



Malawi

The Malawi Village Mediation Programme: Promoting social cohesion and protecting rights¹

Name of policy: Malawi Village Mediation Programme

Start Date: 1998

Completion Date: Ongoing

CONTEXT

GOVERNMENTAL CONTEXT

National context and access to justice

Located in southern Africa, Malawi is a land-locked country with a population of over 13 million. It is among the world's least developed and most densely populated countries (UNDP 2010).

¹ The **Inclusive Cities Observatory** is a space for analysis and reflection on local social inclusion policies. It contains over sixty case studies on innovative policies for community development, access to basic services, gender equality, environmental protection and the eradication of poverty, among others. The initiative has been developed with the scientific support of Prof. Yves Cabannes from the University College of London (15 case studies) and a team of researchers from the Centre for Social Studies (CES) at the University of Coimbra, which has worked under the supervision of Prof. Boaventura de Sousa Santos (50 study cases). This Observatory aims to identify and investigate successful experiences that might inspire other cities to design and implement their own social inclusion policies.

The **Inclusive Cities Observatory** has been created by the Committee on Social Inclusion, Participatory Democracy and Human Rights of UCLG. United Cities and Local Governments (UCLG) is the global platform that represents and defends the interests of local governments before the international community and works to give cities more political influence on global governance. The **Committee on Social Inclusion, Participatory Democracy and Human Rights** aims to contribute to building a common voice for the cities of UCLG in the areas of social inclusion, participatory democracy and human rights. It also aims to guide local governments in designing these policies and to that end, fosters political debates, the exchange of experiences and peer learning among cities around the world.

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The economy is heavily agriculture-based, with more than one-third of GDP and 90% of export revenues coming from agriculture.²

In terms of its political structure, Malawi has a democratic, multi-party government. The branches of the government consist of executive, legislative, and judicial. The executive is headed by a president who is both chief of state and head of government. The legislative branch consists of a unicameral National Assembly, whose members are elected every five years. Although the Malawian constitution provides for a Senate, it does not exist in practice. If created, the Senate would provide representation for traditional leaders and a variety of geographic districts, as well as special interest groups including the disabled, youth, and women. Local government is administered by central government-appointed regional administrators and district commissioners. The first multi-party local elections took place in 2000, a symbol of the ongoing decentralization process and a significant step towards empowering the population.

The independent judicial branch, based upon the English model, consists of a constitutional court, a High Court, a Supreme Court of Appeal, and subordinate Magistrate Courts. However, as in other parts of the continent, despite the constitutional promise of access to rights and justice to all Malawian citizens, the vast majority of the population live in areas out of reach of the courts. The official justice system is seen as inefficient, slow, and inaccessible – financially, culturally, and geographically – to the vast majority of the population (Brainch 2010a, 2010b).

COMMUNITY JUSTICE AND PROMOTION OF HUMAN RIGHTS

In many African contexts, including Malawi, non-state local justice is more trusted and legitimate, being the repository of the community's beliefs, norms, and values, and because it provides practical and accessible justice. As such, local justice plays a critical role in society, particularly in these rural areas, and has been indispensable to the communities for immediate delivery of what has been, for them, the only option when it comes to settle conflicts.

Despite the Constitutional promise of access to justice, approximately 85% of Malawi's population lives in rural areas, out of reach of formal courts.³ Major causes of conflict are related to a lack of effective laws and adequate protection of rights, particularly in relation to women and children. Thus, in order to fulfill Malawians' right to access justice, one has to bring justice into the villages, engaging with different sources of law and mediation. In a situation where most people want to settle their disputes quickly and cheaply through a local forum that they understand and can access, the Malawian NGO Paralegal Advisory Services Institute (PASI)⁴ has sought to improve access to justice for the Malawians.

² Agriculture accounts for 35% of GDP, industry for 19%, and services for the remaining 46%. Data obtained from <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/MALAWIEXTN/0,,menuPK:355882~pagePK:141132~piPK:141107~theSitePK:355870,00.html> [22 March 2011].

³ According to recent documents, in Malawi there are about 300 lawyers (UNODC, 2011).

⁴ The Paralegal Advisory Services Institute (PASI) is an NGO born out of a programme of Penal Reform International (Brainch 2010b). It functions under the Paralegal Advisory Service, an advisory council made up of senior prison officers, police officers, and members of the judiciary. The purpose of the Paralegal Advisory Service is to provide appropriate legal aid to poor people using non-lawyers on the 'front line' of

Institutional level of policy: Village level and municipality

COMPREHENSIVE NARRATIVE

Description of the policy

As in many other countries, the legal system of Malawi is formal, complex, mainly present in urban centers, time consuming, and expensive. Therefore, poor people, particularly the illiterate and the disadvantaged living in rural areas, cannot enforce their own rights and suffer injustice in silence.

The VMP introduces a village-based mediation scheme that can assist poor and vulnerable people to access justice in civil and some minor criminal cases. Inspired by similar projects around the world⁵, the Malawi Village Mediation Programme (VMP) was developed with PASI. It promises citizens justice in their own language, in their own village, and on their own terms. It empowers them to resolve minor criminal and civil issues, free of charge and in a participatory and culturally appropriate manner, in a process which is founded on strict human rights principles (Brainch 2010b). The Programme is implemented by village mediators who live within the communities they are assisting: it is a mediation service to the community by the community. The VPM operates within Malawi's own legal system complementing existing formal and informal dispute resolution mechanisms. It respects the parties' right to privacy by conducting the mediation in a private place and allowing them to express themselves in confidence in caucus meetings.

Background/Origins of the policy and its development

It has been evident for a long time that major causes of conflict are related to a lack of effective laws, their enforcement, and inadequate protection of rights, particularly in relation to women and children. PASI asked itself not what the state could supply in terms of improved justice at community level, but 'what do the people of Malawi need?' Most citizens just want to settle their disputes quickly and cheaply through a local forum that they understand and can access. In their quest to remove barriers to justice, PASI recognises that no people are better placed to bring about a fundamental improvement to community justice than the communities themselves.

In 2007, Penal Reform International supported PASI in adapting a successful model of village-based mediation to the Malawi context; a model developed by the Madaripur Legal Aid Association in Bangladesh in the aftermath of the 1970s civil war with West Pakistan, when formal structures of justice had all but collapsed and the poor were unable to access ways of resolving their disputes quickly and affordably.

Mediation is a voluntary process of resolving disputes whereby a mediator helps disputants find a settlement which is acceptable and workable. Mediation allows people to decide how they would like to settle their problem and tries to help them reconcile. A big difference between the VMP and other mediation models is that PASI recognises and respects the value of traditional dispute resolution fora and the importance of engaging Chiefs to collaborate in this initiative to train the villagers themselves (not the leaders) as mediators: people residing in the heart of the

the criminal justice system, helping to introduce and spread civic education and to prevent crime by educating the communities through the creation of youth groups (Anderson 2006).

⁵ Such as the Madaripur Mediation Model in Bangladesh, among others.

community who can help their fellow villagers resolve disputes amicably, quickly, and free of charge. The initiative sought to complement the established mechanism of arbitrated decisions of the Chiefs by providing another layer of justice – another choice – to the villagers to resolve their day-to-day disputes, while still retaining the option of a public forum with their Chief if they prefer or if they are unable to resolve their problem through mediation.

PASI teachers have been training village-based mediators in their local language, teaching them how to manage disputes in the communities the village mediators live in. The village mediators are supported and given supplementary training on an ongoing basis by their teachers, supervisors, and PASI paralegals (PASI 2009). Village mediators are carefully selected and have attributes that win the confidence and trust of the people in their villages. In 2008 only, more than 400 village mediators were trained by local trainees.

In every single case brought to the VMP, the village mediators are required to consider possible human rights elements. For instance, if a juvenile is involved, how can their rights be protected in the process so that they are not intimidated, and so that they do not agree to a settlement which is not appropriate (for example, which requires a young child to work)? If the case is between a woman and a man, are the woman's rights to equal opportunity being protected in the process? If the village mediators have any doubts or concerns, they are required to consult with the village mediation group and to ensure that a Human Rights observer, or other mediator with particular knowledge of human rights, is present.⁶

Lack of awareness about the formal justice system, illiteracy, cultural practices, and fear of discrimination has deterred women from accessing the formal justice system. Mediation gives women an opportunity to take their dispute to a locally based programme that respects and understands their concerns, and will help them to resolve disputes in a way that is both non-discriminatory and comprehensible. Women have also expressed that they like the fact that mediation is confidential.

PASI has taken steps to ensure that women are included in the selection of village mediators. Sensitization of women was a critical element in the Communications Strategy, to encourage them to use the VMP with confidence. As a result, 60% of village mediators are women and over two-thirds of cases brought to the VMP have been brought forward by women. By late 2010, Village Mediators helped to resolve 1,470 cases, 53% of which had been brought forward by women and 9.9% of which involve children (Brainch 2010b). A strength of the VMP is that it is situated inside the villages of Malawi where citizens can access its services on a daily basis, in an informal context, free of charge.

Objectives

The main objective of the Village Mediation Programme is to provide quick and affordable justice to the poor and to the vulnerable at the community level, in the language of the disputants, and in a secure environment which respects their human rights. The VMP is structured in parallel with existing local government structures and customary practices.

⁶ Current court procedure in Malawi encourages disputants to resolve their disputes outside the court through mediation, and the Magistrates Court often refers cases to the VMP. The Police also refer cases to the VMP. The VMP will report to the court or to the police if the matter is settled or not. In this way, there is no risk of impunity (PASI 2009).

Another purpose of the programme is to support existing dispute resolution mechanisms and to provide means for diverting suitable cases away from the formal justice system. In this way, the VMP helps to reduce case backlogs in the courts, to divert offenders away from detention where appropriate and thus reduce overcrowding in prisons, to provide quick settlement of matters so that they do not escalate, to enhance access to justice for the poor and vulnerable, and to contribute to better harmony in Malawi's communities (PASI 2009).

Legal framework for the Village Mediation Programme

Malawian Constitutions guarantees the rule of law, human rights, and equal opportunity before the law or access to justice but the reality is that, as in most African countries and many elsewhere in the world, the law is the privilege of few rather than the right of all citizens. Justice programmes tend to underestimate or ignore the value of the community itself as a viable resource in the provision of justice. Others baulk at what they believe is a lack of authority to introduce restorative justice practices at community level without legal reform. PASI has made use of the space created by Malawi's existing legislation to introduce restorative justice practices at community level; a space which can be found in many jurisdictions; legislation which to a large extent exists in other countries whose Constitutions promise access to justice and thereby provide sufficient framework for action to commence.

Structure of the Village Mediation Programme

The VMP is founded on three pillars:

1. *Voluntariness* of the process whereby parties cannot be forced to participate, nor can the village mediators charge a fee for their services;
2. *Confidentiality*. Only the disputants attend. Nothing said or done in the mediation is repeated elsewhere. Mediators cannot be called as witnesses in any other proceedings, and whatever one party may say to the mediator in private is not repeated to the other party without express authority; and
3. *Neutrality*. The village mediators may not participate if there is any conflict of interest.

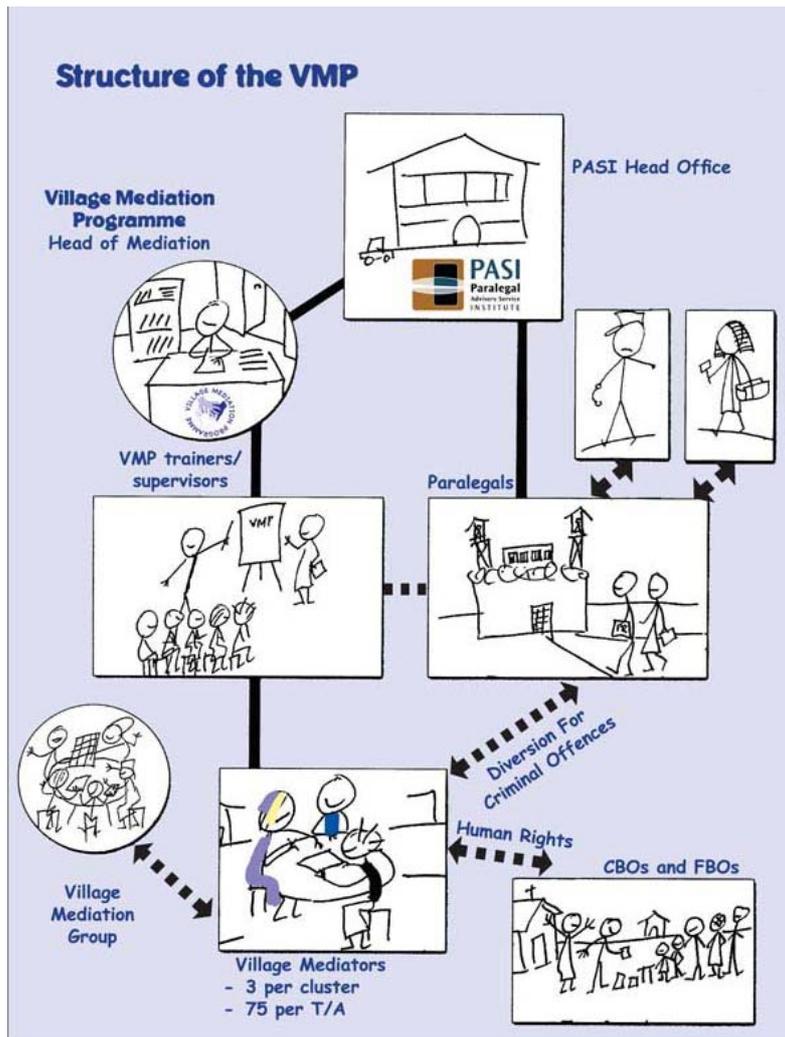
Volunteer village mediators are recruited from all sectors of society in the village with appropriate gender, cultural, and ethnic balance and according to stringent criteria. More than half of mediators are women and illiteracy is not a bar to participation.⁷ Teachers are assessed to ensure their ability to impart their knowledge of mediation concepts and techniques as well as a basic but good understanding of human rights, anchored in practical experience (PASI 2009; Brainch 2010a, 2010b); at the same time, the mediators act in accordance with a strict Code of Conduct.

To ensure adequate support to the village mediators, the VMP has designed a system of supervision, monitoring, mentoring, and evaluation. In addition, the village mediators are supported by 'Village Mediation Groups', which help the mediators complete Case Records of every matter brought to them.

⁷ Indeed, Village Mediators have been selected by their own communities and represent a cross-section of the population: literate and poorly literate, men and women, elderly and young, able and disabled.

PASI VMP trainers and paralegals ensure monitoring and maintenance of standards, as well as adherence to human rights principles and the law. They also act as the principal link between the local community and the formal justice system. The outcome of all matters referred from the Police is also reported to the Police so as to avoid impunity on the part of anyone seeking to avoid the process.

Figure 1. Structure of the Village Mediation Programme



Source: Brainch (2010b)

Partners involved

The VMP is implemented by PASI in Malawi where it was piloted in cooperation with the Danish Institute of Human Rights (DIHR) and the Dispute Resolution Centre (DRC) in Kenya. The model was inspired by the Madaripur Mediation Model from Bangladesh and other village-based mediation programmes around the world. The VMP pilot programme was funded by Irish Aid. The VMP seeks close coordination and collaboration with other agencies working with access to justice, such as the traditional authorities, community leaders, the Judiciary, government, and

civil society organizations. VMP also benefits from an International Advisory Group with members from Bangladesh, Nepal, Albania, U.K., and Denmark.

Beneficiaries

Local communities, especially women

Institutionalization process

The experience of the Village Mediation Programme illustrates how a partnership of formal institutions – courts, civil society, and local authorities – can become a powerful instrument to democratize access to rights and justice, from a multicultural perspective. National institutions are expected to kickstart overarching policy and planning to ensure the sustainability of these legal aid initiatives.

Funding

PASI through the Danish Institute of Human Rights, and Irish Aid

Main results

By introducing a community-based diversion and mediation scheme, it becomes possible to empower poor and vulnerable people to access justice in both criminal and non-criminal cases. VMP has been involved in training mediators to resolve village disputes. These mediators also mediate in certain types of criminal cases, especially those involving juveniles who are detained or convicted for petty crimes (Brainch 2010a). The end result of this policy is increased public confidence in a justice system that directly impacts on political stability and the willingness of the public to cooperate with authorities.

Figure 2. The VMP performance: Case flow from March 2009 to February 2010 (12 months)

| District | Cases received | Cases settled | Cases not settled ⁸ | Pending | Cases referred to other providers ⁹ | Cases received from other providers |
|---------------|----------------|---------------|--------------------------------|-----------|--|-------------------------------------|
| Mchinji | 397 | 279 | 35 | 43 | 40 | 33 |
| Lilongwe | 270 | 201 | 27 | 13 | 29 | 18 |
| Salima | 248 | 183 | 23 | 26 | 16 | 26 |
| TOTALS | 915 | 663 | 85 | 82 | 85 | 77 |

⁸ Most of these cases resulted from the second party failing to attend the mediation meeting, usually because s/he had left the area.

⁹ Other providers comprise: Traditional Leaders, village courts, the parties own clan or family Elders, church leaders, community paralegals (within other NGOs), NGOs and CBOs

Figure 3. The VMP performance: Origin of cases

| | |
|---|------------|
| Cases brought by women | 600 |
| Cases involving children | 53 |
| Referrals from Magistrates Court | None yet |
| Referrals from Police Victim Support Unit | 110 |
| Referrals from Chiefs | 150 |
| TOTAL | 913 |

Figure 4. The VMP performance: Nature of disputes

| Dispute | % of total cases |
|--------------------------|-------------------------|
| Domestic abuse | 60% |
| Land | 5% |
| Neighbours ¹⁰ | 30% |
| Petty criminal offences | 5% |

Overall assessment and improvements of the practice

Public confidence in the VMP can only be maintained if the programme is operated and managed responsibly; and disputes dealt with quickly and properly. This requires supervision and a well-functioning grievance mechanism as well as an efficient and effective Monitoring and Evaluation system. VMP collects and collates statistical and qualitative information including: the number and type of cases referred and the source of the referral; the outcome of all cases whether settled or not; the time between referral and resolution; how cases not settled in mediation are dealt with afterwards; socioeconomic data on gender, income, ethnicity, and religion of the parties – all measured against a Baseline Survey carried out at project start-up.

Interest and replicability

Most of the community disputes experienced in Malawi are recognisable in any language and in any culture. Thus, the Village Mediation Programme’s applicability, success, and simplicity caught the attention of the Justice Sector Development Programme (JSDP) in Sierra Leone. Similar approaches are being implemented in other countries in Africa (Mozambique, Zambia, Kenya, Nigeria, and Sudan), in Europe, and elsewhere in the world. The combination of a broad approach to justice and reconciliation will have to take into consideration state and non-state; judicial and non-judicial; legal and paralegal key elements to reduce pressure on the courts, to promote social integration, and to reduce social tension.

Village Mediation Programme draws on a sense of community – the 'global village' – and does not confine itself to rural areas. The VMP is equally applicable to urban communities, which may comprise a group of neighbours living in a single street (as in the Cells of Tanzania), trade associations (such as the Sierra Leone Bike Riders Association), a women's group, or a youth organization. Each such community has the potential to assist its members through the same structures established and practised in Malawi.

¹⁰ Unpaid debt, theft of crop, theft of other property, fight over access to farmland, trouble created by children (eg theft)

SUMMARY

To be effective, approaches to justice and reconciliation need to be multi-faceted: state and non-state; judicial and non-judicial; legal and paralegal. The Village Mediation Programme (VMP) impacts positively on social harmony in the community, reducing conflict and creating greater understanding of the risks of unmanaged or mismanaged disputes.

The ultimate goal in resolving disputes is to repair harm and promote understanding between citizens of all religions, culture, gender, and race. The values which underpin mediation – empowerment, honesty, respect, engagement, voluntarism, healing, restoration, personal accountability, inclusiveness, collaboration, and problem-solving – apply to the length and breadth of best practices of community legal aid. Communities where the VMP is active have responded by saying that the programme has brought harmony to their villages. The VMP ensures that the provision of legal aid to communities respects the participants' diversity and equality and is non-discriminatory in upholding the rule of law. Standards are assured to protect its users, and its effectiveness continues to be measured through monitoring and evaluation, user feedback, and the programme's timely response to needs that arise.

Beneficiaries: Local community, especially women.

Institutionalization process: The process is gradually spreading in the country and national institutions are expected to kickstart overarching policy and planning to ensure the sustainability of these legal aid initiatives.

Funding: PASI through the Irish Aid, with support from the Danish Institute of Human Rights.

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Acknowledgements / Credits

Information was obtained from Internet-accessible sources. The text was prepared by Dr. Maria Paula Meneses in 2011, at the Centre for Social Studies, University of Coimbra, Portugal.

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