delivery structures (that) trivialise some concerns ... and a feeling of intimidation by the vulnerable people in this forum

Cases highlighted by the study included:

- Land dispossession of women
- Property grabbing after the death of a spouse
- Woman on divorce simply sent back to home without being given any access over the matrimonial property or land
- High rates of early and/or forced marriages of girls
- Cultural approval of some practices such as early and/or forced marriages for girls and the practice of wife beating
- High incidences of sexual offences particularly of rape and defilement with the majority of victims being women and girls
- Issues of rape and defilement..unreported... for the preservation of family honour
- Polygamous marriages which give rise to problems of wife and children abandonment or lack of maintenance
- Low awareness of labour rights... and unfair practices such as dismissal of women from employment due to pregnancy; employment-related discrimination of PLWHA and vague employment contracts
- Child labour due to the presence of tobacco estates, the fishing industry and farms
- Persons with disabilities and people

living with HIV and AIDS low participation in development initiatives due to stigma and discriminatory practices

- Trafficking of women and girls

Charlotte W Mesikano-Malonda and Grace Tikambenji Malera, October 2010



Using the legal manual: paralegal in Mangochi



Design and writing of the legal manuals

Accurate, up to date and accessible legal information is absolutely crucial to the success of any project that aims to use trained paralegals as advisers. The information given to clients must be clear, concise, relevant to their own situation and above all correct. Wrong information is worse than no information at all and therefore the writing and updating of the legal manuals is most important. Often attempts to re-write the law produce cut down versions that follow the order of the articles of the specific law. This is not very helpful: clients seldom come for advice on a specific article or chapter of the law. Most frequently, clients begin with a problem: my husband is violent, what can I do about it? Or my employer hasn't paid my wages for a month, how can I get my money? The manuals also had to be accessible to people without any background in the law as the project recruits community activists as paralegals.

Format to be followed for the legal manuals

The Legal Manuals should:

- Be written in plain language and be understandable by people who are non-lawyers.
- Provide sufficient detail to enable a paralegal to offer accurate and clear information about how the law addresses the problem of the client. Key legal texts will be available in each of the advice centres but it is important that the manuals can provide sufficient detail and accurate

information so that they can be used by paralegals running outreach clinics in rural areas.

- Adopt a problem centred approach as opposed to a chronological rewriting of the existing articles of the law.
- Provide information about possible options that the client has in resolving his/her problem, For example, a woman trying to decide what to do if her husband is violent needs to consider a number of different options: intervention by a third party; referral to the police and criminal action; suing for divorce (may require information on child maintenance); doing nothing.
- Ensure that references are made where there may be cross over between one law and another. For example, the chapter on divorce should remind an adviser to consult the manual on child maintenance.
- Ensure that the likely problems of the key target groups are covered, taking into account urban and rural differences
- Use examples or case studies to illustrate particularly difficult areas of the law.



Paralegal team in Dedza

A team of people (Grace Malera, Charlotte Mesikano-Malonda, Fiona Mwale and Gil Long) worked on the manuals: writing editing and checking the legal content. A problem centred approach was adopted which meant reorganising the order of the manual and trying to focus on the problem areas that had been identified in the baseline survey. All the manuals were first produced in English and there was then a lengthy debate about whether translation into Chichewa would be possible or desirable. Opinion was divided. The experience of some members of the Project Advisory Committee had been that trying to translate the law had proved unsuccessful in that

it had resulted in lengthy academic debates and no clear decisions about what was correct. Others argued that it would enable non-English speakers to become paralegals and improve understanding. It would, however, have been very expensive and time consuming and the resources and the time limit of the project simply wouldn't allow it. The first team of trained paralegals was asked its opinion and most said that they were happy to read in English although they would always speak to clients in Chichewa. In the end a compromise was reached and the key legal terms in each of the manuals were translated into Chichewa to try to eliminate misinterpretations.

The legal manuals

- 1 Child rights (two parts)
- 2 Civil and criminal procedure
- 3 Domestic violence
- 4 Employment
- 5 Human rights
- 6 Trafficking
- 7 Land
- 8 Marriage and Divorce
- 9 Referral institutions (information about other organisations)
- 10 Wills and inheritance

Keeping up to date

The introduction of new laws on inheritance required the re-writing of manual 10 and also the general information leaflet that had been produced. The manuals were also amended after the first production to include more cases and citations to assist with interpretation. Fiona Mwale, who previously worked with the Malawi Law Commission, was part of the production team for the manuals and has also been responsible for helping with the training materials, briefing sheets and leaflets. Her legal expertise and meticulous approach to writing is invaluable. The manuals are produced in loose-leaf format to allow updating. Each paralegal has a copy of the manuals and in addition each main centre has copies of the Laws of Malawi and recent texts such as the Domestic Violence Act. It is a strict rule of being a paralegal that one should not rely on memory but always check what the law says, using the manuals or, where necessary, the actual texts. Unfortunately, there are insufficient resources to provide legal texts in

all the outreach posts. Here, if they are unsure of the law or its interpretation, paralegals are encouraged to consult the centre manager. Maintaining links with the centre and its support mechanisms is crucial to ensuring standards of service.



Paralegal team in Mangochi

Grace came to the Centre to complain that her land had been seized by her in-laws because her husband had been sent to prison. She had been married for twelve years and had four children when her husband was sent to jail for nine years for defiling a child. Her in-laws claimed that her field of crops belongs to one of her husband's brothers even though Grace has been cultivating the fields since she was married. Grace wanted to know why her in-laws could suddenly claim this land. The Centre called the in-laws to a mediation meeting and it was agreed that Grace could use the land and harvest her crops, despite their brother's absence, to enable her to earn a living and support her children.

Working with volunteers

The centres are staffed by volunteers but this does not mean that the service is not professional. In order to ensure the quality of advice, volunteers have to be carefully selected and trained and their work has to be both checked and supported to maintain high standards.

It is often assumed that using volunteers implies that everyone who puts him or herself forward should be accepted. Whilst it is important to applaud people's willingness to assist their community and give freely of their time, it must also be recognised that not everyone is suited to becoming a paralegal. Volunteers are selected and only those with the skills and abilities that match the job description are accepted for training. This includes the ability to read and write in English. All volunteers complete application forms and are interviewed by the centre managers before they are accepted for training. A leaflet setting out the responsibilities and job description of a paralegal is given to all candidates. Once accepted and trained each paralegal signs a confidentiality statement.

In total the project has trained 125 paralegals and most remain in service. Some turnover of volunteers is inevitable and therefore training is an ongoing process. Often people who leave the service do so for good reasons: paralegals become knowledgeable about the law and skilled in research, communications, writing, negotiation and mediation

and these skills make them much more employable. To date four paralegals have gained paid employment as a result of their work in the Centres.

Charles is 40 years old and has been living in Dedza for the past 10 years. Having moved there with a company that subsequently went bankrupt, Charles became unemployed. He had no permanent employment when he came to train as a paralegal. "Clients come to us because they know we are fast, free and independent and because they get a friendly service – they are made welcome."

Although the Centres specialise in social and economic issues, Charles became interested in the criminal cases that appear from time to time. He has taught himself about criminal law and when a case arises in the Centre he takes it on, going to the District Council library and using the legal texts in the Centre to research the case. Criminal cases are now referred to Charles. "Becoming a paralegal changed my life. I know how to solve problems ... I can stand for someone and support him because I know about the law."

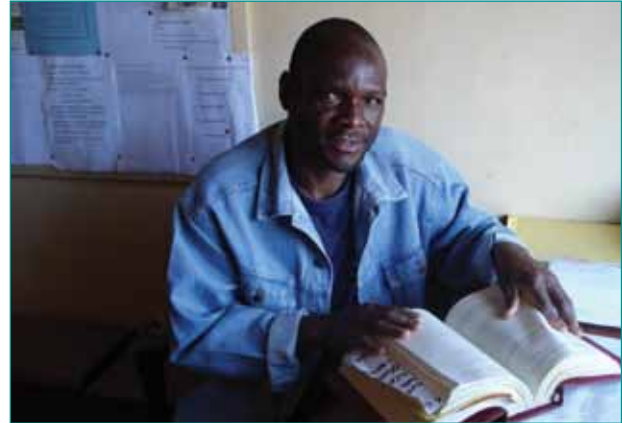
But Charles' presence in the Centre is useful in other ways. He is both disabled and HIV

positive and so encourages other people with disabilities and those living with HIV to use the services of the Centre: " I can say I am a disabled paralegal – I can help you ..it also allows me to relate to other people that are HIV positive". Through his membership of the Federation for People with Disabilities and the Malawi Council for the Handicapped, Charles advertises the work of the Centre and reassures other potential clients.

Charles' work as a paralegal has also gained him permanent employment as a Project Officer for Youth and Children's Rights Shield. The skills and knowledge that he gained as a paralegal made him attractive to another agency. As Charles says: " the training and the work that I did as a paralegal got me the job." But he is not lost to the service. Dedza now opens its main Centre on a Saturday and Charles is one of the paralegals on duty.

The Ethiopia project drew on law students from the Universities to serve as paralegals, as well as community activists. While students gained valuable practical experience to augment their theoretical studies, the Centres gained legal expertise. In Malawi, with the main University in Zomba, it is difficult to see how students could best be used on a regular basis in other areas of Malawi but thought could be given in the future to work out ways of using students during the summer vacations. It is not only law students who might gain. Students of community

development, social work and trainee teachers could also enhance their studies by volunteering for paralegal work. In Scotland a regular supply of students is provided by running crash training courses after the annual university exams. In Ethiopia practical service in the Centres is being incorporated into the law degree course.



Charles: helping to reach people with disabilities



Paralegals in Mangochi

What do advisers do?

- Interview clients, listen to their issue or problem and identify the key questions
- Use the legal manuals and other sources to research the law
- Help the client to understand what options are available to him or her
- Write up a case record for the client
- Assist the client with writing letters or submissions for the court
- Negotiate on behalf of a client
- Mediate between two parties to a problem

What skills and abilities must I have?

- Ability to read and write in English
- Understanding of the problems of people in the community and ability to empathise
- Willingness to abide by the principles of the service
- Willingness to train to become an adviser
- Commitment to work for at least 5 hours a week

Volunteer expenses

By definition a volunteer is someone who works without pay. However, this doesn't mean that people should lose money by volunteering. The funding for the project provides for travel expenses to enable the volunteers to travel to the centre or outreach post and also a small lunch allowance.

Paralegal in Maldeco Outreach



Training

Training the trainers

Having an effective training policy and good training materials is key to ensuring the quality of service. The project uses a cascade model in which a group of people were trained as trainers and they then take on responsibility for training the paralegals. The initial training of trainers drew on consultants from the Office of the Ombudsman, the Human Rights Commission, the Industrial Relations Court, the Law Society the High Court and as well as the Centre Managers and staff from Malawi Carer.

The training of trainers course focused on participative training skills and ended with the trainers designing and delivering their own sessions on key aspects of the law. One of the problems with carrying out training for the paralegals has been the availability of these people, all of whom are full time employees.



The training materials

A set of training materials was developed for use by the trainers. Each module is designed to be able to be used by the trainer in a group setting or for self-study by a trainee paralegal working on his or her own. There are three colour coded parts to each module: a set of notes for the trainer (yellow); a handout with case studies and exercises to be completed by the trainees (white) and a set of answers for those who are working on their own to check their own work (pink). While all the training for the current groups of paralegals has been conducted in a group setting, the self-study materials could be used by trainee paralegals who have either missed sessions or live in remote places and therefore cannot easily access training. The intention was to invest in materials that could provide flexibility in the future.

Opposite: Chimbizgani Kachere: training on land law

Extract from training module on marriage and divorce

All the training uses participative methods and there is a strong emphasis on case studies and practical exercises.

Exercise 2: Marriage by repute and co-habitation

A client comes to you to say her "husband" has moved out of the house and has married

another woman. He is no longer supporting her although he is still paying school fees for the children and buying food. The landlord has given her notice as rent is no longer being paid. The client does not work. There are ankhoswe but they have refused to help because she moved in with him before the negotiations were finalised.

1. What is the first thing you need to be sure about before you can offer advice?
2. If there was no valid marriage in this case does it mean the client cannot get any help from the courts?

Extract from training module on interviewing skills. Paralegals are taught active listening skills to fully understand the problem, to then research the law and explore options with the client. It is always the client's right to decide on a course of action

Case 2 Christine

Christine is a domestic worker who is being exploited by her employer. Her wages haven't been paid and she is asked to work extremely long hours and is treated badly.

- Which areas of the law would you research for this client?
- Which options would you explore with this client?
- How would you go about clarifying what are Christine's aims?

Training the paralegals

As the syllabus on the training record shows, there are sessions on areas of the law but also on process skills such as understanding the principles of advice giving, interviewing clients and writing case records. These two latter sessions are carried out 'in-house' by the Centre Managers, while the legal knowledge topics are covered by legal experts in the week-long training course. The main emphasis on the legal content sessions is on providing an overview of the topic, explaining any specific jargon or technical language and enabling the paralegal to access the legal manuals which give much fuller information. The training materials have also been extended to include sessions on Alternative Dispute Resolution (mediation and negotiation) and a self-study pack called 'Using the legal manuals' which is designed to familiarise the paralegals with the legal manuals and their contents.

It is fully recognised that one week is insufficient time in which to train a paralegal and therefore a period of induction has been introduced when the paralegal will observe experienced people or the Centre Manager, conducting interviews and be observed him or herself. This also allows time for self-study and visits to key institutions like the courts and the labour office. Each paralegal has a training record to indicate which sessions she or he has completed. A complete record is required before a paralegal can operate alone.

Opposite: Clients and paralegal in Chimwala



Extracts from paralegal training record

Topic	Initial when you have completed this module
Principles of advice work	
Human rights	
Civil and criminal procedures: the courts	
Marriage and divorce	
Child rights: maintenance, custody etc.	
Domestic violence	
Wills and inheritance	
Employment	
Child rights: children in trouble with the law	
Human trafficking	
Land	

Extracts from paralegal training record

These are the sessions on skills that you will study with your centre manager after the week long course.

Topic	Date	Initial to show attended session
Interviewing skills		
Case recording		
Alternative dispute resolution		

During your induction you will be asked to observe some interviews being done by your centre manager or an experienced paralegal. S/he will then supervise you conducting interviews to help you to acquire the necessary skills. Please fill in the dates when you complete these activities.

	Date	Date	Date	Date
Observed interviews				
Supervised interviews				

During your induction period you will also begin to start using the legal manuals. There is a self study module to help you to do this. Please initial the column to show when you have completed each of the topics on the module.

Self study during induction: 'Using the legal manuals'

Topic	Date completed
Manual 1 Child rights 1	
Manual 1 Child rights 2	
Manual 3 Domestic violence	
Manual 4 Employment law	
Manual 7 Land law	
Manual 8 Marriage and divorce	
Manual 9 Wills and inheritance	

The Centre Managers

Madalitso (Mada) Masache and Stella Mpasu are the two Centre Managers based in Mangochi and Dedza and are full-time employees of the project. While neither has a degree in law, both were trained as paralegals by other organisations and have practised as paralegals for some years. Stella has a background in community development while Mada worked for the Civil Liberties Committee. It is a tough job which Mada describes as “a challenge: I wanted to work with communities ... it gives me a diverse knowledge of issues affecting people in local communities.”

Job description of a Centre Manager

- Set up and manage the Rights Advice Centre in Dedza/ Mangochi town and through outreach in the surrounding rural areas to offer legal advice and information to clients
- Provide professional support to the paralegals and maintain the quality of legal advice
- Institute and manage a case recording system to record client information about the nature of enquiries and details of legal cases.
- Set up and maintain links with key stakeholders including the District Commissioners’ Office, Labour Office and personnel in the courts
- Set up, support and assist a local advocacy group to take forward issues highlighted by the users of the rights advice and

information service.

- Manage and account for the Centre budget
- Assist with legal literacy activities, for example, distributing leaflets
- Gather and report information needed for project monitoring and national advocacy publications

While much of the daily routine involves providing support to paralegals, the Centre Managers are also involved in case work, mediation and negotiation sessions as well as maintaining contacts with local stakeholders and conducting local advocacy. There is the straightforward organisation of volunteers; to make maximum use of their labour and time, volunteers need to know when and where they will be expected to work and provided with ongoing support. This means that they should be able to ask the co-ordinator for advice on legal matters and interpretation of the law and assistance in how to handle a particularly difficult case or client or help in writing up cases.

One of the Centre Manager’s most important roles is to maintain the quality of advice. They do this by making regular checks of the case records in order to see that the correct information has been given to the client. Managing a staff of 60 plus paralegals

is difficult especially when half of those staff are spread out between outreach centres in remote places. They try to visit each outreach post at least once a month and make use of Malawi CARER's motor bikes for transport but this often involves between 30 minutes and an hour on rough roads. According to Mada it is worth it: "the outreach clinics are really working They are closer to the people... the service is free clients appreciate this – we provide professional advice for free."

While they have both increased their legal expertise, other skills have been gained as Stella explains: "Supervising 50+ people is a hard job – I have learned to delegate and how to manage them. I introduced a system of team leaders for each of the centres and they report to me. I have also learned how to motivate people." Mada too enjoys his job: "I love being a Centre Manager. It gives me satisfaction that I am helping the people in Mangochi... as I am going about my work I am supported by this team of paralegals."



Ensuring the quality of advice: Centre Manager supporting volunteers

The paralegals: working with the clients

People volunteer to become paralegals for a variety of reasons but most commonly it is a combination of wishing to help others and serve the community and recognition that the training and experience of being a paralegal also brings benefits.

“I am able to assist other people – how they can assert themselves and where they can go if their rights have been violated – helping others”
(Donata, paralegal in Mangochi Centre)

“What have I gained? Knowledge. I know about the law and I can help myself and my family and others.”
(Henry, paralegal in Mangochi Centre)

“Most of the community are ignorant of the law and so we can help them- so we can change our community for the better.”
(Phunziro, paralegal in Kachere outreach, Dedza)

Chisamba has been a paralegal in Dedza for over a year:

“I have learned a lot ... I am clued up on the laws of Malawi...the constitution and the penal code. How to assist vulnerable people in the community ... I learned all these things as a paralegal ... I feel empowered I was ignorant about the law but having been trained I am able to assist others and also to study.”

The principles of the service are covered in the first session of the training course and underpin the work of the paralegals. In all advice work but especially in rural areas where most people know one another, confidentiality is paramount.

Principles of advice work

The principles of the service

Free: advice and information is free.

Confidential: Client information is confidential to those who work in the service and information can only be disclosed with the client’s permission.

Impartial: Advisers do not discriminate in deciding who they will give advice to and they behave in a non-judgemental way, setting aside their own views and prejudices.

Independent: The advice and information given is determined by what the law says and what is written down in Government policies. The centres are independent of Government.

Empowering: The centres aim to empower people by giving them the information and advice they need to claim their entitlements.

After training paralegals are asked to guarantee their support for the principles and to sign a statement of confidentiality.



Working with clients in the outreach at Maldeco

Lucy came to the RAC to find out about maintenance for her child. "I had a traditional marriage with a man who is a policeman. When I became pregnant he chased me from the house - I was 8 month pregnant and I had to go back to my village. When my baby was born I went back to him to try again but he said that he had married someone else and he beat me and chased me from the house. I was bleeding and injured. I went to the police to complain but because he is a policeman they did nothing. They gave me a form to go to the hospital and the doctor completed the form but when I took it back to the police they still did nothing. I went to the Centre and they treated me well. My husband was called to a meeting with the paralegals and he agreed that he would pay 2000 KW a month for my baby and provide clothes. He refused to pay for a house for me but he said he would pay for a blanket for the baby. At the Centre people really helped me. I won't take the matter further because he is a policeman... but the Centre was good - they helped me."

A free service or only for the poor?

There is a potential contradiction between providing a service that is aimed at helping the poor and providing open access because it is free. There is much research literature that demonstrates the benefits of universalism and the problems of trying to target through means-testing in countries that do not routinely gather data on people's incomes.⁵ The policy decision was made that the service should be free but that we would try to ensure that the overwhelming majority of clients were poor by targeting our service on those groups known to be vulnerable to poverty: women, the elderly and young, disabled people and those living with HIV/AIDS. Case records suggest that this has been largely successful. This was achieved through targeted advertising, by inviting representatives of these specific groups onto our local advisory committees who provide a conduit to their members and by recruiting paralegals from the target groups. The last point is illustrated in the case studies of Charles and Ali. Equal numbers of men and women are recruited as paralegals in the interests of equality but also to target women clients: some women prefer to talk to a female paralegal. As the charts below show, the project is succeeding in reaching its target groups. Over half of clients are women and other target groups are using the Centres. It should be noted that these figures are based on self disclosure; the client volunteering information about his or herself and that people may fall in more than one category, for example, being disabled and unemployed.

⁵ See, for example, S Kidd, Child Poverty in OECD Countries:

Lessons for Developing Countries, Pathways' Perspectives, Number 2

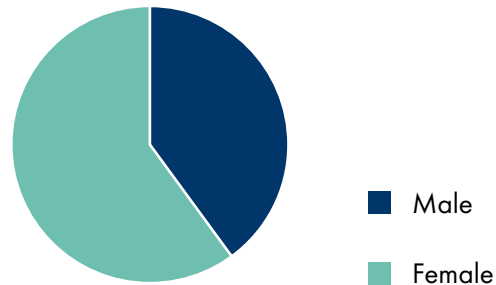
**Working with the Moslem community:
a case study of Ali**

Ali works in the Chimwala outreach service. "I saw so many people suffering because they had no legal advice, access to justice ... I am a paralegal – I can advise them about the laws and what it says... I can help them and myself because I know the laws of Malawi... I didn't know them before but when I trained." Ali is also a sheik and religious leader and has standing within the Moslem community. As he points out, some Moslems would be afraid or shy of going to the RAC but as he has a position of authority he is trusted and is therefore able to help. "When we are dealing with a case we have to be confidential and independent and empowering." But how does Ali deal with the potential conflict between the laws of Islam and those of Malawi: "We explain to them that in Islam it is like these laws and in Malawi law its like this ..the client chooses." Ali's position also allows him to help target women: " in Islam it (women) is not allowed to talk with a man separately.. but sheik means you are pastor so it is no problem for them." Ali suggests that the project needs Moslem women to be trained as paralegals in order to make the service more accessible. Other suggestions are for 'women only' sessions and making provision for clients to see a paralegal of the same sex.

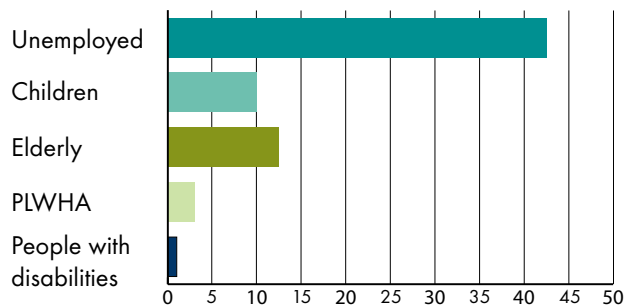


Ali: working with the Moslem community

Percentage of male and female clients



People from vulnerable groups as a percentage of all clients



Case recording

The case record developed for the project requires different sorts of information: a summary of the main problems of the clients to ensure effective follow on if the client comes more than once, a record of contact and social details required to monitor the types of clients using the service and a third section on information and advice given. In this third part, the paralegal has to fill in the numbers of the section of the legal manual that he or she consulted and summarise the advice given thereby allowing the Centre Manager to check that correct information has been given. Support and help can be given where paralegals have made a mistake and, if necessary, corrective action taken. It is adequate support for volunteering that maintains professional standards and ensures that poor people are not being offered a 'second class' service simply because they cannot afford to pay for a lawyer.

Interviewing and advising

In learning how to interview and advise clients, paralegals are taught to use a routine:

- Reassuring the client and explaining the principles of the service, particularly confidentiality
- Understanding the client's problem by listening actively
- Researching the law and advising the client about the options available
- Writing up the case record

Talking through the options open to the client may involve thinking about the role of traditional custom and law and also within the Moslem community,

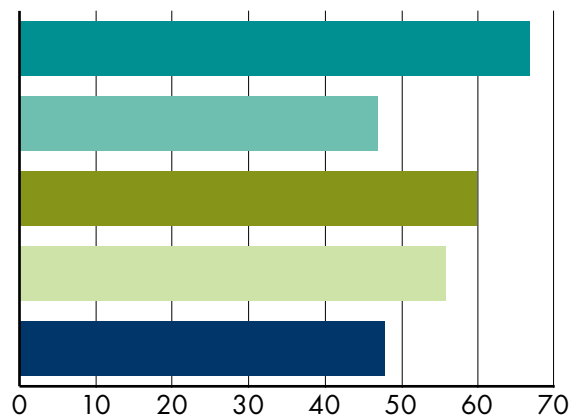
sharia law. It is particularly important that paralegals understand that it is the client's right to decide on a course of action. Increasingly paralegals are being asked to mediate in cases or negotiate on behalf of a client and it is for this reason the training on alternative dispute resolution was introduced. As the chart below shows, most cases require additional help beyond simple advice and information. Paralegals may be involved in case work, such as writing a letter or submission to a court or mediation and negotiation. Most clients visit more than once and nearly 50 per cent of cases take more than 3 hours of work.

Type of enquiry/ Nature of complaint: <i>Domestic Violence</i>	
Details of enquiry/ details of complaint: <i>Dorothy complains that her husband is mistreating her. He went to South Africa to work 2 yrs ago, but since he left he has not assisted his family. The complainant earns a living doing odd jobs, as a casual labourer support their children and her grandmother. They have been married for six years and have three children together. The complainant supports her elderly grandmother whom they live together.</i>	
Option by client: <i>Information and Advice</i>	
Details of advice given <i>That all children have the right to know, and to be raised by their parents - this does not excuse the father. Prolonged absence and no provision of necessities to wife and children amount to cruelty. Complainant should seek the intervention of marriage counsellors.</i>	Ref. <i>The Constitution s. 25 (3) Marriage & Divorce (Manual 8)</i>

The work of the centres and outreach

The type of work of paralegals

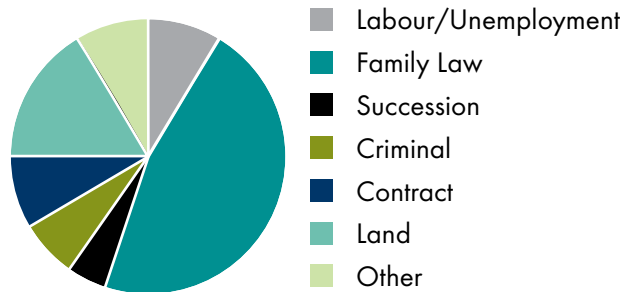
- % of cases where client visits more than once
- % of cases requiring more than 3 hours of paralegal time
- % of cases requiring mediation and negotiation
- % of cases requiring case work
- % of cases requiring information and advice



These figures are based on monthly average workloads for 2012

Family problems, marriage, divorce, maintenance of children and domestic violence are the most common issues making up almost 50 per cent of all cases that paralegals have to deal with and this is true both in the towns of Mangochi and Dedza and in the outreach centres. Land is the second largest category particularly in the rural areas: problems of boundary disputes, dispossession and inheritance of land are the most common problems.

Client issues



(based on statistics for 2012)

Referrals

The paralegals are trained to deal with a case as fully as they can, seeking help from the Centre Manager or other agency if cases are particularly complex. Learning when to refer a case is important. The Centres have built a relationship with other agencies to whom they refer cases when necessary.



Centre manager and paralegals in Kachindamoto outreach

Referrals in 2012

District Counsel/Local Chiefs

High Court

Magistrates Court

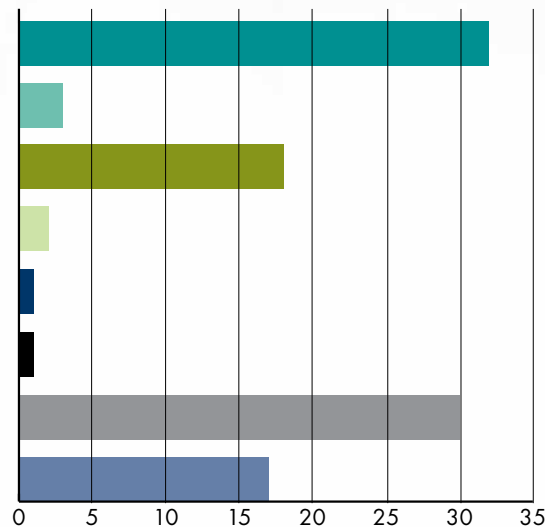
Legal Aid

HR Commission

Ombudsman

Victim Support

Police



Views of stakeholders

"It takes two years for a case to go through the Industrial Relations Court... Without the NGOs we would be in a bad situation... we couldn't do our job... we are the least funded government agency and the Centre has a very important function."

Joe Manase (Labour Office Mangochi)

Matthew Nyrenda from the Labour Office in Dedza agrees. He reports that the Centre helps to improve his work and reduce his work load. The Labour Office has no field workers so what usually happens is that the Centre staff phone him for advice on difficult issues and refer the most complex cases that they cannot deal with.

Views of stakeholders

"We work closely with the Centre and know about its work... they refer to us people whose cases need to come to court and deal with complaints from people who want to know why their case has not come to court".

Jack Njiko (First Grade Magistrate, Mangochi)

"the project is doing fine... It has assisted us a lot in the courts ... when clients have been to the Centre they know what to do and say in court... they know what to expect."

(Damiano Banda, First Grade Magistrate, Dedza). Mr Banda also reports that fewer social cases are reaching court because the Centre

is able to deal with them. *"They are doing commendable work - people are getting redress and this is important."*

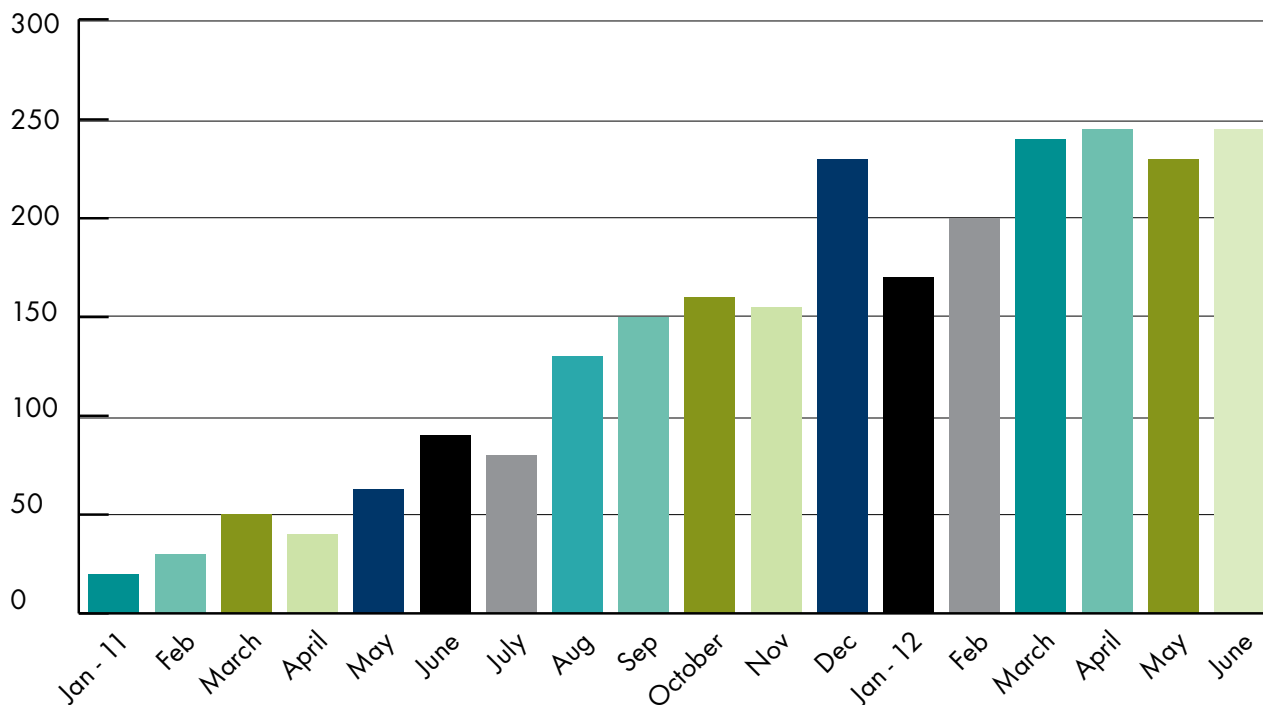
Views of stakeholders

The Victim Support Unit in Mangochi reported that they had noted an increase in referrals from the places where the Centre is operating. The Centre staff accompany victims to the Unit and this is very helpful. The main advantage of the Centre is that people now know where to get help. VSU also reported that the leaflets were especially good and asked for more reprints. (Interview with **Enock Tembo, VSU, Mangochi**)

Rising demand for the service

The Centres opened at the start of January 2011 and at the time of writing have been running for 18 months. As the chart below shows there has been a steady increase in demand and the Centres, together with their outreaches services are dealing with a monthly average of 223 cases. This is a considerable contribution to providing access to justice. One of the most common comments from clients is that they like the service because they get a friendly welcome and speedy response. Not all issues can be dealt with instantaneously but considerable efforts are made to resolving cases where at all possible. On average, in any one month, 80 per cent of cases are resolved and 20 per cent carried over into the next month.

Client numbers: January 2011 – June 2012



Not everything goes smoothly. Paralegals report the frustrations of respondents not turning up at arranged mediation meetings, people being aggressive because they are upset and some officials who resent being told what the law says. “... some are working in Government offices like the police – they don’t even want to know about the law... they think they already know and they don’t want to be assisted by us.” (Isiah, paralegal, Dedza) Similar comments were made in Mangochi but both Centres are working hard at improving relations with the police and Kwauma, a paralegal in Dedza Centre commented

that the situation is improving with some police coming into the Centre to make use of the legal manuals.

However, overwhelmingly the paralegals report their satisfaction and pride in being able to help and the feeling that becoming a paralegal has significantly raised their status within the community. “They trust us as people who can help them without discriminating ... People even come to my house – they know that I know something about the law – so they say can you assist me. I am known in the community... they know I can help.” (Donata, paralegal in Mangochi)

Reaching people in rural areas

A key aim of the project was to experiment and establish ways of reaching people in rural communities. This presents considerable challenges but has been achieved through the outreach services. On average 66 per cent of Dedza's cases are in the outreach clinics and 50 per cent in Mangochi, and as the graph below shows, these have become increasingly popular. The figures for June alone show that the outreach clinics in both areas are dealing with over 70 per cent of the cases. In Dedza 8 outreach clinics have been set up in each of the traditional authority areas, while in Mangochi there are 6 established around centres of

rural population. Most typically the outreach clinics are set up in trading centres that people would visit in the course of their daily routines. Paralegals are selected from within the communities and then trained along with other people living in different outreach areas and the towns themselves. An alternative model would be to invite paralegals living in the towns to travel out to provide outreach services on a regular basis. However the distances involved and the lack of public transport make this unworkable in Malawi. The recruitment and training of people from the outlying communities also brings benefits.

Using bicycles to visit clients in rural areas

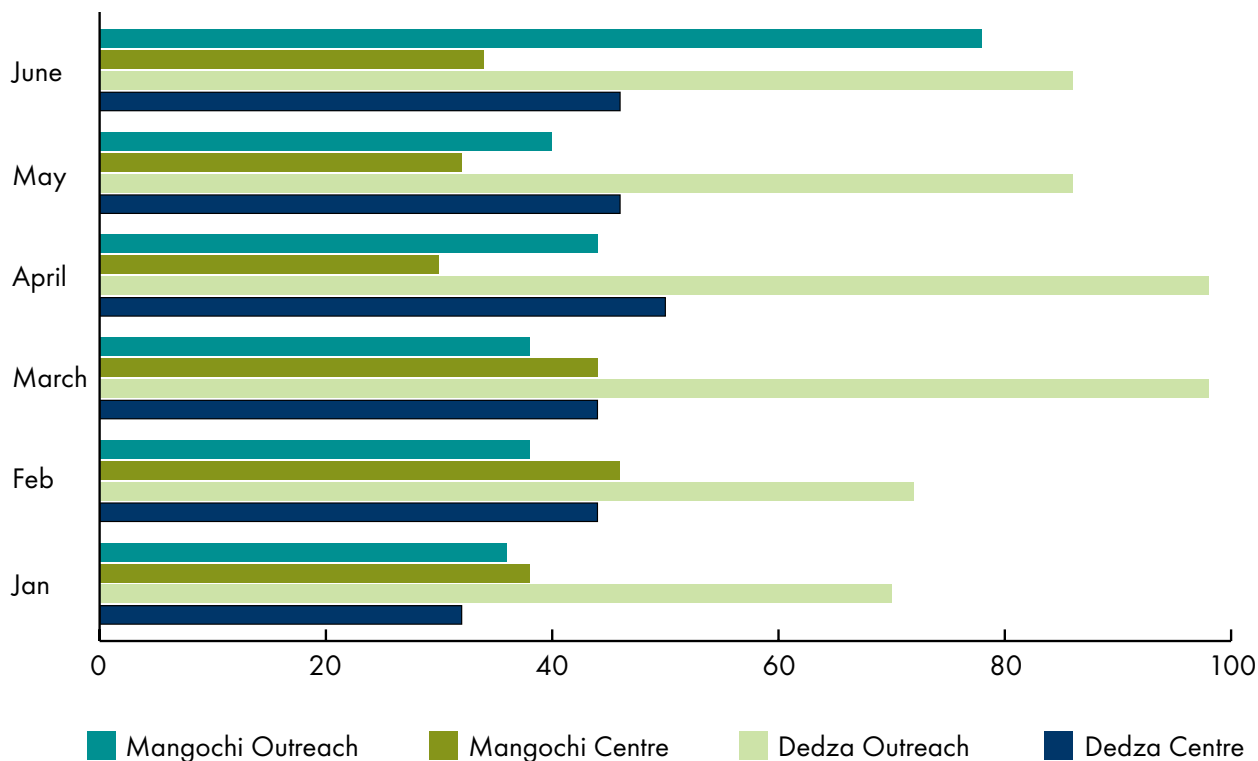


The Centres are also experimenting by collaborating with other organisations to provide additional services and make maximum use of the paralegals. In Dedza two CBOs have been identified who will allow their premises to be used for advice sessions, the Victim Support Unit is also co-operating by providing space for paralegals to work with clients and in Mangochi an outreach post in the court is being developed.

time to travel to seek advice. Mada, Centre Manager Mangochi, explains: "They are closer to the people that we are targeting... the paralegals are from those communities, they know what issues are affecting people, they also speak local languages." There are also problems to overcome. "For example, some people may be shy of using the Centres because they think that their business will be talked about locally... that is why confidentiality is so important."

The advantages of outreach are primarily accessibility. Poor people do not have the money or

Outreach and Centre: clients using rural and urban services



Local advisory committees: local ownership

The local advisory committees are crucial in establishing local ownership particularly of the outreach clinics. These small committees comprising local community leaders, including chiefs and village headmen, and representatives of locally based organisations such as women's groups and HIV/AIDS organisations, have a number of functions. They take responsibility for identifying local premises, usually one room, where the paralegals can work; supporting paralegals within the community and identifying new recruits for training; mounting local awareness raising campaigns; advertising the presence of the service and increasing their own knowledge of local issues.

Members of the local advisory committee in Kachere



The local advisory committee in Kachere, about one hour by car out of Dedza, meets monthly and is attended by the traditional authority. The paralegal team reports to this committee to give information about the type of issues being dealt with and discuss plans for local campaigns on rights issues. Here the Centre opens two days a week and they have an average of 5 clients in a day, although once they recorded 10. Trust in the service has been built up by the committee and the paralegals. *"The training helps... we can talk to chiefs now we are recognised by society – they rely on us to know what the law says, we are resource persons... we are invited to the Area Development Committee to advise about what the law says."* (Phunziro, paralegal, Kachere outreach)

There are, of course, difficulties in working in remote areas. Communications with the Centre are complex. The Centre managers visit once a month but in between times support and advice on complex issues has to be by mobile phone – each outreach has one allocated for Centre use only. There is also one bicycle allocated to each outreach in order to facilitate follow up case work, for example, travelling to give a client a letter or to ask parties to come to mediation. Although there is a team of 4 or 5 paralegals for each outreach, they can feel isolated. They would like to meet with colleagues from other Centres; feel that more refresher training is needed to

keep them up to speed and would like access to the internet so they could be fully up to date.

Martha inherited land from her grandmother and planted maize and fruit trees but was pushed off the land by her cousin. The matter was reported to the senior chief in the area who ruled on behalf of Martha. However, the cousin refused to accept the ruling and threatened to kill Martha if she came near the land. The matter was referred to the Magistrates court that ruled in favour of the cousin. The Centre has assisted the client to appeal to the High Court in Lilongwe where an outcome is still awaited.

Traditional justice and statute

In Malawi the traditional system of justice is well established with a hierarchy of village headmen, group headmen and traditional authorities able to decide on issues within their jurisdiction. Potentially, there is a conflict between the decisions of the traditional system and statute although as Chief Kachere explains, both have similar aims: “ We are both trying to get stability in the community – we try to settle small disputes... (although) very few know about the law.. we inherit our position – we are only the first level of justice.”

Recognising the potential conflict, the Centre Managers have worked hard to bring the chiefs on board and to recognise their positions, by including them on the local advisory committees and encouraging them to use the facilities of the Centres. For example, Group Village Headman Mtambo from

the Chimwala outreach near Mangochi, recognises that there are: “lots of changes in the law and I need to keep up to date.” He cites a case in his area of a piece of traditionally held land being ‘sold off’. He went to the RAC and together with the paralegals looked up what the law said in order to deal with the case. He also mentions gaining information on the law on domestic violence via the Centre. As a representative of the RAC local advisory committee, he reports on its work to other meetings that he attends, for example with the police, the hospital and regular meetings with other chiefs.



*Working with the custodians of traditional justice:
Group Village Headman Mtambo*

The main thrust of the strategy with respect to traditional law has been to try to involve chiefs in the running of the Centres and to offer the resources of the Centre to ensure that when traditional justice is dispensed, it has the benefit of the knowledge of statute. The paralegals report that a number of chiefs are coming to the Centres, using the legal manuals and seeking advice on what the law says.

Raising awareness of rights

The base line survey indicated that very few people are aware of their rights, indeed knowledge levels amongst the general public and officials is low. Raising awareness of rights is therefore a precondition to being able to claim entitlements or seek redress. In the project most awareness raising has been carried out using radio broadcasts. These have taken a variety of formats including phone-in programmes where members of the public phone with their questions on a particular topic; discussion programmes with legal experts and features with interviews with clients and paralegals to discuss specific issues.

The topics that have been covered by radio programmes reflect the types of issues about which clients have sought advice and include: land, domestic violence, employment, wills and inheritance, child maintenance and custody, marriage and divorce. In addition jingles have been aired which relay messages about rights.

Other methods of publicity are also used to advertise the centres, including leaflets and posters. However, word of mouth is probably equally important and often clients mention that a family member or friend or colleague told them about the service. The information leaflets are in Chichewa and aimed at the general public and cover: the Bill of Rights; child rights, domestic violence, employment rights, land, trafficking and rights on arrest.



Leaflets on key aspects of the law



Stella: Centre Manager in Dedza

Madalitso explains: "I am still at school but I am an orphan and I have to pay for myself... I want to stay at school and become an accountant. In the school holidays I took some temporary employment to save money to stay but when I finished the work and I went to ask for my wages, the employer refused to pay me. I went to the RAC where the paralegals said they would help me. I went to the Centre because I heard that the police often victimise people." After many missed appointments the employer eventually visited the office and agreed that Madalitso should be paid. However, the employer went back on his agreement and the Centre had to intervene again, writing letters to the employer, asking him to attend a meeting in the RAC office and visiting his place of employment, before Madalitso finally received his money. "The Centre gave me very good service... if the Centre hadn't got my money I would have been a very worried boy - it was my last hope."



Advocacy: the evidence of clients

Client records generate substantial evidence of gaps in the law and demonstrate where existing laws are constantly flouted or lack implementation. This valuable information can be used by the Government to improve the wellbeing of its population. Case records provide the evidence for briefing sheets on specific legal issues in order to advocate for review, revision or better implementation. To date briefing sheets have been published on: children's rights, domestic violence, employment, human trafficking, land law, marriage by co-habitation and repete and a further three publications are planned before the project end.



The target audience at national level for these briefings includes Members of Parliament, officials in the justice sector including: the Ministry of Justice; the Legal Aid Department, the Law Commission; the Law Society; the Human Rights Commission; the Office of the Ombudsman; other relevant Government Departments such as the Ministry of Gender; members of the judiciary; NGOs and donors. Other national advocacy activities have included: a press conference to launch the briefing sheets and meetings held in Blantyre and Lilongweto which Members of Parliament and other policy makers were invited. A letter from the Law Commission on receipt of the briefing sheets stated that: "The Briefing Sheets are very informative to us as an institution that is mandated by the Constitution under section 132 to review and make recommendations relating to the repeal and amendment of the laws in Malawi".

At the local level briefing sheets have also been distributed to the courts, the District Commissioners' Offices, traditional authorities, members of the district executive committees, the police and other Government offices. In addition, various awareness-raising campaigns on most of these topics have been mounted both in the towns and outreach areas.



Briefing Sheet No: 4 Human Trafficking

Brief Summary of the law
Apart from the Child Care, Protection and Justice Act which criminalises child trafficking, there are no existing laws that criminalise human trafficking.

What problems do children encounter despite law?
The court rarely accedes to the claims of parents who do not always take their children to court.

Typical cases illustrate problems
In 2005, a man trafficked children from one district to another for labor. There was no law under which the Employer was playing years of labor to go to the police to report the case.



Briefing Sheet No: 2 Employment Law

Brief summary of the law

The Employment Act is the main law governing relations between employer and the employee. The Employment Act lists the rights of employees including: the details a contract of employment should contain; the amount of time an employee is to be allowed off work leave; and the reasons for which an employee can be dismissed.

Employers take advantage of lack of awareness of the laws to deny workers basic rights such as maternity leave, the right to join a union, the right to work in a safe and healthy environment, and the right to be paid for overtime work.



Briefing Sheet No: 1 Domestic Violence

Brief summary of the law

The Domestic Violence Act (PDVA) was passed on 15th December 2008. The purpose of the Act is to provide effective legal remedies which include counselling, accommodation, and protection orders.

Typical cases illustrate problem

A 14 year old girl was admitted to court by her 55 year old step-father. She had been sexually abused by her step-father for a period of two years. She fell pregnant. She was charged with rape but was acquitted because, according to the Grade Magistrate, she was not a virgin.



Briefing Sheet No: 5 Child Rights Maintenance and Custody

Brief summary of the law

The Child Care, Protection and Justice Act is the law governing the maintenance for children. According to the Act, every parent or any person who is legally liable to maintain a child (e.g. a guardian or a foster parent) must do so or make a contribution towards the maintenance. If the maintenance order is not complied with, a police officer or a welfare officer, a health officer or a social welfare officer may arrest the means of both parents or any other person who is liable to maintain the child. The court may order that the child be placed in the custody of a social welfare officer to prepare a social inquiry report. The court may also order that the child be placed in the custody of a social welfare officer to prepare a social inquiry report. The court may also order that the child be placed in the custody of a social welfare officer to prepare a social inquiry report.



Briefing Sheet No: 3 Land Law

Brief summary of the law

There are a number of laws that deal with land issues. The law of land is divided into public land, government land and customary land. Customary land is regulated by customary law whilst the other three types of land are regulated by statutory law.

What problems do people encounter in land matters?

- Public awareness of the laws regulating land administration is very low. Many times people enter into land transactions without legal advice and often end up being defrauded.
- Corrupt administrative practices and corrupt government officials make it difficult for people to obtain the necessary documents to prove ownership of land is very low.
- There is often confusion in land transactions because of the lack of clear boundary demarcation for neighbouring plots caused by fraudulent sellers who belong to them or who sell the same plot to multiple buyers.



Briefing Sheet No: 6 Marriage and Divorce (Marriage by Repute and Cohabitation)

Brief summary of the law

Marriage is a special type of contract entered into by a man and woman and recognised by law. Like any other contract, once a man and woman have entered into marriage, there are rights and obligations on both sides. Malawian law recognises different types of marriage contracts, all with different rights and obligations. These marriages are: civil marriages or marriage under the Marriage Act (English law), customary law marriages under either the matrilineal or patrilineal system, and marriages by repute or by permanent cohabitation. For those married under the Marriage Act or under customary law and who properly follow all procedures, some of the rights and obligations of the marriage include sharing a marital home, providing maintenance after the marriage breaks down, inheriting each other's property upon death and who properly make the marriage. In a valid marriage of any sort these rights and obligations accrue automatically. If the couple simply live together and do not undergo any procedures under customary law or under the Marriage Act to validate the marriage, the couple will not be entitled to any of the rights and obligations automatically. It will depend upon one of the couple making an application to the court and whether or not the court decides to grant the rights and obligations based on the facts of the particular case.

What problems do people encounter in marriages especially in marriage by repute and cohabitation?

There is a general lack of awareness as to what the rights and obligations of marriage are. Many people enter into marriages by repute or cohabitation without knowing what the rights and obligations are.

Case law giving rights and privileges to a woman is not capable to validate marriage. It has been around even before the law. In Nelson v Magombani, the court presumed the couple were married even though no marriage had taken place. The court held that the fact that the couple lived together for a period of several years was not sufficient to recognise the cohabitation as a marriage. In the case of Khembo v Khembo, the court held that the cohabitation was not the woman as no marriage had taken place in the presence of the court. On the other hand, in Lunguzi et al. v Sera Lunguzi and Lunguzi et al., the court held that the co-responder and the decedent were cohabited as wife and husband for eleven years and the co-responder was entitled to inherit the decedent's estate as a spouse. While long cohabitation has been central to the decisions of the courts, it is not a sufficient condition as Khembo demonstrates. Marriage by repute or cohabitation depends on the facts of each case for purposes of succession or inheritance.

Our experience to date has allowed us to identify a number of practical lessons:

- Volunteerism does work – people are willing to give their time but they need support and guidance to provide an effective and quality service. The role of the Centre Managers in providing support is crucial and they need transport to do this efficiently.
- The principles of legal aid work are important; they underpin a professional service and develop trust with clients.
- Good legal manuals are essential and it is important to keep them up to date and insist on their continual use.
- Case recording is essential to providing a quality service and checking the accuracy of information.
- Good communications are important; the bikes to reach remote places and the phones to keep outreach services in touch with the Centres.
- There is a need to search out additional places where paralegals can offer a service, for example, within the premises of other organisations or institutions. The Ethiopia example of establishing outreach in rural and town courts should be piloted. This will also make maximum use of the teams of paralegals but there will be an impact on the budget.
- Working in outreach clinics ensures that legal advice and information is provided to the poor people right in their communities. This underpins the RAC principle of a free service.
- Working with community stakeholders and establishing local advisory committees pays off: local ownership and trust by the community are vital.
- Rights Advice Centres need to work with traditional authorities and can provide a resource to ensure that traditional justice respects the Constitution and statute.
- There is a large gap in terms of understanding of the law and access to redress demonstrating a need for awareness raising and more rights advice centres.
- Feedback from client records provides valuable information on the efficacy and implementation of the law and contributes to a culture of evidence-based advocacy.
- Legal advice and information are essential to improving the lives of poor people.

The way forward

This project is time and geographically limited and can therefore only contribute ideas towards establishing a cost effective and efficient way of delivering legal services. The funding, generously provided by the Scottish Government, has enabled us to pilot the methodology that scaled up and applied more widely could establish legal services for many more in Malawi. Ultimately, the Government has the obligation to ensure access to justice and the means by which citizens can claim their rights. This does not mean that the Government itself has to be the provider, as the Legal Aid Act acknowledges. It is possible to envisage a network of legal services providers drawing from a number of different organisations. However, in order to ensure consistency and quality of service there needs to be agreed criteria about the principles under which the service operates and the standards of service to be delivered. Likewise there needs to be agreement about geographical coverage and the focus on specific client groups.

There are many ways in which providers can co-operate and co-ordinate to provide services. Training and legal manuals can be shared and a common system of case recording would provide substantial information about the problems experienced and accurate identification of areas of the law where reform is needed or where implementation is weak.

There are other avenues to explore that would contribute to a more robust and uniform provision of service:

- Integration of legal community service into law and social work degree courses and other relevant courses. The experience of Ethiopia and other countries where this is practised indicates proven benefits for communities and students alike.
- A system of accreditation that could be available to community activists who volunteer for paralegal work. This would not only reward voluntary activity but also help to secure standards of service.
- Development of lay representation for specific types and levels of cases. Such systems exist in other countries and can bring benefits when qualified lawyers are in short supply and beyond the means of most ordinary people. Specific types of cases and the more complex remaining the province of qualified lawyers.

Finally there is the issue of funding. Whilst many donors have been generous in funding legal aid programmes, in the very long term it will be up to the Government to provide the resources for a legal aid scheme. In the meantime it is important to work towards a system that can guarantee a quality of service and equitable provision.



Rights advice centres: a practical guide to providing legal advice and information services in Malawi

Throughout the world, but particularly in developing countries, poor people do not have access to legal information and advice and therefore lack access to justice. While the rich buy the services of a lawyer, the poor cannot. The booklet describes the process of establishing rights advice centres dedicated to offering legal advice and information to people living in Mangochi and Dedza and the surrounding rural areas. The experience of the project is offered as a way of informing and improving future legal advice services in Malawi.

The project is a collaboration between the Active Learning Centre, UK; Malawi Centre for Advice Research and Education on Rights (Malawi CARER) and the British Council, Malawi and is funded by the Scottish Government.

www.rightsadvicencentres.com
www.activelearningcentre.org

