

Final Report   
UNDP Malawi

**Mid-term evaluation**

**Access to Justice through Village Mediation and Paralegal Services Project**



April 2020

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| Acknowledgements |

This Mid-term Evaluation Report of the Access to Justice through Village Mediation and Paralegal Services Project is prepared by Mark Aiken (Team Leader) and Chris Dzimadzi (National expert).

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The conclusions expressed in this report are those of the evaluation team, who take full responsibility for them.



*Court sessions are a community event – Magistrate Court in session, Ntcheu*

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| Executive Summary |

This document is the Mid-term Evaluation Report of the Access to Justice through Village Mediation and Paralegal Services Project. The findings and recommendations contained within this report are based upon documents reviewed, and first hand data collected by key informant interviews with 49 respondents, eleven focus group discussions with 51 participants and twelve observations including prisons, police cells and court proceedings.

The Access to Justice Project has two objectives:

* + - * 1. *To provide an effective and sustainable village mediation programme that, in improving access to restorative dispute resolution at the local level, substantially reduces the number of minor matters entering the formal justice system, especially those affecting women and children, and strengthens community mechanisms for conflict resolution and access to justice.*
        2. *To provide an effective paralegal aid service that, functioning in Malawi’s police stations, courts and prisons, provides appropriate legal assistance and advice to those in conflict with the law and the authorities; and through this, substantially reduces the number of people in detention, especially women and children, and increases the diversion of those held on minor matters to mediation and so reduces the duration of incarceration and therefore, the overcrowding of Malawi’s police cells and prisons as well as the backlog in cases before the magistrate’s courts.*

In relation to the first objective, the information reviewed by the Evaluation Team supports the finding that the Village Mediation project does provide an effective and sustainable approach, benefiting from close collaboration and support from traditional leaders. The Village mediation approach is sustainable due to its close ties to the community, and the use of volunteer mediators who serve their local area.

Village mediators have resolved 25,073 cases over two years,[[1]](#footnote-1) with over 55% of cases involving women. These cases are a combination of civil and minor criminal cases, such as family law disputes, loan repayments and verbal fighting / insults. Internal User Perception surveys conducted in 2018 and 2019 found extraordinarily high rates of satisfaction – 99% of respondents were either highly satisfied or satisfied with the service they received.[[2]](#footnote-2) There is presumably some impact upon the number of minor cases which are diverted from the formal justice system, however it is not possible to quantify this impact since not all parties to a mediation will have the desire or capacity to file a case in the formal justice system if their dispute goes unresolved.

Village mediation not only resolves individual disputes and provides a practical forum to for people to access justice, but it restores relationships which strengthens community resilience. In parallel, village mediation also allows traditional leaders to devote themselves to addressing more complex community disputes, such as land cases.

In relation to the second objective, the information reviewed by the Evaluation Team supports the finding that the PASI Paralegal component of the Project is similarly highly effective, building on a well-established model that was pioneered in Malawi by PASI and subsequently exported internationally. PASI Paralegals deliver a high-volume service (assisting 216,751 clients in 2018-2019)[[3]](#footnote-3) and have facilitated the release of over 61,056 people from places of detention in 2018-2019.[[4]](#footnote-4)

PASI paralegals undertake a range of tasks to assist people in detention, including screening for compliance with Malawi law (eg with Pre-trial rules), providing legal empowerment, assistance and counselling, assisting to contact families, witness and sureties to provide bail or alibis. PASI helps identify cases which are delayed and advocates for these to be addressed through mechanisms including the Court Users Committee meetings and Court sessions convened inside prisons (Camp Courts).

As paralegals are not authorised to provide individual legal advice and representation, PASI’s legal assistance is in some ways constrained. The Legal Aid Board may appoint lawyers to handle more serious criminal offences, however they do not have sufficient lawyers to handle caseload demands, and the Legal Aid Bureau does not have offices in many districts. While PASI’s legal empowerment work is valuable, these factors support the conclusion that there remains a critical gap in the provision of legal assistance and representation, which is beyond the scope of PASI to address.

Feedback collected through key informant interviews and focus group discussions demonstrated that stakeholders widely acknowledge the contribution that PASI paralegals make in helping expedite cases through the criminal justice system. The impact of these initiatives is shown through the reduction in the percentage of prisoners serving a sentence in prison of less than three years, which has fallen from 40% (2017 baseline) to 18% as at Q3 2019.[[5]](#footnote-5) Similarly, the rate of prison population per 100,000 of Malawi’s national population has decreased from 88% in 2017 to 79% in 2019.[[6]](#footnote-6) PASI and other criminal justice initiatives have contributed to these reductions, including the work of the Criminal Justice Coordination Committee and criminal sentencing reforms promoted by the Judiciary following the decision in Gable Masangano (2007)[[7]](#footnote-7) on prison conditions.

The Evaluation team has reviewed the Project’s budget expenditure and compared it to the results achieved.

* Under Output 1, PASI’s average cost to resolve a case by community mediation in 2019 was $12.09 per case.
* Under Output 3, PASI facilitated the release of 61,056 people in places of detention during 2018-2019, with a budget of $714,287, with an average cost per release of $11.70.
* Under Output 4, PASI processed 3,676 detainees through Camp Courts in prisons, with a cost per case heard of $8.27, and an average cost per detainee released of $14.31. [[8]](#footnote-8)

This investment in paralegal support has positive financial benefits for the Government of Malawi, by avoiding the costs incurred to care for people in detention, and by delaying or avoiding the cost required to build new prison infrastructure. At the same time, the paralegal service has significant benefits for people who are released from detention, and can return to their work or family duties, along with the extensive social benefits associated with this.

This evidence of the large number of beneficiaries assisted by PASI, the relatively modest level of inputs and the high value of deferred investment in criminal justice infrastructure supports the finding that the project has achieved excellent value for money.

**Lessons learned:**

The evaluation report has documented lessons learned during the first two years of project implementation, for consideration and to assist in guiding future programming.

1. Project scale up – The Access to Justice Project reactivated activities which had been implemented under previous donors, while also expanding project activities to new locations. Building upon previous activities allowed the project to jump-start, since PASI had existing networks of staff, trainers and village mediators which could be activated. However, reactivating former districts at the same time as expanding into new districts placed a heavy demand on PASI’s management and training resources. A more progressively phased expansion may have been easier to implement.
2. Community ties – the success of the village mediation activities is due in no small part to support provided by traditional authorities and village leaders. PASI has gone to significant efforts to engage with traditional leaders, and ensure that village mediation is framed in terms of support rather than competition with traditional leaders. It is critical to preserve this support by traditional leaders to ensure the ongoing success of village mediation.
3. Collaborative advocacy - PASI paralegals have negotiated access to places of detention by operating in a collaborative, rather than challenging way. Project implementation has demonstrated some of the benefits of this approach. At the same time, there is a risk of ‘capture’ which paralegals and their supervisors must be aware of, to ensure that close relationships between PASI and security institutions do not jeopardise the willingness of paralegals to properly escalate cases when authorities do not agree to follow legal procedures. While PASI has adopted a collaborative approach, the complementary roles of formal accountability and oversight remain critical.
4. Redressing systemic issues - The Access to Justice project operates as a kind of ‘canary in the coal-mine’, which is capable of identifying and signalling systemic issues which could be addressed either by PASI or by other actors. PASI has had some incremental success in influencing justice reforms through its roles on various committees. However, PASI’s primary focus as an organisation has remained on service delivery, and the implementation of the planned research and advocacy components of the project has lagged behind other outputs. Closer coordination with the *Chilungamo* programme, greater involvement by UNDP in advocacy through its specialist expertise and convening role, and strengthened collaboration through consortium with other civil society organisations could help leverage PASI’s operational experiences into more effective systemic reform.
5. Camp courts - Initiatives such as Camp Courts have been an effective mechanism to decongest prisons. Stakeholders advised the evaluators that the preparation undertaken by PASI when organising Camp Courts is key to their successful outcomes. We would encourage PASI to document and share the procedures they follow, so other organisers of Camp Courts can adopt these good practices and the Camp Courts can have a better impact, regardless of which organisation is supporting the event.
6. Serving vulnerable populations - As an Access to Justice project, the project focuses intensely on the needs of vulnerable people in prison, and on ensuring that village mediation is accessible to women. However, other categories of vulnerable people are not an explicit focus of the project – for example, people with disabilities, people with albinism, children, elderly, migrants, people with mental illness or serious illnesses etc. While the Project may assist some of these people, the support is not targeted and the results are not disaggregated in record keeping or reporting.

**Findings and recommendations**

Overall, the information obtained and assessed by the evaluation team demonstrates that the Access to Justice project is performing very well, and is making a significant difference to the lives of beneficiaries through the village mediation and paralegal services. Detailed findings and recommendations are proposed by way of further refinements to the project, rather than expressing fundamental concerns about the project’s value or progress.

Based upon a review of available documents, key informant interviews with stakeholders and focus group discussions with community leaders and beneficiaries, a summary of the main findings and recommendations is outlined below. The evaluation report includes additional findings and recommendations, along with further discussion of the key findings and recommendations below.

### **Relevance**

Overall finding: The Access to Justice Project is highly relevant to international goals such as SDG 16, is aligned with the UN Malawi UNDAF Outcome 1.1, the Malawi Growth and Development Strategy III and the fulfilment of rights guaranteed under the Constitution of Malawi. The project focuses on the needs of vulnerable people, especially those in detention, and in providing localised access to dispute resolution in communities in close cooperation with traditional leaders.

Specific findings and recommendations:

* The Access to Justice Project is the main component of UNDP’s access to justice programming, however the project is by design primarily ‘bottom up’. Ideally this bottom up programming would be reinforced by parallel initiatives and advocacy to engage with justice stakeholders. We recommend UNDP (with other donors) should support advocacy based on PASI’s experiences to help redress systemic justice issues. UNDP can play a convening role in bringing together interested stakeholders, particularly other NGOs which may be less willing to cooperate with PASI.
* UNDP is the lead UN agency on access to justice, and has deep technical expertise and guidance notes on access to justice and judicial reform. However, the Access to Justice Project has not significantly benefited from the UN’s technical expertise in these areas. We recommend UNDP be more technically engaged on issues including legal aid policy, mobile court policy, case management, alternatives to detention / diversion, community mediation (including linkages with the formal justice system), restorative justice / victim – offender mediation, sentencing policy, university legal aid clinics, pro bono schemes with law societies, implementation of the Bangkok Rules, strengthening oversight and accountability mechanisms etc.
* The project document outlines most of the components of a theory of change, but does not include a theory of change. We recommend PASI and UNDP review the logic model discussed at various places in the project document and articulate a clear project theory of change, including linkages between each stage and linkages to relevant UNDAF indicators.

### **Effectiveness**

Overall finding: The project has met or substantially met the planned targets. The Village Mediation component has resolved 25,073 cases over two years (target 27,954), with 55.7% of cases involving women, and a 99% client satisfaction rate. The paralegal component has assisted 216,751 beneficiaries in places of detention, and facilitated the release of 61,056 detainees. PASI’s support to the implementation of Camp Courts, Court Users Committee meetings, Court consultation forums and outreach has been noted by respondents with approval. Traditional leaders also highly regarded the effectiveness of village mediation in resolving disputes and reconciling community members.

The project has been less effective in implementing planned activities relating to research and advocacy, and in collaborating with civil society, donors and justice actors to advocate for and implement access to justice reforms. These further reforms are essential to progress beyond reactive service delivery, whether delivered via PASI or in conjunction with other programmes.

Specific findings and recommendations:

* The Access to Justice Project document outlines an approach to research, studies and advocacy, however this component has been relatively undeveloped in comparison with the service delivery activities. We recommend PASI place greater emphasis on action-based research and mini-studies to document access to justice issues observed by PASI, with technical assistance from UNDP as appropriate to incorporate international best practices on access to justice and legal reforms. We recommend PASI place greater emphasis on the dissemination of their results and case studies, for example through social media.
* The project serves two very vulnerable groups, notably people in detention and women with disputes in communities. However, the Access to Justice Project has had a limited focus on the access to justice needs of people with other types of vulnerability, including people living with disabilities and albinism. We recommend PASI improve data disaggregation in case files and reporting on cases with particular vulnerabilities. We recommend PASI improve their access to people with vulnerabilities by strengthened collaboration with other civil society organisations who service these populations (including child focused organisations, SGBV organisations, organisations supporting people living with disabilities etc).
* The screening and provision of basic legal information to detainees conducted by PASI paralegals provides a foundational level of level assistance. However, it is important to note that the project design does not seek to meet more advanced legal needs of detainees, including individual legal advice relating to their case, or representation. This leaves unmet legal needs and. We recommend that PASI, donors and the Legal Aid Bureau continue to advocate for the expansion of legal assistance services, which could be delivered in various ways including by duty lawyers at Court from the LAB, MLS pro-bono roster or civil society organisations staffed with lawyers. Due to the existing restrictions on paralegals providing legal advice, it is not feasible for PASI to provide this service as it is currently structured.

### **Efficiency:**

Overall findings: The Project has executed their available budget at a high rate (96.9% in 2018 and 99.8% in 2019), and has sought supplementary funding for items not included in the original budget. The evaluation assessed value for money for money of key project activities, including the average cost to resolve a case via village mediation ($12.09 in 2019), average cost to facilitate the release of a detainee ($11.70 in 2018-2019) and average cost per detainee released via camp courts ($14.31). These costs appear relatively modest, especially in comparison with the cost per day of detention and the avoided or delayed investment in additional prison infrastructure. However, project implementation has been constrained at the start of each quarter due to the financial management processes associated with reporting, verifying and disbursing each tranche payment.

Specific findings and recommendations:

* The reactivation of PASI’s prior activities and simultaneous expansion to include additional districts for paralegals and additional TAs for village mediation has potentially exceeded PASI’s capacity to fully train and fully support these personnel. Paralegal and village mediator service delivery is exceeding targets, however the planned budget is potentially insufficient to support the management and overheads which are required to sustain this level of service delivery. We recommend that PASI seek additional funding for support which was underbudgeted or not included in the original proposal, including sufficient allocation for reasonable management and overhead expenses. We recommend that PASI should ensure that appropriate human resource management policies are in place to support the well-being of staff who work under difficult conditions, and encourage staff to take leave as accrued. Particular attention should be given to paralegal staff who work alone in districts, where support is more remote.
* The current project reporting / verification / funding disbursement cycle means leaves PASI without funds to programme activities at the beginning of each quarter for periods up to or exceeding one month per quarter. PASI does not have sufficient funds from other donors to self-fund activities or payroll during these periods. We recommend UNDP and PASI should agree on a revised approach to reporting, expenditure verification and disbursement which minimises impact on project implementation.
* PASI and donors should be aware of the risks of creating perverse incentives by embedding allowance funded activities such as Camp Courts as a routine part of the justice system.

### **Implementation**

Overall findings: The Access to Justice Project has been recognised by stakeholders as being very successful to date, and has been delivered substantially as designed and budgeted. The project has generally achieved its targets, and in some indicators has significantly exceeded those targets. PASI has implemented lessons learned from their experience in implementing similar activities for other donors, and has successfully scaled up these activities by expanding to additional districts and TAs under the current project. Project implementation has been hindered in some regards by delays in reporting / verification and disbursement of funds to PASI, and turnover of programme management staff at UNDP and the EU. However, PASI has generally been able to implement its workplan and make up for these delays. PASI has established partnerships under formal MOUs with key stakeholders. However, further attention is required to maintain collaborative relationships with some few justice actors. PASI’s advocacy would potentially be more effective with better coordination with *Chilungamo* and closer collaboration with coalitions of civil society actors and donors.

Specific findings and recommendations:

* Some paralegal personnel demonstrated excellent knowledge and understanding of criminal justice processes, while other paralegals appear to require further training and support. Some paralegals have a legal background, while others have no previous exposure to the justice system or a legal background. We recommend PASI ensure that all paralegals receive appropriate training, refresher training, ongoing support and supervision, as a way to ensure that knowledge is accurate and up to date and skills are developed, including training on working with vulnerable populations (SGBV, children, people with disabilities). Paralegals with a non-legal background may also require additional training, support and supervision to meet quality standards. We recommend that institutional capture should be explicitly discussed during professional development sessions, with paralegals identifying their personal risks and personal and organisational strategies to mitigate these risks.
* Although PASI is part of the *Chilungamo* Project funded by the EU, the project components are implemented separately and there is limited coordination between the PASI activities and institutional capacity building activities. PASI would potentially have greater impact with better coordination with *Chilungamo* and closer collaboration with coalitions of civil society actors and donors. We recommend closer integration between PASI and the *Chilungamo* Project, particularly by using PASI’s experiences as an evidence base to guide and prioritise the larger funding allocated to support justice institutions, closer linkages between PASI’s village mediators and existing community peacebuilding and vulnerability initiatives.
* PASI’s work evidences child justice challenges, including lack of access to safe houses (particularly in districts) and operational challenges for Government social workers. As UNICEF is the lead UN agency on child justice, we recommend that PASI and UNDP direct these issues to UNICEF so they receive appropriate technical expertise, with potential for coordination between PASI, UNDP and UNICEF on strengthened child diversion.

### **Sustainability**

Overall findings: The Access to Justice Project has been designed and implemented from a sustainable perspective. Village mediators work on a voluntary basis, and operating costs once personnel are recruited and trained are relatively limited. The value for money of paralegals is quite high, as they assist the Government to reduce the costs of detention by diverting cases, and a case could be made that an investment in paralegal funding will save money for the Government by delaying or avoiding investment in prison infrastructure and justice services. PASI has developed a sustainability plan to guide its strategic development. The plan provides several options for PASI’s future development, and sets out advantages and disadvantages of each option. However, in reality, virtually all legal assistance services remain reliant on a combination of Government and / or donor funding, and full sustainability is difficult to achieve.

Specific findings and recommendations:

* PASI’s ‘Sustainability plan and exit strategy’ sets out various options for future sustainability, including ten models to sustain PASI without donor funds. PASI does not appear to be in favour of some of these models, while other models may not be realistic. It will take time to transition to any of these models, particularly if the transition is intended to be completed by the end of this project. At present, PASI remains heavily reliant on the leadership and expertise of its founding Director. We recommend that PASI, with inputs from donors and stakeholders, assess the feasibility of the various options proposed by PASI to improve financial sustainability, and agree on one or two preferred models which PASI can commence transitioning towards under a sustainability implementation plan. As part of its sustainability strategy, PASI should continue to develop the capacity of its management team to minimise its organisational reliance on individual key staff members.
* The *Chilungamo* programme is a significant and much needed investment in the justice system of Malawi. The programme takes a sectoral approach with a EUR 48m Financing agreement which supports justice institutions[[9]](#footnote-9) under a private contract with Human Dynamics, NICE as their own contracting authority and PASI under a contract with UNDP. PASI is involved in coordination meetings (as the sole civil society organisation), however it is unclear how much impact they may have. We recommend that the European Union build stronger synergies between programme components by encouraging closer collaboration, including using information generated by PASI as an evidence base to identify and prioritise justice reforms. We recommend that the European Union and Human Dynamics take into consideration which tasks are likely to have the greatest impacts on service delivery when prioritising the selection and funding of activities and the use of non-key expert working days under the *Chilungamo* programme, including consideration of the constraints and evidence base identified by PASI. We recommend that the European Union and UNDP support advocacy efforts on access to justice issues, including the promotion of space for broader engagement by civil society. While in the current climate space for civil society is constrained, advocacy may be possible in some niche areas – for example, on outreach, legal aid policy, child diversion etc.
* The justice sector in Malawi faces many challenges and constraints, including infrastructure, personnel, transport, budget and policy framework issues. These constraints are inter-connected and it is not possible to simultaneously resolve all of these issues. However we recommend that in selecting which initiatives to implement, justice institutions take into consideration which activities will most directly improve their service delivery to users, particularly for vulnerable people. Where available, practical studies and data from organisations such as PASI can provide an evidentiary basis to inform this prioritisation.

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| List of abbreviations |

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| CCJP | Catholic Commission for Justice and Peace |
| CJCC | Criminal Justice Coordination Committee |
| CHRR | Centre for Human Rights and Rehabilitation |
| CUC | Court User’s Committee |
| DEC | Disaster Executive Committee |
| EU | European Union |
| LAB | Legal Aid Bureau |
| M&E | Monitoring and evaluation |
| Mwk | Malawian Kwacha |
| MoGCDSW | Ministry of Gender, Children, Disability and Social Welfare |
| PASI | Paralegal Advisory Service Institute |
| NICE | National Initiative for Civic Education |
| PRI | Penal Reform International |
| SGBV | Sexual and Gender Based Violence |
| TA | Traditional Authority (geographic area) |
| UNDP | United Nations Development Programme |
| UNICEF | United Nations Children’s Fund |
| UNODC | United Nations Office on Drugs and Crime |

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| Introduction |

This assignment is to conduct an independent mid-term evaluation of the Access to Justice through Village Mediation and Paralegal Services Project (‘the project’). The project is implemented by the Paralegal Advisory Service Institute (PASI), with funding from the European Union under the *Chilungamo* (Justice and Accountability) Programme and UNDP.

There are two specific objectives of the Project

* To provide an effective and sustainable village mediation programme that, in improving access to restorative dispute resolution at the local level, substantially reduces the number of minor matters entering the formal justice system, especially those affecting women and children, and strengthens community mechanisms for conflict resolution and access to justice.
* To provide an effective paralegal aid service that, functioning in Malawi’s police stations, courts and prisons, provides appropriate legal assistance and advice to those in conflict with the law and the authorities; and through this, substantially reduces the number of people in detention, especially women and children, and increases the diversion of those held on minor matters to mediation and so reduces the duration of incarceration and therefore, the overcrowding of Malawi’s police cells and prisons as well as the backlog in cases before the magistrate’s courts.

The project comprises the following outputs:

Output 1: A well-functioning and sustainable mediation service at community level established for criminal and non-criminal matters.

Output 2: An effective diversion scheme for minor offences established to benefit both the formal and informal justice sectors.

Output 3: Strengthened provision of first legal aid services (advice, assistance and legal empowerment) to the poor and vulnerable people in conflict with the law in Malawi.

Output 4: Strengthened coordination mechanisms to ensure efficient and effective flow of information and delivery of justice in the criminal justice agencies and the community.

Output 5: Strengthened effective and efficient management, partnership formation, research and M and E.

## Evaluation design and approach

The Evaluation was conducted in three phases as follows:

Phase I: Desk review and preparation of draft inception report

A desk review was conducted of all available information relating to the project. The evaluation team relied upon UNDP and PASI to collate and provide the information, which included the project document, project progress reports, steering committee meeting minutes, monitoring visit reports, training materials, outreach materials and the 2018 user perception survey. The information provided by UNDP and PASI was complemented by research from secondary sources, particularly on paralegal and access to justice issues in Africa.

On the basis of the available information, a draft inception report was prepared which outlined the evaluation methodology.

Phase 2: In-country data consultations and data collection

The evaluation team met with the Evaluation Manager to refine the evaluation approach, which was presented to the Evaluation Reference Group and approved during week one of data collection. A list of stakeholders to be interviewed was prepared in conjunction with UNDP and PASI. Data collection, including key informant interviews, focus group discussions and observation visits were conducted by the two evaluation consultants between 20th January – 31st January 2020. Data collection was suspended during the week commencing 3rd February 2020 due to political and security issues which led to a UNDSS restriction on movements. The national expert conducted supplementary key informant interviews and focus group discussions during the week commencing 10th February.

The evaluation team collected data from the districts of Lilongwe, Dedza, Ntcheu and Mangochi. Meetings in Lilongwe focused on national level stakeholders, while the remaining districts focused on district and sub-district / boma level stakeholders. As it was not possible to visit each of the districts where the PASI programme is implemented, these districts were purposively selected to provide a sample district from each region, and a balance of ‘old’ districts where PASI has previously operated together with ‘new’ districts where PASI has commenced operations under this project. The sites were selected in consultation with UNDP, PASI and the Evaluation Reference Group.

Key informant interviews

Thirty-six key informant interviews were conducted with a total of 49 respondents (36 males, 13 females). Interviews were conducted in Lilongwe (27 respondents; 16 males, 11 females), Mangochi (12 respondents; 11 males, 1 females), Ntcheu (8 male respondents) and Dedza (2 respondents; 1 male, 1 female).

The interviews were conducted as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Interviewees | Number of males | Number of females | Total |
| Project team (including PASI management, Paralegals) | 7 | 4 | 11 |
| UNDP | 1 | 3 | 4 |
| Police officers | 8 | 1 | 9 |
| Prison officers | 4 |  | 4 |
| Judiciary | 2 |  | 2 |
| State institutions | 7 | 1 | 8 |
| International organisations and NGOs | 4 | 4 | 8 |
| Beneficiaries and community leaders [[10]](#footnote-10) | 3 |  | 3 |

Focus Group discussions:

Eleven Focus Group discussions were held, with a total of 51 participants (29 males and 22 females). Focus Group discussions were convened in Lilongwe (1), Ntcheu (4), Mangochi (4) and Dowa (1). The Dowa Focus Group Discussions were convened with Northern and Southern region paralegals to enhance the information relating to those regions when the National expert had the opportunity to attend part of the PASI paralegal team retreat held in Mponera.

The Focus Group Discussion participants were as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Participants | District | Number of FGDs | Number of participants |
| Village Headmen | Ntcheu | 1 | 3 males |
| VMP beneficiaries | Ntcheu | 2 | 8 (4 males, 4 females) |
| Mangochi | 2 | 7 females |
| Village mediators | Ntcheu | 1 | 3 (2 males, 1 females) |
| Mangochi | 2 | 10 (5 male, 5 females) |
| Paralegals | Dowa | 2 | 17 (14 males, 3 females) |
|  | Lilongwe | 1 | 3 (1 male, 2 females) |

Observations:

Twelve observations were conducted of prisons, Camp Court sessions, Court Sessions and Police Station cells. It was not possible to observe any outreach sessions during the evaluation.

Observations were held as follows:

|  |  |  |
| --- | --- | --- |
| Site | District | Total Number of observations |
| Court sessions | Lilongwe, Ntcheu, Mangochi | 3 |
| Prisons | Lilongwe, Dedza, Ntcheu, Mangochi | 4 |
| Police cells | Dedza, Ntcheu, Mangochi | 3 |
| Camp Court | Lilongwe | 1 |
| Court Users Committee | Lilongwe | 1 |

Phase 3: Report preparation and finalisation

The evaluation team prepared a draft evaluation report, which was provided to the Evaluation Reference Group and revised to take into consideration the feedback received. A feedback matrix was used to identify issues, accept or respond to feedback, and track amendments to the draft evaluation report. Factual corrections and updates to the draft report were made based on feedback from the Evaluation Reference Group, and any differences of opinion were tracked and reconciled through the matrix.

The scope of the mid-term evaluation is to ascertain:

* The progress made towards the achievement of the expected results and performance.
* Relevance of the project strategies to development needs of the people and global, regional and national development goals.
* To assess effectiveness of the project in achieving the specific expected results and analyse any factors contributing and hindering its progress.
* To what extent has the project contributed to the reduction of work load in the formal justice institutions.
* To what extent has the project addressed the overcrowding of prisons in the targeted districts.
* To what extent has the project contributed to the diversion of minor cases from formal to informal justice institutions.
* To what extent was gender equality and human rights issues incorporated in project design, implementation, monitoring and reporting.
* To make recommendations, if any, to improve the design, efficiency, effectiveness, sustainability and strategies and directions of the project for the remainder of the implementation period.
* To document lessons learnt for improving project effectiveness.

### Data analysis

Interview notes and focus group discussion notes were transcribed in real-time, either directly on a computer or by hand-written notes which were subsequently typed. Meeting notes were collated and analysed using Atlas.TI, a qualitative software package. Respondents were grouped according to variables including gender, location and respondent’s organisation. Response statements were highlighted to facilitate analysis and reporting.

An evaluation matrix was developed during the inception phase of the project, and reviewed and endorsed by the Evaluation Reference Group. The evaluation matrix includes the each of the evaluation assessment criteria, the questions relating to the relevant assessment criteria, the means of verification and the data collection method. The evaluation matrix is attached as Annex 2 to this report. Information from desk-based research and direct observation were recorded against the evaluation matrix questions that they related to, and incorporated directly into the responses contained in this evaluation report.

### Triangulation and validation

Triangulation has been carried out in several ways.

* Available research reports, statistics and other sources of data were collected by the team during interviews, where these were available.
* Information from various sources was entered into the evaluation matrix, allowing for testing to check consistency. This allows the results of interviews and focus groups to be tested against other available sources of information including baseline data, project reports and VMP user perception survey.
* The contributions provided by stakeholders during interviews, focus group discussions and from documents were ‘reality tested’ by brief observation visits to observe court sessions, Camp Court, Court Users Committee meeting, male and female prison sections, and police cells.

The information in this report is validated by the following process:

* A summary presentation of evaluation findings was made on the final day of the in-country data collection period. This provided an opportunity for stakeholders to confirm or clarify evaluation findings.
* The draft report was circulated to the Evaluation Reference Group, to invite clarifications and the correction of any factual errors.
* The final report was revised to incorporate feedback from the Evaluation Reference Group.

## Evaluation ethics

The evaluation was guided at all times by the UNEG Ethical Guidelines and the UNEG Code of Conduct for Evaluation in the UN System. During the evaluation, the evaluation team observed the following ethical guidelines:

* Independence and Impartiality
* Credibility
* Honesty and Integrity
* Accountability
* Confidentiality
* Respect for Dignity and Diversity
* Informed Consent and Assent
* Avoidance of Harm
* Accuracy, Completeness and Reliability
* Transparency.

## Evaluation limitations and constraints

The following constraints should be noted:

* Scheduling of evaluation: UNDP and the Evaluation Manager anticipated a period of uncertain security in early February 2020, associated with the release of the Constitutional Court’s decision on an application to overturn the results of the May 2019 Malawi Presidential Election. The election results had been widely contested, particularly in opposition-held areas. UNDP and the evaluation team chose to expedite the in-country mission to ensure that data collection could be substantially completed before the Constitutional Court decision was announced. This meant there was approximately one week to contract and mobilise the consultant team, which resulted in limited time for the evaluation preparation, and in particular, the evaluation inception report and methodology was not approved until part-way through the in-country visit.
* Security considerations: The evaluation team had originally proposed Mchinji district as one of the focus districts for data collection. While en-route to Mchinji district, UNDSS advised the evaluation team not to travel to the district due to the volatile security situation in the district. Accordingly the evaluation team replaced Mchinji district with Ntcheu district, which necessitated the rearrangement of meetings and travel logistics at very short notice. The evaluation team extended our apologies to the Mchinji stakeholders for the last-minute cancellation. We also appreciate the PASI paralegal and stakeholders in Ntcheu district who made arrangements on short-notice to meet with the evaluation team.
* Access to districts and TAs: It was also not possible for the evaluation team to reach the project areas in TA Mpando in Ntcheu and TA Mponda in Mangochi in their four-wheel drive vehicle, as the roads were impassable due to heavy rains. However, the experience did reinforce for the evaluation team the practical challenges faced by PASI, justice providers and justice system users in attempting to deliver and access services.
* Gender balance: The evaluation team did not include a female member. The financial proposal of the national expert had included female enumerator(s) to assist with data collection, however for budget reasons this was not accepted by UNDP. Due to the short preparation time and changes in selected districts due to security considerations, it was not possible for the evaluation team to retain a female team member to assist with interviewing female beneficiaries in Ntcheu and Mangochi districts. It is possible that due to cultural constraints, the female beneficiaries were less forthcoming with the male evaluators present than they may have been with a female enumerator. The evaluation team attempted to mitigate this by gathering information using focus group discussions with other female beneficiaries present to provide support, and by designing the survey tool to concentrate on the beneficiary’s interaction with PASI rather than more sensitive issues such as the circumstances of their dispute. The responses provided by female was triangulated with the User Perception Survey on Village Mediation (2018) and the responses received were consistent with this study. While it remains best practice and strongly encouraged to include a female enumerator, in this case there is nothing to suggest that any different information would be obtained that would vary the evaluation findings and recommendations.
* Focus group beneficiaries: Focus group discussions were arranged by PASI village mediation trainers, and the evaluation team paid a small allowance to village focus group participants (village headmen and mediation beneficiaries) of Mwk 1,000 (USD 1.36) in lieu of providing refreshments, and as a contribution to their travel. Due to the changes in selected districts and short lead times, it was not feasible to arrange for a random selection of beneficiaries. We understand the practice of providing an allowance is routine in Malawi, and we acknowledge that some of the focus group participants walked for several hours to participate in the discussions, which we greatly appreciate. Beneficiaries were not informed in advance that they would be paid an allowance (although they may have been expecting one), and the allowances were paid at the end of the meeting to minimise a biasing effect upon responses. While the responses received were consistent with the two User Perception Surveys noted above, it is possible that some results were biased in favour of the project due to the non-random selection process and payment of an allowance.

|  |
| --- |
| Evaluation issues and analysis |

## Results and Achievements

### What has been the progress made towards achievement of the intended results? What are the reasons for this achievement or non-achievement?

The project has performed extremely well to date, and is very highly regarded by stakeholders at national and sub-national levels. Given the sensitive subject matter that PASI engages with, and the challenges for civil society organisations in engaging with state actors on security and justice issues, the progress of project implementation against the indicators is an impressive feat.

The following section outlines the results and achievements of the project on an output basis. While the project document outlines components of a theory of change, it does not articulate this theory of change or outcome level indicators. It is difficult to assess the project’s progress towards achieving impact because the intended outcomes and impacts are not made explicit.

The project document notes that the project is aligned with SDG 16 and it is plausible that PASI’s work will contribute towards the fulfilment of SDG 16.3 targets, particularly in relation to a reduction in pre-trial detainees. However, it remains important for PASI’s theory of change to be clearly articulated, as a way of guiding the project’s strategic direction and also in providing clarity for donors and stakeholders.

The project document notes that the specific objectives of the project are:[[11]](#footnote-11)

* To provide an effective and sustainable village mediation programme that, in improving access to restorative dispute resolution at the local level, substantially reduces the number of minor matters entering the formal justice system, especially those affecting women and children, and strengthens community mechanisms for conflict resolution and access to justice.
* To provide an effective paralegal aid service that, functioning in Malawi’s police stations, courts and prisons, provides appropriate legal assistance and advice to those in conflict with the law and the authorities; and through this, substantially reduces the number of people in detention, especially women and children, and increases the diversion of those held on minor matters to mediation and so reduces the duration of incarceration and therefore, the overcrowding of Malawi’s police cells and prisons as well as the backlog in cases before the magistrate’s courts.

The information reviewed by the evaluators suggests that PASI has been highly effective in providing a sustainable village mediation mechanism and paralegal aid service, which is very highly regarded by stakeholders and has clearly documented high volumes of service delivery to beneficiaries. Over 2018-2019, PASI has successfully resolved 25,073 disputes (target 27,954) via village mediation (involving 55.7% cases with women), and has facilitated the release of 61,056 people from places of detention. However, despite these intensive efforts and the activities by PASI, the number of people in prison in Malawi has reduced only slightly (although the number of people in prison for minor charges has reduced significantly more), and court backlogs remain lengthy.

In relation to the first objective, the information before the Evaluation Team supports the finding that the Village Mediation project does provide an effective and sustainable approach, benefiting from close collaboration and support from traditional leaders. The Village mediation approach is sustainable due to its close ties to the community, and the use of volunteer mediators who serve their local area.

Internal User Perception surveys conducted with VMP beneficiaries in 2018 and 2019[[12]](#footnote-12) found extraordinarily high rates of satisfaction – 99% of respondents were either highly satisfied or satisfied with the service they received. There is presumably some impact upon the number of minor cases which are diverted from the formal justice system, however it is not possible to quantify this impact since not all parties to a mediation will have the desire or capacity to file a case in the formal justice system if their dispute goes unresolved. .

Village mediation not only resolves individual disputes and provides a practical forum for people to access justice, but it restores relationships which strengthens community resilience. In parallel, village mediation also allows traditional leaders to devote themselves to addressing more complex community disputes, such as land cases.

In relation to the second objective, the PASI Paralegal service is similarly highly effective, building on a well-established model that was pioneered in Malawi by PASI and subsequently exported internationally. PASI Paralegals deliver a high-volume service, assisting 216,751 beneficiaries in 2018-2019 and have facilitated the release of 61,056 people from places of detention in 2018-2019.[[13]](#footnote-13)

PASI’s contributions in supporting individuals to access justice and at the activity level are clear, and they are outstanding. For example, paralegals impact on individuals by:

* Helping detainees to understand their rights in Court
* Helping detainees feel more confident about claiming their rights in Court and applying for bail
* Reducing the instances of unlawful detention and lengthy pre-trial detention
* Screening and facilitating the diversion or release of detainees
* Facilitating communication between justice actors
* Facilitating justice actors to respond to cases involving vulnerable people, particularly children.

However, in the absence of a theory of change, it is difficult for the evaluators to provide a detailed opinion on the high-level impacts of PASI’s contributions. At the Goal and Outcome levels it should be noted that the impacts of PASI’s work will also be subject to the contributions of other actors. A sustained and sectoral approach will be required to comprehensively address many of the justice issues which PASI is engaged on. The *Chilungamo* programme (of which PASI is a part) holds great potential to address systemic justice issues, however the linkages between PASI’s work and other components of the *Chilungamo* programme could be strengthened to obtain greater synergies and effectiveness.

The following section summarises some of the key results and achievements of the project. A detailed discussion of the project results and associated findings is included in Annex 4.

### Output 1: Well-functioning Village Mediation and Paralegal Services backed by strengthened legal frameworks and procedures

The village mediators have resolved disputes as follows: [[14]](#footnote-14)

Table 2: Cases resolved by village mediators 2018-2019

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2018 | | 2019 | | Total | | Grand Total |  |
| Male | Female | Male | Female | Male | Female | Target **[[15]](#footnote-15)** |
| 3,244 | 3,592 | 7,888 | 10,349 | 11,132 | 13,941 | 25,073 | 27,954 |

PASI has resolved 25,073 cases out of a two-year target of 27,954, or 89.7% of targeted cases. PASI did not reach the targeted number of resolved cases in Year 1 (resolved 6,836 of targeted 11,817 cases). However, PASI exceed the Year 2 target (resolved 19,887 of targeted 16,137 cases), and appears well placed to exceed the annual targets for Years 3 and 4.

### Output 2: An Effective Diversion Scheme for Minor Offences Established to Benefit Both the Formal and Informal Justice Systems

Paralegals perform a crucial role in screening cases at police stations, courts and prisons, and encouraging the diversion of people charged with minor offences to other mechanisms including informal justice systems and village mediation (in locations where village mediation operates).

In addition to PASI’s work on diversion, PASI seeks to reduce the proportion of minor cases in the formal justice system. Two measures are used for this – the proportion of minor cases compared to total registered cases, and the percentage of prisoners serving a sentence of three years or less.

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Stage | Number of Registered Cases | | | | Number of Minor Cases | | | | % of Minor Cases | | |
| Male | Female | Total | Male | | Female | Total | Male | | Female | Total |
| Police | 6,456 | 491 | 6,947 | 2,198 | | 248 | 2,446 | 34% | | 51% | 35% |
| Courts | 4,146 | 833 | 4,979 | 2,291 | | 795 | 3,086 [[16]](#footnote-16) | 55% | | 95% | 62% |
| Prisons | 9,162 | 128 | 9,290 | 1,449 | | 20 | 1,469 | 16% | | 16% | 16% |
| TOTAL | 19,764 | 1,452 | 21,216 | 5,938 | | 1,063 | 7,001 | 30% | | 73% | 33% |

PASI has a baseline of 40% minor cases, and a target of reducing minor cases for 2019 of 30%.

Taking this into consideration the comments above:

* The Police report 35% of cases are minor offences, with women over-represented (51%) – ie, women are more likely to be charged with a minor offence than a serious offence, although overall they are less likely than men to be charged with any offence.
* The Judiciary report 62% of cases are minor, however if this includes all their civil cases then no direct comparison can be drawn. The percentage of women with minor cases in the courts is extraordinarily high (95%), however if this figure includes civil issues such as family law issues then this may be a partial explanation. It would be more useful to include only criminal cases in this category, to better reflect the flow of cases in the criminal justice system.
* The Prisons report 16% of registered convicted prisoners are for minor offences. This exceeds PASI’s target. However, the figure does not include detainees on remand

Table 5: Percentage of Prisoners Serving a Sentence of Less Than Three Years, as at Q3 2019 [[17]](#footnote-17)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Prison | Number of registered convicted Prisoners | | | Number of prisoners serving less than 3 years | | | % of prisoners serving less than 3 years | | |
| Male | Female | Total | Male | Female | Total | Male | Female | Total |
| TOTAL | 9,162 | 128 | 9,290 | 1,580 | 58 | 1,638 | 17% | 45% | 18% |

The table above is taken from data provided by PASI as a snapshot from quarter three, 2019. The data is a sample based on most districts where PASI is operating, but does not include data from Chichiri Prison. Annual data is not available or reported. Accordingly, this table is informative, but is not comprehensive.

PASI has established a baseline of 40% prisoners serving a sentence of less than three years, and a 2019 annual target of 30%. PASI has significantly exceeded this annual target, as in 2019 18% of convicted prisoners had a sentence of three years or less. However, it should be noted that 45% of women were serving sentences of less than three years, compared to 17% of men. As above, the reasons for this gender difference would benefit from further investigation – perhaps as women commit violent and serious offences at lower rates than men.

### Output 3 Strengthened Provision of First Legal Aid Services (Advice, Assistance and Legal Empowerment) to the Poor and Vulnerable People in Conflict with the Law in Malawi

Under this Output, PASI provides paralegal services at police, courts, and prison by conducting paralegal aid clinics; screening suspects, tracing sureties, witnesses and guardians; facilitating the release of detainees and conducting quarterly national management meetings with regional managers.

Paralegal service delivery

PASI’s coverage of districts and sites of paralegal service delivery have increased significantly under the project. Since commencing the project in 2018, PASI now provides services in 98 police stations (from a baseline of 16, target 2019 56), 68 magistrates courts (from a baseline of 25, target 2019 35) and 27 prisons (from a baseline of 20, target 2019 25). PASI has exceeded or significantly exceeded its targets for increasing the sites where paralegal services are delivered. In turn, this provides increased accessibility of services and increased access to justice.

Without detracting from the performance of PASI paralegal staff, it should be noted that one consequence of PASI’s high volume paralegal work is that they are not in a position to provide individualised advice to clients.

Prison decongestion

PASI has facilitated the release of over 61,056 detainees from police stations (33,828), courts (17,795) and prisons (9,433).

The number of facilitated releases exceeds substantially exceeds PASI’s targets for 2018 and 2019 of 21,000 per year, or 42,000 cumulative release target (ie actual 61,056 versus cumulative target of 42,000).

PASI reported assisting over 134,000 clients in 2019, and facilitating the release of 33,337 people from places of detention.[[18]](#footnote-18) These numbers are exceptionally high, especially taking into consideration the limited number of PASI paralegal staff.

Chart 3: Number of PASI facilitated release, by gender

Adult males are the main category of detainees released by PASI’s facilitation, which is consistent with the over-representation of adult males within the criminal justice system.

### Output 4 Strengthened Coordination Mechanisms to Ensure Efficient and Effective Flow of Information and Delivery of Justice in the Criminal Justice Agencies and Communities

This output aims to:

‘*address the need for improved communication, coordination and collaboration among key stakeholders to ensure timely and efficient access to justice for the vulnerable people who are in conflict with the law.’ [[19]](#footnote-19)*

Under this output, PASI supports Court Users Committee / Case management Committee meetings at Community, district and regional levels, Camp Courts, Case coordination meetings, and preparation of status reports on conditions in places of detention.

During 2018 – 2019, PASI convened 158 Camp Courts. PASI’s target was to convene 220 Camp Courts through this period, so the target was not reached. However, some additional Camp Courts were convened by other justice actors, so the total number of Camp Courts convened would be higher than the Camp Courts convened by PASI alone.

As a proportion, the PASI convened Camp Court outcomes were as follows:

Table 6: Outcomes of PASI convened Camp Courts by Gender and Age

|  |  |  |
| --- | --- | --- |
|  | Outcome –  Discharge / bail | Outcome –  Court date renewed |
| Men | 1,880 (56.2%) | 1,464 (43.8%) |
| Women | 123 (76.9) | 37 (23.1%) |
| Boys | 105 (73.4%) | 38 (26.6%) |
| Girls | 16 (55.2%) | 13 (44.8%) |

Women and boys received bail or had their cases dismissed at relatively high rates at Camp Courts. Girls had lower rates (consistent with adult men), although the number of girls in this sample was relatively limited.

PASI provides limited support to the implementation of Court Users Committee meetings. These meetings are chaired by the Magistrate, and involve a range of justice actors and community stakeholders. PASI can provide support for the meetings to take place monthly, although in some districts such as Lilongwe the meetings are reportedly more irregular. The Judiciary has undertaken a short study on CUCs in February 2019, and DFID and Coffey will undertake a more detailed study under the *Tithetse nkhanza* SGBV programme. The evaluation notes several potential improvements to CUC in the further discussions included in Annex 4.

### Output 5: Strengthened, Effective and Efficient Management, Partnership Formation, Research, Monitoring and Evaluation Services

Under this Output PASI includes institutional management of the project (such as Steering Committee meetings / PASI Board meetings, Project management meetings), partnerships, communications and visibility activities, project monitoring and project management capacity building activities supported by UNDP.

Partnerships

After a long process, institutional agreements have been completed with almost all key stakeholders. This is important as a way of formalising the relationships between PASI and rule of law stakeholders, and establishing cooperation at an organisational level rather than being reliant on personal persuasiveness and connections.

Project monitoring

The project monitoring approach appears to have strengthened over time during project implementation. While the Project Board appears to have raised some concerns over some indicators and whether the targets were appropriate, these issues appear to have been resolved. The project baseline report was completed in 2018, along with User Perception Surveys on the Village Mediation Project in 2018 and 2019. Regular monitoring visits have been scheduled by the Access to Justice Project management team, including some visits supported by UNDP’s monitoring and evaluation officer, and joint PASI / UNDP / EU donor monitoring visits.

Action learning

The Access to Justice Project document notes that the project will provide:

*‘action-orientated research aimed at advocating for a more efficient and equitable justice system with the principal aim of informing and influencing policy change.’ [[20]](#footnote-20)*

Limited research has been released to date. The evaluation annex recommends several areas where the project could meaningfully undertake further studies.

Communications and visibility

PASI and UNDP have developed a Communications and Visibility Plan, which is also one of the requirements of European Union funding. The Plan includes outreach materials, press releases, media visits, social media and audio-visual productions. [[21]](#footnote-21) PASI and UNDP have produced notable visibility items, such as short documentaries on village mediation and paralegal services which have been released on UNDP Malawi’s Youtube channel. These documentaries appear very well produced, and would benefit from broader distribution. Given the prominence of smart phones in Malawi, especially among young people, a reactivated social media presence may be an effective mechanism to communicate with beneficiaries.

## Relevance

The project’s relevance was analysed with respect to its alignment to international goals and the national development agenda, with specific reference to facilitating Access to Justice for marginalised communities.

The Access to Justice Project is highly relevant to international goals such as SDG 16, is aligned with the UN Malawi UNDAF Outcome 1.1, the Malawi Growth and Development Strategy III and the fulfilment of rights guaranteed under the Constitution of Malawi. The project focuses on the needs of vulnerable people, especially those in detention, and in providing localised access to dispute resolution in communities in close cooperation with traditional leaders.

Box 1: Project relevance

Box:

*‘PASI are like the foot soldiers of the justice system’*

Key informant interview with lawyer

The evaluation considered the Access to Justice Project’s relevance in terms of alignment to international goals, alignment to national development goals, alignment with the national and regional context, alignment with existing structures and relevance to vulnerable people.

This discussion is further expanded in Annex 5.

### Alignment to global and national development goals

The Access to Justice Project is aligned with the global Sustainable Development Goal 16, “promotion of peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

The assessment also finds that the Access to Justice Project is highly relevant to the Malawian development context and also well linked to national development policies, such as the Malawi Growth and Development Strategy (MGDS); the Education Sector wide Approaches (ESWAp) and other policies pertaining to Civic Education, Community Empowerment, Gender Equality, Human Rights, among others. Even more importantly, PASI is implemented in line with Malawi law, which specifically provides for the ‘inclusiveness’ of all people through Section 20(1) of the Constitution, which provides that ‘Discrimination of persons in any form is prohibited’ and that ‘all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property or other status’.

### Relevance for vulnerable people

The Access to Justice Project is designed to assist vulnerable people to access justice. Under its paralegal component, PASI has an explicit focus on people in detention, who are very vulnerable group with complex legal, psycho-social, health, educational and livelihood needs. Within the overall population of people in detention PASI also provides targeted support to juveniles and women who face particular vulnerabilities.

PASI collaborates closely with the social workers from the Ministry of Gender, Children, Disability and Social Welfare, particularly in relation to juveniles in contact with the law. PASI paralegals assist in the diversion process, attend Children’s Court, and have also completed social reports on behalf of absent social workers to expedite children’s cases.

The Village Mediation component of PASI’s project also seeks to assist vulnerable people to access justice locally. In this instance, people may be vulnerable due to illiteracy, due to poverty, due to lack of accessible presence of the formal justice system, due to lack of capacity to retain a lawyer etc. PASI’s village mediation statistics show that the service is widely used by women, with women participating in 55% percentage of cases. It is not clear from PASI’s data whether women are initiating or responding to the cases, however anecdotally PASI’s paralegals told the evaluation team that it is frequently women who initiate the case.

PASI does not appear to have an explicit focus on people with disability, or people with albinism. People with disabilities may use PASI’s services, but statistics on this are not collected by PASI. PASI does not use specific approaches to target their services to people with disabilities, although community representatives and staff of community-based organisations may assist people with disability to access PASI’s services if required. The Ministry of Justice has advised that civil society organisations should prioritise support to people with disabilities and women, and has established a 24/7 emergency hotline for police and paralegal assistance.

People with albinism have specifically been targeted in Malawi in recent years, due to perceptions that their body parts have magic properties which can be used in rituals to gain power.[[22]](#footnote-22) Persecution, abductions and murders have been particularly documented in association with the elections. PASI has not specifically targeted people with albinism in their work. PASI’s paralegal support is more orientated towards criminal suspects rather than victims, although PASI does collaborate with the Police Victim Support Unit in some areas.

### Project outcome and outputs

The project inputs, activities and outputs are clearly articulated. Project activities and outputs are stated in SMART terms, with appropriate disaggregation by gender and location, although limited disaggregation by age.

The project results framework does not include the outcome which the project outputs are intended to support, although the outcome is noted elsewhere in the project document as aligned with UNDAF Outcome 1.1 / UNDP Country Programme Document:

‘By 2023, rights holders in Malawi access more accountable and effective institutions at the central and decentralized levels that use quality disaggregated data, offer integrated service delivery and promote civic engagement, respect for human rights and rule of law.’

There is no articulated link between the project and the UNDAF indicators, which relate to (1) Treaty obligations, (2) National statistics plan and (3) Perception of Governance institutions perceived as of high integrity and performance. [[23]](#footnote-23)

The project document does not include a theory of change, which is required to understand the intended impacts of the project and how the project seeks to achieve these.

## Effectiveness

This criteria considers how effectively the project has delivered the planned outputs and outcomes, and whether the project strategies are effective in responding to the needs of beneficiaries including vulnerable people.

The project has met or substantially met the planned targets. The VMP component has resolved 25,073 cases over two years (target 27,954), with 55.7% of cases involving women, and a 99% client satisfaction rate. The paralegal component has assisted 216,751 beneficiaries in places of detention, and facilitated the release of 61,056 detainees.

PASI’s support to the implementation of Camp Courts, Court Users Committee meetings, Court consultation forums and outreach has been noted by respondents with approval. Traditional leaders also highly regarded the effectiveness of village mediation in resolving disputes and reconciling community members.

The project has been less effective in implementing planned activities relating to research and advocacy, and in collaborating with civil society, donors and justice actors to advocate for and implement access to justice reforms. These further reforms are essential to progress beyond reactive service delivery, whether delivered via PASI or in conjunction with other programmes.

Box 2: Project effectiveness

*The TAs can now focus on more serious cases, like land disputes. Village mediators look at petty issues – theft, loan repayments, trespass, marital and family disputes. When we see small cases we can send them to PASI, and when they have big cases they can send them to us.*

Key informant interview with traditional leader

*The people in this area are mostly illiterate, and they end up in prison for things like trespass and land issues where Traditional Authorities and District Commissioners should have intervened. So we do need more support to resolve cases in villages. The court should also be more ready to refer cases or send them away.*

Key informant interview with prison official

### How effective are the project strategies in delivering expected/planned outputs and outcomes?

By design, PASI was intended to provide justice services, identify justice delivery bottlenecks for marginalised segments of the society and motivate the process of corrective action. Such corrective action could be implemented either locally, via mechanisms such as Camp Courts and Court Users Committee meetings, or escalated to relevant national stakeholders. PASI has had outstanding successes at the community and district levels. However, PASI’s influence on redressing systemic access to justice issues at national level has been more modest, notwithstanding PASI’s important contributions on a number of national level committees. Broader coalition building with civil society may have strengthened advocacy outcomes, while noting Government suspicions of civil society and the competition for funding which exists in Malawi civil society. Similarly, greater synergies could be established between PASI and other components of the EU funded *Chilungamo* programme, with more strategic advocacy engagement by the UN and donors.

The evaluation findings show that the project has been effective in promoting access to justice among the traditionally disadvantaged and marginalised members of the community. This has been achieved largely by demystifying the legal processes with information and practical action, principally facilitated by both the paralegals and the village mediators. PASI’s approach, strengthened through community sensitisation meetings and almost daily interaction with the rule of law stakeholders (polices, prisons, courts and Department of Social Welfare) have provided a rallying point for upholding the rule of law concept that has become a part of local actors’ understanding. It was evident in all the study sites that PASI has a prominent role in local justice, and is highly regarded by stakeholders. At the national level, during Key Informant Interviews with authority figures in the rule, it was generally acknowledged that PASI has introduced an innovative avenue for diverting cases, and their role in decongesting police holding cells and prisons was applauded.

Furthermore, at the programmatic level, PASI has been particularly effective in facilitating the following key elements:

* + Creating a platform for engaging rule of law stakeholders in decongesting prisons through regular Camp Courts and Court consultation fora, although these fora could also be made more effective.
  + Flagging breaches and promoting self-awareness and standards in upholding the law and curbing justice violations among rule of law stakeholders (such as the lingering tendency to exact payment for bail applications, observance of pre-trial detention rules, detention of children mixed with adults, age alteration of suspects by police officers, etc)
  + Knowledge of standards which citizens can use to monitor conduct of rule of law stakeholders
  + Creation of a cadre of trained village level mediators who can proactively deal with justice issues in the communities
  + PASI has inculcated a culture of transparency and accountability at both the service provider level and service user level, although continued reinforcement and oversight is required to solidify this.

### Are the project strategies effective in responding to the needs of the beneficiaries especially the vulnerable population including those with disabilities and albinism, what results are being observed?

Notwithstanding its high level of overall effectiveness, the project faced a number of challenges that have reduced its effectiveness in certain areas. The evaluation believes the project could be even more effective if these issues can be addressed. In particular: *having robust MoUs with remaining service providers, Building broader coalitions with other service providers and donors, advocating with consortiums to effect institutional change, upholding pre-trial detention rules, the issue of age alteration for child offenders, delays in the processing of social reports for child offenders*, *lack of safety homes for young offenders, Virtual neglect of vulnerable victims (PWDs), frequent transfers of prosecutors*.

It is critical to note that the PASI programme only exists because of systemic barriers such as these – if these barriers did not exist and the justice system was operating perfectly then there would be no need for PASI’s interventions and support. At the same time, the systemic issues which limit the effectiveness of the justice system also constrain PASI’s effectiveness.

Remaining MOUs and nature of relationships with justice institutions

Although PASI has had lengthy engagements with the Malawi Law Society and the Human Rights Commission, there are no MOUs as yet to formalise their cooperation.

In relation to the Legal Aid Bureau, PASI has reported that there was an MOU which was revised and signed in June 2019. The Legal Aid Bureau initially advised the evaluation team that there is no MOU between PASI and the Legal Aid Bureau, however the Legal Aid Bureau later clarified that there is an MOU in place.

Consistent with the project design, the paralegals role is restricted to providing first legal aid services (advice, assistance and legal empowerment) to vulnerable and marginalised beneficiaries. By implication more sophisticated legal issues encountered by the beneficiaries were supposed to be referred to qualified lawyers, most notably from the Legal Aid Bureau. These lawyers are not present in every district, and their role is also limited to more serious criminal cases. This leaves a gap especially at Magistrate Court level where defendants cannot afford to pay a lawyer and face a custodial sentence if convicted, but the charges are not serious enough to be eligible for a legal aid lawyer.

PASI’s engagement with LAB is on as need basis and in most cases at the request of families of suspects on remand and mostly homicide suspects. However, paralegals interviewed agreed the need for lawyers is sometimes pertinent during court sessions because some suspects, even after being afforded legal first aid by the paralegal are still not able to competently present their case in court, due to issues including illiteracy, lack of knowledge and fear of the foreign situation.

Paralegals do not have the right of audience with the Court, and consequently, they cannot represent the client in Court, and do not provide individual or specific legal advice to the client. During Court observations conducted as part of the evaluation, the evaluators observed court proceedings where the defendants severely incriminated themselves, admitting to each of the elements of the offences without offering a defence. This highlights the need for additional legal assistance to be available to detainees, whether it is done by PASI or another mechanism.

The Legal Aid Bureau also noted that they have been approached by a number of clients who participated in PASI Village Mediation, particularly in relation to debt matters. When the debtor does not comply with the mediated settlement agreement, the creditor approaches the Legal Aid Bureau for assistance in executing the mediation agreement, however the mediation agreement is not intended to be used in this way.

The Legal Aid Bureau also has access to a database of lawyers who are required to carry out pro bono cases each year as a condition of their licence renewal. PASI could potentially put in place a system to access legal assistance from these pro bono lawyers, in collaboration with the Legal Aid Bureau.

Need to build coalitions with other service providers

As indicated earlier, notwithstanding its unique approach, PASI has established limited partnerships and cooperation with other civil society organisations, including CCJP, the Centre for Human Rights Education (in the Southern Region), Child Rights and Paralegal Centre in the Central Region and Youth Watch Society (in the Northern Region), and the Centre for Legal Education and Victim Support (in the Eastern Region).

PASI’s innovations have not been broadly adopted by other organisations, such as CCJP and CHRR, and PASI’s good practice approaches to arranging Camp Courts have also not been replicated by other actors. As a result, when issues are identified at DEC level, PASI is the main actor who is relied upon to provide support. In districts where only one PASI paralegal is present, this creates a tension between the paralegal’s daily routine of screening detainees, and other activities such as community outreach.

As noted above, this could potentially be due to the sensitive nature of PASI’s engagements with the rule of law actors, and also due to practical considerations such as the competition for funding between organisations. Objectively speaking, PASI could benefit from closer collaboration with organisations on service delivery and outreach, and stronger coalitions with civil society and donors on justice advocacy. More specifically, PASI’s reach to vulnerable beneficiaries would be enhanced by working in collaboration with organisations which specifically seek to support people with those vulnerabilities, including specialised disability organisations and women’s organisations.

Challenges in upholding pre-trial detention rules

*‘I was working with the paralegals in another district before I came here. At first I thought the paralegals were witch-hunting, but now I see it as very useful for our organisation. It reminds us if we forget something. Sometimes we forget, sometimes we knowingly ‘forget’ but when the paralegal comes he reminds us. He also talks to the suspects, and talks to the relatives who are waiting, so he helps make our work easier’.*

Key informant interview

The findings show pre-trial detention rules and timely bail processing were not consistently followed by law enforcement authorities, with these functions left to paralegals to monitor and report as a matter of routine. One respondent advised the evaluation team:

*‘We know what we are supposed to do, but for our own reasons, we sometimes chose not to do it.’ [[24]](#footnote-24)*

PASI’s adopts a collaborative approach to their work in places of detention. This collaborative approach is beneficial for PASI in obtaining and maintaining access, and it is a credit to PASI that they have been able to negotiate and maintain access given the sensitive work which they perform.

At the same time, there is a risk that PASI is substituting their work in place of the actors who should be responsible. Police Station Officers should be responsible for monitoring and ensuring that detainees in their custody are presented to court within 48 hours, rather than relying on PASI to monitor and report cases where detainees have been in custody too long. Similarly, Police and Social Workers in some locations appear to rely on PASI to make notifications to the Department of Social Welfare when children are in police custody. This support is useful in expediting cases for children, however notifications by PASI should ideally be made when in instances where the Police are unable to do so, rather than handing over responsibility to PASI paralegals to make such notifications.

Ultimately, the collaborative approach of PASI also needs to be complemented by rigorous Police and Prison accountability mechanisms under legislation (such as the Prison Inspectorate regime). Subject to confidentiality, PASI can feed into these mechanisms. As an embedded civil society organisation, PASI paralegals have successfully influenced, encouraged and supported the Police and Prisons to comply with legal requirements. However, it is not PASI’s role to formally hold these institutions accountable, which highlights the importance of other formal accountability mechanisms.

Age alteration of child suspects

During interviews with paralegals and during CUCs, stakeholders reported a number of occasions where police had attempted to influence child suspects to fraudulently increase their age, so they could be treated as adults. Age alteration was believed to occur because police officers found the processing of child offenders to be lengthy, highly involving and costly as it entailed multiple requirements such as chasing probation reports with the Social Welfare Department, the burden of contacting health authorities for age assessments, lack of appropriate holding cells, and the virtual nonexistence of children homes in the districts. The prisons the evaluation team spoke with refused to accept any minor suspects, which meant they were detained in police cells and exposed to adult detainees while living under poor conditions which were never intended for long-term detention.

Most investigators, particularly junior officers, were also not conversant with age assessments as such were compelled to physically refer the child suspect to health authorities, which they found burdensome due to time and transport constraints. Some officers found these factors cumbersome, incentivising them to coerce young suspects to inflate their ages so they could be processed as adults. Paralegals have been instrumental in identifying cases of age alteration including pursuing probation reports, and bail processing for the efficient conclusion of child cases.

Delays in processing of social reports for child offenders

In children’s cases, the social report is mandatory for the conclusion of their cases. The production of these social reports is the responsibility of the Social Welfare Department. However, often times the office is so stretched due to competing demands for the office leading to inordinate delays in the production of the social reports. During both interviews and CUC meetings which the evaluation team attended, delays in the processing of social reports by Probation Officers in the Social Welfare department was cited as key factor in the delayed conclusion of child cases. Similarly to age alteration cases, paralegals have been instrumental in pursuing probation reports, including bail processing for the efficient conclusion of child cases. On some occasions PASI paralegals also reported that they have prepared the social report themselves, due to the unavailability or high workload of the social worker. While this has benefits for the individual child who is assisted, there is again a risk that PASI may substitute its own work to mitigate the failures of the justice system, rather than highlighting these issues so they can be appropriately resolved.

Frequent transfers of police prosecutors

Frequent transfers of police prosecutors also emerged as a major factor hindering the speedy conclusion of cases. For example, it was not uncommon for a prosecutor to be assigned others tasks such as providing security of armed escort for private entities such as banks, manning road blocks, quelling civil unrests over and above their prosecutorial work. These disturbances were also the major factor contributing to overstays on remand as the assigned prosecutors were not available to facilitate the remandees date in court. In the course of the evaluation, the Evaluation Team attended one camp court, where it emerged that most of the remandees never had a further day in court after an adjournment, for example, because of the unavailability of prosecutors.

This issue was raised by a number of justice actors during the evaluation. When the evaluation team discussed the issue with some Police Officers, they did not perceive the rotation of the prosecutors as an issue, since they believed any other police prosecutor could pick up and resume the case based on the case file.

Ultimately, this is not an issue for PASI to resolve directly. However, it is an example where PASI could help in collecting data and highlighting the extent of the issue for justice actors, who may be in a position to negotiate with the police more effectively on their police prosecutor rotation policies.

Lack of juvenile safe homes and child prosecutors

PASI’s effectiveness in promoting justice delivery for the young and vulnerable is constrained by the very limited access to juvenile safe homes, especially in districts. The Child Care, Protection and Justice Act, 2010 clearly proscribes that no child under 18 shall be detained in prison, neither while waiting trial or after conviction. Instead, they must be kept in a place of safety or a reformatory. However in many locations these safe homes are simply not available, or not accessible due to transport complications. Despite the formal provisions the evaluation observations showed the presence of children in both police cells and adult prisons, either as suspects, convicted offenders or children with their detained mothers.

In May 2018, Judge Sylvester Kalembera sitting in the high court, Blantyre, confirmed the illegality of holding any child in prison.[[25]](#footnote-25) He confirmed that according to the Malawi law, no child shall be detained in a prison, neither while awaiting trial nor even after conviction.

The evaluation found that the Prison Service was very aware of this rule, and would refuse to accept children into the prison, whether on remand or convicted. Similarly, the Police Service were very aware of the ruling, however they were hampered in dealing with child suspects by the lack of places of safety or reformatories. As a result, the Evaluators observed that the Police were detaining children in Police stations for prolonged periods, of weeks or months. The children were detained in police cells, in the reception area or in the corridor outside the police cells.

It is unlikely that Judge Kalembera intended for children to be removed from Prisons and instead detained in Police stations. Police stations are not designed for long term detention of suspects, particularly children, and cells frequently lack basic facilities including toilets and running water. Additionally, dedicating a cell to detaining children results in overcrowding of other cells, particularly in stations which may only have two or three police cells. While the Police may do their best to separate child suspects from adults, there is some inherent exposure during prolonged detention in police stations.

The Police and PASI do endeavour to expedite cases involving children. This often includes the preparation of a processing of the probationary report in conjunction with the Probation Officers in the Social Welfare Department and age determination with hospital authorities. These processes were however length and cumbersome as they required multiple stakeholders to work together.

In the absence of child reformatories, and perhaps to minimise additional workload, police officers have been reported to have incorrectly documented some children’s ages, to allow them to be tried as adults.

During the evaluation visits, the evaluation team observed an eleven year old girl who was locked in an adult police cell while the investigating officer took a lunch break. Following the intervention of the PASI paralegal, the girl was removed from the cell and placed in a more appropriate location.

In addition to the lack of reformatories and places of safety for children, the absence of specific child prosecutors in some districts also means that many children’s cases were not prosecuted within the prescribed 30 days.

### Is there a suitable Monitoring and Evaluation Framework? How often is the framework used to monitor expected project outcomes?

The Access to Justice Project has a suitable monitoring and evaluation framework, with the exception of identifying outcomes and indicators related to these. Internal monitoring is conducted by PASI monitoring staff and management personnel, and complemented by external monitoring visits undertaken by UNDP. The evaluation team has received Back to Office reports of UNDP’s monitoring, although it is not clear whether these visits have been undertaken on a scheduled or ad-hoc basis.

### To what extent are human rights, gender and disability issues mainstreamed in the project strategies and implementation?

The project is founded on the recognition and protection of human rights, and these issues are integrated throughout the programme design and implementation. Gender and disability issues are both discussed further below.

|  |
| --- |
| Case note: Victims disillusionment with the legal system  *“The over emphasis on suspect rights at the expense of victim rights is frowned in the communities. The 48 hour rule is not appreciated by victims and their families. When they see a suspect who they worked hard to have arrested released on bail the victims’ families are devastated. Aggrieved communities feel that bail is frivolously and corruptly awarded. This is fuelling community disillusionment, loss of faith in the judiciary, all of which are contributing to increasing cases of mob justice as people resort to taking matters in their own hands.”*  Box 3: Key informant interview with NGO staff member |

## Efficiency

This criteria considers whether the results justify the costs incurred, and whether financial management processes affected the performance of project implementation.

The Project has executed their available budget at a high rate (96.9% in 2018 and 99.8% in 2019), and has sought supplementary funding for items not included in the original budget.

The evaluation assessed value for money for money of key project activities, including the average cost to resolve a case via village mediation ($12.09 in 2019), average cost to facilitate the release of a detainee ($11.70 in 2018-2019) and average cost per detainee released via camp courts ($14.31). These costs appear relatively modest, especially in comparison with the cost per day of detention and the avoided or delayed investment in additional prison infrastructure.

However, project implementation has been constrained at the start of each quarter due to the financial management processes associated with reporting, verifying and disbursing each tranche payment.

Additionally, PASI and donors should be aware of the risks of creating perverse incentives by embedding allowance funded activities such as Camp Courts as a routine part of the justice system.

Box 4: Project efficiency

This criteria considers whether the results justify the costs incurred, and whether financial management processes affected the performance of project implementation.

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Box 8: Project efficiency

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Box 8: Project efficiency

### Are the processes of achieving results efficient? Do the actual results justify the costs incurred and were the resources effectively utilised?

Overall, the evaluation team considers that the processes to achieve the results are efficient, that the results justify the costs incurred and that the project has used resources effectively.

The large number of beneficiaries assisted by PASI for relatively modest inputs represents excellent value for money.

* Under Output 1, PASI’s average cost to resolve a case by community mediation in 2019 was $12.09 per case. The cost per case has reduced significantly from 2018, as the caseload for village mediators approximately tripled, and the costs in 2019 were substantially less than 2018 as the selection, recruitment and training costs to open new village mediation sites were all incurred during 2018.
* Under Output 3, PASI facilitated the release of 61,056 people in places of detention during 2018-2019, with a budget of $714,287, with an average cost per release of $11.70.
* Under Output 4, PASI processed 3,676 detainees through Camp Courts in prisons, with a cost per case heard of $8.27, and an average cost per detainee released of $14.31. [[26]](#footnote-26)

The costs of detention in Malawi are not known, however in many countries these costs are significant. Data from South Africa reports a daily cost per inmate of between 350-390 Rand – between $21-24 per day.[[27]](#footnote-27) In addition to these direct costs for food, health care and security, detainees suffer direct economic loss (such as lost wages) and significant social costs for families and children, such as the loss of a parent (and potentially breadwinner), loss of employment opportunities, and health complications. In this context, the opportunity to properly release a detainee for $14.31 under the PASI initiative represents outstanding value for money.

PASI has achieved outstanding results with a modest budget, due to some of the following approaches:

* Use of volunteer mediators, who do not receive a payment or stipend
* Placement of a single paralegal in some districts to manage all project implementation
* Recruitment and internal development of paralegal staff, rather than recruiting more expensive experienced staff
* Avoiding the use of lawyers to supervise paralegals, and their associated salary expenses
* Financial controls and procurement conducted at national and regional levels – districts and villages do not have access to petty cash
* Limited investment in PASI’s organisational development and growth
* Potential under-investment in paralegal and village mediator training and capacity development

Hence, while the financial efficiency of PASI has been admirable, it does raise the converse issue of whether PASI has attempted to be too ambitious and spread itself too thin, by maximising service delivery at the expense of staffing, training and organisational investment.

These issues are discussed further below.

### What project strategies or factors are contributing to project implementation efficiency?

Overall, the findings illustrate a very efficient use of human resources. Paralegals were able to multi-task in conducting their work across different sites such as police stations, courts and prisons. The evaluation team observed paralegals in various settings, processing bail, facilitating diversions and mitigation for convicted suspects, delivering prison information sessions, tracking witnesses and surety identification, identifying police and prison overstays, among other justice delivery functions. Having a motorcycle and adequate fuel ensured that paralegals could afford to undertake tasks such as these on a daily basis.

Similarly, the presence of VMs in the villages provided an opportunity for cases to be received and finalised at the village level without congesting the prisons and without requiring physical travel to the sites by the paralegal. While twenty-two VMP Lead Mediators / Trainers receive a modest stipend to help defray transport and communication costs, the majority of Village Mediators work without a salary or stipend, as a measure to promote sustainability and financial efficiency. Some mediators volunteer for several organisations as outreach workers, so while they may not receive a stipend from PASI they may receive a modest stipend from institutions such as NICE to conduct related civic education work. Other mediators said they support themselves via subsistence agriculture.

For example, almost all the VMs interviewed lamented the fact that while it was generally understood that theirs were pure voluntary positions, dispensing their mediation services for free, the realty was that in practice, village mediation activities entailed significant hidden costs, such as: time, transport and communication. For those were lucky to be allotted with push bicycles, the mediators were not certain how to arrange for routine maintenance or replacement tyres. This had a demoralising effect on the volunteers. It also threatened their commitment to the project granted that their expertise was sought after by other organisations.

Finally, Village Mediation Trainers and paralegals spoke of their embarrassment at not being able to attend important events such as the funerals of mediators because there is a cultural assumption that PASI as the employer would pay for the funeral casket or funeral food. While the European Union should not be expected to directly pay for funeral costs of project personnel, it is essential for the financial stability of an organisation that it has sufficient retained earnings to meet incidental expenses such as funeral costs – not only because it is culturally expected, but also because the failure to contribute to funeral expenses for project personnel may undermine all of the goodwill which has been built up in the community via investments in outreach and sensitisation.

All Village mediators and Village mediation trainers highlighted the importance of regular and ongoing training. During 2018-2019, PASI’s training resources and limited training budget was directed towards establishing Village Mediation in new locations. This meant that formal training was limited for Village mediators in ‘old’ sites, although PASI reportedly has plans to redress this during 2020.

The weighty expectations placed on paralegals is positive for financial efficiency, but may also have negative consequences. The Paralegals the evaluation team met with were very committed to their work, but struggled to reconcile daily routine activities (such as screening at the police, courts and prisons) with other activities, such as community outreach, Court consultation events, and following up juvenile cases. Paralegals reported they were unable to provide as much support as they would like, due to time constraints. Paralegals may also be called upon to support Village Mediators with technical and administrative tasks (such as reporting), however it is not clear whether all paralegals are also highly qualified mediators and able to provide technical assistance if required.

Finally, paralegals working alone reported that they felt personally constrained from taking sick leave or holiday leave, because of the impact this would have upon the beneficiaries they were unable to assist during the period of their leave. As a consequence of this, some paralegals reported they did not take their leave as accrued. We would like to be clear that this was not a constraint which PASI was placing upon the paralegals, but more an expression of the paralegals’ sense of responsibility to assist beneficiaries. In the long-term this attitude can be harmful for the well-being of the paralegal staff as it leads to burnout, so PASI should carefully monitor the leave arrangements for paralegal staff and ensure that proper mental health and well-being mechanisms are in place to support staff.

Some stakeholders reported that the legal knowledge of paralegals was limited, and they would benefit from further training or closer supervision and mentoring. The evaluation team also observed one instance where the paralegal appeared confused by the proper application of the pre-trial detention timelines, which is part of their daily work and the training they receive from PASI. While paralegals have the option to escalate complex matters to supervising paralegals, they do not work under the supervision of lawyers who provide them with legal guidance, as the paralegal’s role is intended to be more limited. However, there remains an ongoing need for investment in paralegal training, capacity development and support. This is particularly required for paralegals who work alone, and paralegals working in districts without ready access to lawyers from the Legal Aid Bureau.

The efficiency of PASI paralegals is also hindered by many of the systemic issues facing the justice system, including delays, backlogs and bottlenecks – for example, the shortage of magistrates appointed in the northern region to Karonga, Mzuzu and Mzimba inhibits the work of the justice system and PASI’s work, as have strikes and protests including those relates to the elections process. Furthermore, in relation to the elections process, some police were reluctant to engage with PASI on screening and release of suspects charged with offences relating to the election and protests, while police and prosecutors were also re-assigned to public security duties which meant they were unavailable to handle their case files expeditiously.

### How did the project financial management processes and procedures affect the performance of the project implementation?

Budget execution

The Access to Justice Project budget has been substantially executed as planned. Budget delivery rates are very high, as follows:

Table 8: Planned and Executed Project budget delivery

|  |  |  |  |
| --- | --- | --- | --- |
|  | Planned | Executed | Budget Execution rate |
| 2018 | 1,389,419 | 1,433,648 | 96.9% |
| 2019 | 1,102,481 | Not reported | 99.8% |

PASI has sought supplementary funding from donors to cover the costs associated with additional paralegals, training, additional bicycles and activity related expenses. At the time of the evaluation, UNDP and the EU were still considering a request for additional funding, while PASI has received some additional funds from Irish Rule of Law International. We understand the source of these funds is partly from the European Union.

Budget disbursement

PASI management staff advised the evaluation team that they are constrained from organising project events at the start of each year, and in the first weeks of each quarter, because they receive funding on a quarterly basis from UNDP and they cannot be certain in advance when the funds will reach their account.

UNDP advise that they receive a quarterly narrative and financial expenditure report each quarter, and payments are released against this. PASI cannot submit the quarterly report until after the end of each quarter when their data is available and the reports are prepared. UNDP then takes some time to review the report and expenses before approving the report, at which point PASI can request the next tranche of funds. We understand that PASI and UNDP also collaborate with earlier drafts of the report and expenses, to reduce the details that must be reviewed after the end of each quarter. However, the current process still requires PASI to be paid the next disbursement following the approval of the quarterly narrative and financial reports. Over 2018-2019, it appears that there have cumulatively been several months where PASI has been unable to schedule activities due this uncertainty about when funding would be received.

An additional consequence of submitting preliminary reports is the burden of double reporting – for example, preparing a report on progress to date in the second month of the quarter, but then needing to update the information and recalculate the statistics for the final report. Secondly, it appears that in some instances data has not been available in time or not updated in the final quarterly reports, so the final report still includes preliminary progress data.

PASI has requested that UNDP shift to issuing funds from a quarterly to a six-monthly period, which would mean PASI would face interruptions to funding and activities twice a year, rather than four times a year. The evaluation team are not auditors and are not in a position to provide an opinion on the strength of PASI’s financial management systems, and whether three-monthly or six-monthly disbursements are appropriate. However, the current system clearly interrupts PASI’s programming on a regular basis, and is undesirable. Shifting to six-monthly payments would reduce the frequency of these interruptions, but not address the root causes of the issues – which are that PASI is unable to pre-finance implementation before funding is received from donors, and UNDP is currently unable to provide funding to PASI before each payment is fully utilised and substantiated with narrative and financial reports.

On the basis of the positive implementation to date, UNDP may be prepared to disconnect elements of the narrative reporting, financial reporting and payment disbursement process. For example, PASI could continue to submit quarterly reports, but PASI would be eligible to apply for their next tranche of funding after they reached a percentage utilisation of the available funds. For example, if after two months PASI has used 80% of their funding they can submit their financial report for verification and apply for the next tranche. The percentage of utilisation should be set taking into consideration the time UNDP will require to verify the expenditure and release the next tranche of funding – so if this process will take UNDP one month, the percentage should be set to ensure that PASI will still have sufficient operational funds available while the process is underway.

The evaluation team also understands that PASI and UNDP have currently scheduled a payment to be made at the start of each quarter, including at the start of January 2019,2020,2021 etc. Due to UNDP’s end of year financial closing and reopening processes, it is simply not feasible for UNDP to make payments at the start of January, as UNDP’s accounts are operational closed at this time. The UNDP programme unit should avoid scheduling payments to implementing partners in late December and early January, to avoid delaying into mid-January when UNDP’s operations unit will resume issuing payments.

The evaluation team has been informed by UNDP, PASI and the European Union and PASI of delays in UNDP receiving and disbursing funds. Regardless of the causes of the delays, the inability of PASI to receive project funds on schedule has significant impacts on their ability to plan and implement activities, and to meet the payroll for project staff. Although payment requests to the European Union must be made in hardcopy by UNDP, we also recommend that UNDP follow the usual practice of submitting the hardcopy request along with an electronic copy of the payment request by email in parallel, to allow the EU programme officer to accurately track the payment request through their internal systems.

### Do the project interventions duplicate existing similar interventions in the targeted areas and were there any collaborations with similar interventions?

The interventions do not duplicate existing similar interventions.

PASI could benefit from strengthening collaborative partnerships on service delivery, outreach and advocacy with civil society, *Chilungamo* partners, UN agencies and donors. The evaluation team notes the sensitivities of PASI’s engagements with rule of law actors, and the reality of competition for donor funds between civil society organisations. However, the evaluation team notes that the systemic reforms required to address justice in Malawi are greater than any one civil society can perform alone, however capable the organisation may be.

### Are there more efficient ways and means of delivering results?

The evaluation team is overall very impressed with the efficiency of PASI’s interventions, with the caveats that there is a risk that PASI has been overly ambitious in attempting to maximise service delivery, at the expense of allocating resources to train, supervise and support staff, and at the expense of organisational investments.

PASI’s work is based around mitigating some of the adverse impacts of the justice system. A structured approach to systemic justice issues would minimise the need for some of the paralegal support provided by PASI. A viable complementary means of delivering outcomes in this area would place greater emphasis on addressing structural justice issues, potentially by:

* closer alignment and coordination of PASI and the *Chilungamo* mechanism,
* greater engagement with other stakeholders to build consortiums for advocacy,
* leverage institutional expertise (eg UNICEF on child protection, disability organisations on disability related issues)
* access technical expertise (eg accessing pro-bono lawyers through the Legal Aid Bureau and / or Malawi Law Society),
* accessing support (eg by law student volunteers through universities).

We note that PASI has undertaken some policy and advocacy initiatives, and that the pace of progress is constrained by political, institutional and budgetary factors. The majority of resources and activities under the Access to Justice Project are intended to directly support service provision to vulnerable people rather than advocacy and policy reform. Notwithstanding these constraints, increased emphasis on policy, research and advocacy, preferably in coalitions with other actors may yield improved justice reform outcomes.

## Sustainability

The Access to Justice Project has been designed and implemented from a sustainable perspective. Village mediators work on a voluntary basis, and operating costs once personnel are recruited and trained are relatively limited. The value for money of paralegals is quite high, as they assist the Government to reduce the costs of detention by diverting cases, and a case could be made that an investment in paralegal funding will save money for the Government by delaying or avoiding investment in prison infrastructure and services.

PASI has developed a sustainability plan to guide its strategic development. The plan provides several options for PASI’s future development, and sets out advantages and disadvantages of each option. However, in reality, virtually all legal assistance services remain reliant on a combination of Government and / or donor funding, and full sustainability is difficult to achieve.

Box 5: Project sustainability

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Box 9: Project sustainability

### To what extent are the project positive results likely to be sustained after the completion of the project

PASI’s work with Village mediators is highly sustainable. It has been designed and implemented in a sustainable way, using volunteer mediators from the local community. Traditional authorities and village headmen expressed a high degree of ownership of the project, and noted how they directly benefit from village mediation activities because the PASI mediators take some of the minor cases which Village Headmen would otherwise be called upon to resolve.

PASI’s paralegal work is more dependent upon ongoing funding. PASI paralegals play a role both in direct service delivery, and also in facilitating communications between rule of law actors to expedite cases. There are no apparent replacements for PASI’s service at this time, although more could be done by PASI to promote their best practices and make these available to other institutions – for example, guidelines on arranging Camp Courts.

Notwithstanding PASI’s daily presence in places of detention, routine violations of human rights still occur in places of detention on a routine basis. PASI plays a valuable role in advocating for rights, and over time this daily example promotes a culture of respect for human rights. However, this culture is not yet embedded, and remains relatively fragile.

Following the conclusion of the DFID funded Access to Justice for Vulnerable Groups Programme in 2016, PASI experienced a gap in donor funding until new funds were contributed by the EU in 2018. PASI demonstrated an ability to revitalise activities in districts when new funding is available, by recruiting additional personnel to replace those who have been lost through attrition (such as people who have moved outside the area) and providing refresher training to continue skills development.

### What strategies does the project have to ensure continuation and sustainability of the project outcomes after completion of the project?

PASI has developed a sustainability plan which provides several options for the sustainability of services eg:

* adoption by the Government, under the LAB, Ministry of Justice or subcontracted to implement outreach by NICE
* alternative funding models for PASI (eg corporate sponsorship, training and paralegal accreditation revenues),
* options to reduce PASI’s cost base (eg use of law student volunteer paralegals, reducing service delivery and focusing on research and advocacy).

There are advantages and disadvantages to the options being considered. For example, embedding paralegal services within the Government would systematise their role, however adequate funding may not be available, and the paralegals may be constrained from criticising Government if they are also employed by the Government. Each of these options would require some organisational transformation of PASI, and would mean a marked shift in PASI’s identity.

Ultimately it appears that PASI’s preferred option is to continue to provide mediation and paralegal services as an independent NGO, to the extent that this is feasible given available donor funding. It may be possible for PASI to continue to shift from donor to donor as different funding streams are available, and to reactivate networks as funding is received.

### What are the key factors that will require attention to improve prospects of sustainability of project outcome?

PASI has already designed and implemented project activities so as to be as sustainable as possible. This is particularly true for village mediation activities, which will be able to function at some level without further donor support. However in the absence of continued training and recruitment, it is likely that the service delivery level would diminish over time, as mediators who leave are not replaced or trained.

Sustainability could be increased by paying increased attention to embedding PASI’s work within the justice system. For example, by:

* Documenting and distributing PASI’s best practices, such as guidelines to make the Camp Courts and Court Users Committee meetings more effective.
* Identifying ways to research, highlight and advocate for systemic issues to be addressed, potentially via closer coordination with the *Chilungamo* programme and donors.

For donors and the international community to promote the role of independent accountability and oversight mechanisms, which complement the collaborative approach which PASI has predominantly taken in encouraging human rights compliance.

Corruption remains a major challenge in Malawi. The Access to Justice Project potentially deters some level of corruption, by educating detainees on their rights, facilitating release and being present in places of detention on daily basis. In doing so, PASI provides an indirect check and balance upon the justice system. At the same time, reports by oversight agencies such as the Malawi Human Rights Commission note ongoing corruption within the justice system. Corruption is not explicitly mentioned in PASI’s annual donor reporting, and anti-corruption is also not featured in the CJCC roadmap. For sustainable outcomes, it is important that PASI, donors and stakeholders can have frank discussions on corruption within the justice system and its impacts on project results.

### How are the capacities strengthened at individual and organisational level to ensure sustainability of project results?

PASI strengthens capacities at several levels:

Table 9: Capacity strengthening

|  |  |
| --- | --- |
| Individual level | * Skills development and training of PASI village mediators, who remain in their communities and are able to continue resolving disputes. * Skills development and training of paralegals through training and capacity building. * Providing empowerment and support to people in places of detention, and educating them on their rights and how to claim them. * Mentoring and individual advocacy to rule of law actors, to educate them on human rights standards and compliance. |
| Community level | * Outreach events to increase communities’ knowledge of human rights and the Malawi justice system. * Support to Traditional authorities and village headmen by receiving referred disputes and allowing traditional leaders to focus on more complex cases such as land issues. |
| Institutional level | * Advocating for compliance with Malawi laws and human rights standards in places of detention. * Encouraging collaboration between justice actors, in places where structural relationships may have been more fraught. * Contributing to systemic justice reform, by participation in the CJCC, UPR, Prison Act review and other mechanisms. |
| Globally | * Advocating globally for access to justice and legal assistance, though mechanisms such as the Task Force on the African Charter on Human and People’s Rights. * Demonstrating global leadership on paralegal initiatives, and distributing these through Namati and other mechanisms. |

### What are recommendations for similar intervention in future to ensure sustainability?

PASI’s intervention has been designed in as sustainable a manner as possible, taking into consideration the inherent difficulties in funding legal assistance programmes outside of Government and donor support. PASI’s approach to village mediation is particularly noteworthy, although the risks of under-investment in training and support have already been outlined elsewhere.

It may be feasible for NICE as a semi-Government authority to take over generalised legal outreach and awareness activities in the future, or to conduct outreach in conjunction with the Legal Aid Bureau. However, it is not immediately clear whether this alternative would have more impact and be more cost effective than PASI’s outreach.

For maximum impact and sustainability, PASI’s outstanding work on service delivery should contribute more directly to highlighting and addressing systemic justice issues, perhaps through closer collaboration with the *Chilungamo* programme. As long as systemic justice issues are not addressed, the demand for individual service delivery will remain overwhelming. The evaluation team acknowledges that justice reform is a long-term process which requires political will. However, ideally PASI’s work should provide an evidentiary basis to highlight the most outstanding access to justice issues, and play a more direct role in setting and guiding the criminal justice reform agenda. There is otherwise a risk that the rule of law institutions will propose activities which most suit their individual needs (such as infrastructure, transport, legislative drafting etc), which may be important but which may also lack a direct tangible link to improved serviced delivery and access to justice.

## Implementation

The Access to Justice Project has been recognised by stakeholders as being very successful to date, and has been delivered substantially as designed and budgeted. The project has generally achieved its targets, and in some indicators has significantly exceeded those targets. PASI has implemented lessons learned from their experience in implementing similar activities for other donors, and has successfully scaled up these activities by expanding to additional districts and TAs under the current project.

Project implementation has been hindered in some regards by delays in reporting / verification and disbursement of funds to PASI, and turnover of programme management staff at UNDP and the EU. However, PASI has generally been able to implement its workplan and make up for these delays.

PASI has established partnerships under formal MOUs with key stakeholders. However, further attention is required to maintain collaborative relationships with some few justice actors. PASI’s advocacy would potentially be more effective with better coordination with *Chilungamo* and closer collaboration with coalitions of civil society actors and donors.

Box 6: Project implementation

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Box 10: Project implementation

*‘Remandees used to have no access to bail. PASI tells them about their rights to bail, sureties etc and this helps a lot for people to get bail and reduces overcrowding. PASI has clinics with people waiting trial to tell them about court and the types of offences. The Prison has a Welfare Officer to communicate with families, but they were not able to keep up with all the cases. PASI contacts families, contacts witnesses and they help a lot.’*

Key informant interview with Prison official

*“PASI is filling an important niche and performing well”.*

Key informant interview with international organisation

### How did project management arrangements and procedures affect the performance of project implementation? What partnerships were built or strengthened to improve performance of project implementation?

The Evaluation Team considers that project management arrangements have generally been appropriate. As outlined under ‘efficiency’, UNDP has an important role to perform in validating the expenses of PASI to ensure they are eligible, and in providing some technical capacity assistance to PASI. The nature of this role has caused some frustrations and delays during implementation, and refinement of the disbursement processes could provide PASI with greater certainty when scheduling activities.

PASI has fostered strong partnerships at community level through the village mediation work, and similarly strong partnerships at district level by facilitating communication between rule of law actors and supporting justice dialogue and delivery.

PASI has established formal partnerships with MOUs with the majority of justice stakeholders (except for the Malawi Human Rights Commission and the Malawi Law Society. The appropriate role and capacity of paralegals to provide legal assistance remains contentious with some stakeholders, especially those who prioritise assistance provided by lawyers rather than paralegals. Ongoing attention to relationships and advocacy will be required here.

Through the PASI national director, PASI has access to high level rule of law fora – for example, PASI is the sole civil society representative on the Criminal Justice Coordination Committee. This is positive reflection on PASI’s capacity to engage with senior rule of law actors, However, the extent to which this engagement is made possible by the outstanding expertise and leadership of the National Director is an open question. Should the National Director for some reason be unable to continue in a leadership role with the organisation he founded, it is not certain whether PASI would continue to benefit from the same opportunities for engagement at national level. Should the National Director be unable to continue in a leadership role with PASI, it is also likely that project implementation and quality assurance would also be significantly impacted. While PASI are taking measures to further build the leadership capacities of other project staff, the heavy reliance on the outstanding expertise of the National Director should be noted as a potential risk factor, in the unforeseen event that he is not able to continue with the organisation.

### How effective was the delivery of inputs specified in the project documents, including selection of responsible institutions, institutional arrangements, identification of beneficiaries, scheduling of activities and actual implementation?

The evaluation team regards the delivery of inputs as positive overall. PASI was selected as the implementing organisation by the European Union, and UNDP was engaged as an eligible recipient to provide quality assurance and oversight of the project. Notably, UNDP has also contributed its own TRAC funds to support the project.

Overall, the scheduling and delivery has been managed in accordance with the project plan and budget, notwithstanding adjustments which have been required to compensate for delays in receipt of project funds as previously discussed.

### The fulfilment of the success criteria as outlined in the project document

The overall project goals outlined in the project document are:

* *To provide an effective and sustainable village mediation programme that, in improving access to restorative dispute resolution at the local level, substantially reduces the number of minor matters entering the formal justice system, especially those affecting women and children, and strengthens community mechanisms for conflict resolution and access to justice.*
* *To provide an effective paralegal aid service that, functioning in Malawi’s police stations, courts and prisons, provides appropriate legal assistance and advice to those in conflict with the law and the authorities; and through this, substantially reduces the number of people in detention, especially women and children, and increases the diversion of those held on minor matters to mediation and so reduces the duration of incarceration and therefore, the overcrowding of Malawi’s police cells and prisons as well as the backlog in cases before the magistrate’s courts.[[28]](#footnote-28)*

Taking each element in turn, the evaluation finds as follows:

Table 10: Fulfilment of success criteria – Village Mediation

|  |  |
| --- | --- |
| Village mediation | Evaluation finding |
| To provide an effective and sustainable village mediation programme that | PASI’s village mediation programme is highly effective, taking into account the volume of disputes resolved (24,633 over two years) and the extraordinary high degree of disputant satisfaction (99% highly satisfied or satisfied)[[29]](#footnote-29)  PASI village mediation approach is highly sustainable, based on volunteer mediators, and the model has previously demonstrated a capacity to continue (at diminished levels) in the absence of donor funding. |
| in improving access to restorative dispute resolution at the local level, | VMP improves access to restorative dispute resolution, as the village mediation process is confidential, free and has mechanisms in place for the referral of unsuitable cases, including SGBV. |
| substantially reduces the number of minor matters entering the formal justice system, | It is not possible to quantify how many Village Mediation cases would have entered into the formal justice system, however it appears likely there would be at least some impact. It would be appropriate to ask in future beneficiary surveys what the parties would have done if village mediation was not available. |
| especially those affecting women and children, | Women are involved in 55.7% of village mediation cases, however there is no disaggregation of cases involving children |
| and strengthens community mechanisms for conflict resolution and access to justice. | Village mediation not only resolves individual disputes and provides a practical forum to for people to access justice, but it restores relationships which strengthens community resilience. In paralegal, village mediation also allows traditional leaders to devote themselves to addressing more complex community disputes, such as land cases. |

Table 11: Fulfilment of success criteria – Village Mediation

|  |  |
| --- | --- |
| Paralegal service | Evaluation finding |
| To provide an effective paralegal aid service that | The Paralegal service is highly effective, delivering a high-volume service (over 134,000 clients in 2019) and facilitating the release of over 31,000 from places of detention |
| functioning in Malawi’s police stations, courts and prisons | The evaluation observed the collaborative relationships which allow paralegals to operate in places of detention |
| provides appropriate legal assistance and advice to those in conflict with the law and the authorities | PASI provides group legal empowerment and information, screening services, facilitates contact with sureties and witnesses. PASI’s capacity to provide individual assistance is constrained by paralegal numbers, restrictions on the role of paralegals and the expertise of paralegals, except in limited circumstances where paralegals are acting in conjunction with LAB lawyers. |
| and through this, substantially reduces the number of people in detention, especially women and children | By screening, advocacy and camp courts, PASI has facilitated the release of over 31,000 people in 2019. The majority of these are adult males as women and juveniles are under-represented in detention. For example, Camp Courts included 4.4% women, 3.9% boys and 0.1% girls, |
| and increases the diversion of those held on minor matters to mediation | The number of detainees in prison for less than 3 years has fallen from 40% (2017 baseline) to 18% in 2019, so diversion and other processes appear to have a significant impact. Diversion from the police stations to mediation is highly effective in some PASI locations (eg Zomba) and less prevalent in other sites. |
| and so reduces the duration of incarceration and therefore, the overcrowding of Malawi’s police cells and prisons as well as the backlog in cases before the magistrate’s courts. | PASI undoubtedly makes a very positive contribution on reducing case backlogs and prison populations. In addition to targeted initiatives such as Camp Courts, PASI identifies detainees with delayed cases or vulnerabilities, and brings these to the attention of the authorities. PASI’s role is widely recognised and appreciated, however it is also difficult to attribute backlog reduction and overcrowding reductions solely to PASI’s interventions, recognising other factors are also relevant, such as changes to judicial sentencing practices following the Gable Masangano case. |

### The responsiveness of the project management to significant changes in the environment in which the project functions (both facilitating or impeding project implementation);

The project has generally been implemented as planned. While unforeseen political conditions have created a more challenging environment for project implementation, the project activities remain relevant and have been implemented as planned.

### Determine whether or not lessons learnt from other relevant programmes/projects were incorporated into the project.

The project is based on the scaling up of prior activities implemented under previous projects, including notably the DFID funded Access to Justice for Vulnerable Groups (JVG) Programme from 2011-2016. PASI has incorporated a wealth of prior learning, institutional knowledge and materials into the project, including training materials for paralegals and village mediators, outreach materials, policies and procedures.

The following notable lessons have been built upon:

* The importance of delivering legal assistance services as early during detention as possible, to expedite screening, tracing of sureties, alibi witnesses and facilitate release. The original implementation of PASI’s paralegal legal work was based in prisons, however under this project PASI paralegals work in police stations and courts for earlier interventions. Earlier invention results in suspects returning to their families and their employment quicker, maintaining social ties and economic livelihoods.
* The importance of establishing clear understandings with other rule of law actors, which are now formalised with MOUs in this project.
* The importance of community outreach to sensitise people on the criminal justice process, their rights and make them aware of services such as village mediation. Educating people on the criminal justice process is critical to mitigate mob violence when suspects are released on bail and return to their communities.
* The importance of selecting and training women as mediators, to ensure that the village mediation service is accessible to women and can deal with their disputes in a gender sensitive and culturally appropriate way.
* PASI paralegals can work collaboratively to support rule of law actors to identify issues and expedite cases, rather than being obstructive and delaying cases further.

### The monitoring and backstopping of the projects as expected by the key partners (Ministry of Justice, PASI and UNDP)

As discussed above, the monitoring and backstopping arrangements for the project have generally been appropriate. At this point, many of PASI’s activities are now operating on a routine basis (such as village mediation and screening by paralegals), UNDP’s would demonstrate an increased ‘valued added’ in their monitoring work by progressively increasing the emphasis on the ‘learning’ component of monitoring, by supporting PASI to undertake research and document lessons learned, best practices and systemic issues as the basis for advocacy. These studies are anticipated in PASI’s project plan, however to date the studies completed are the baseline study and the village mediation user survey. There are many opportunities to undertake useful studies beyond these topics. As noted above, as a starting point, potential topics could include:

* The impacts of legal empowerment clinics on bail outcomes
* Follow up study on Camp Court outcomes
* Comparison of TAs caseloads in areas with village mediation compared to areas without village mediation
* Access to justice issues for people with disabilities
* Impact of Court Users Committee meetings (noting that DFID intends to review this topic)

### The role of UNDP CO and its impact (positive and negative) on project delivery.

UNDP’s support to PASI through ensuring eligibility of expenditure for the EU, monitoring and organisational capacity building is considered by the evaluation team to have been useful and appropriate, notwithstanding that some PASI personnel did not consider this support necessary.

PASI has made progress in strengthening its operational systems during 2018-2019, however the EU does have strict requirements for expenditure to be eligible, and it is important that PASI continues to meet those. Although the EU’s contribution to the Project is not earmarked under Article 1.2 of the Special Conditions, the use of EU funds is still limited to the activities and the inputs identified in the Description of the Action (ie, the project document). Project office operating costs are further constrained by Article 7.1 of the Special Conditions. Accordingly, the contribution of TRAC funding by UNDP also provides some potentially valuable flexibility, in the event that UNDP considers expenditure incurred by PASI to be worthwhile, while the EU considers the same expenditure to be ineligible due to their financing rules.

UNDP could provide additional support to PASI, in particular by:

* Providing technical assistance in researching and documenting systemic justice issues, to provide a solid evidentiary basis for advocacy.
* In conjunction with the EU, promoting closer coordination between the Access to Justice Project and other components of the *Chilungamo* project.
* Playing a convening role to engage donors and other civil society on access to justice issues, and promoting the philosophy that justice sector capacity building should be grounded in improving service delivery and access to justice rather than strengthening institutional capacities without reference to the impact on service delivery.
* Drawing upon UNDP’s global technical expertise in access to justice, legal aid, mobile courts, alternatives to detention, advocacy and justice sector reform, through integrating UNDP’s knowledge products in programming and engaging technical expertise for implementation support and quality assurance. PASI’s work on service delivery is a valuable contribution towards access to justice, however this contribution should be reinforced by UNDP’s other programming to assist in redressing systemic issues highlighted by PASI’s experience.

### Factors which have influenced the performance of the project

Table 12: Positive and Negative factors influencing project performance

|  |  |  |
| --- | --- | --- |
| Level | Positive | Negative |
| National | * Service delivery builds upon an established history of programming and scales up existing initiatives. * Cooperative relationships with rule of law actors, now formalised with MOUs for most institutions. * General agreement amongst stakeholders of the importance of Access to Justice Project. * Progressively strengthened PASI management capacities * Committed and passionate staff and volunteers at all levels of the organisation. | * Impact of external constraints upon the operation of the justice sector, including protests and political issues relating to the elections, diversion of policing resources to security tasks, budget limitations impacting on judicial staffing levels, transport etc. * Delays in funding disbursement process * Incremental but slow progress on redressing systemic issues, hampered by limited coordination with the *Chilungamo* programme and limited civil society advocacy. Limited progress on legislative reform, Practice Directive on use of Mediation. CJCC planning may support institutional priorities rather than service delivery or access to justice objectives. * Limit leverage of donors for advocacy or UN / UNDP for technical assistance and advocacy. |
| Sub-National | * Buy in from district stakeholders * Excellent negotiated access to places of detention – prisons, court, police cells. * Collaborative working relationships with rule of law actors, with PASI paralegals going ‘above and beyond’ to facilitate the operations of the justice system and reduce delays and backlog. * By being present in places of detention, PASI is able to reinforce compliance with national laws and human rights standards, using a collaborative approach. | * Difficulty for paralegals to manage a number of competing tasks in a high volume environment, including task interference when paralegals need to defer routine screening to provide extra assistance for cases of vulnerable beneficiaries. * Potential for paralegal staff burnout, particularly for paralegals working alone in a district. Additional support and training needs noted. * Rule of law actors may become reliant on PASI’s assistance, rather than taking the opportunity to address their own issues. * Regionalised / centralised financial management and procurement meant difficulties for some village mediators and paralegals to access any support budget for incidental expenses. * Weak record keeping and data collection by partners |
| Community | * Strong community buy-in and enthusiasm * Strong support from traditional leaders, and close affiliation of village mediation with traditional leaders. * Passionate volunteer mediators. | * Additional training and support for village mediators required. * Limited transport / communication support. * Weak record keeping, data management. Slow reporting processes relying on village mediators / trainers to travel to town to submit historical records of cases resolved. |

## Cross cutting issues

### Gender

PASI has made significant efforts to include women as project personnel, as paralegals and village mediators. This has helped to make PASI’s services more accessible to women, and has potentially also improved PASI’s retention of village mediators, since it was anecdotally reported that men were more likely to leave their communities to seek employment opportunities. Approximately 55.3% of village mediation cases registered have involved women, although due to records management processes it is not always certain whether the women are lodging or responding to the dispute.

Village mediators reported that they handle some cases of SGBV, and refer other cases to the police, depending on the severity of the case (and the presence of physical injuries). Mediation of SGBV disputes can be quite complex, and requires particular attention, training and the ability to refer beneficiaries to appropriate points of support. As the Village mediators are aware, not all SGBV cases are appropriate for mediation, due to the power imbalances that exist between the parties. As the DFID funded *Tithetse nkhanza* SGBV programme develops, PASI paralegals may be able to tap into those networks to receive and refer cases.

PASI paralegals prioritise assistance to particularly vulnerable detainees, including women and girls. Women and girls make up a relatively small proportion of people in detention, as the majority are adult men. However, the proportion of females charged with minor cases is significantly higher than males – 73% of females in detention face minor charges, compared to 30% of males. The gender distinctions here are striking, especially considering that 95% of females appearing before Court face minor charges – although PASI has advised that the figure for females appearing before the Court also includes civil. The reasons for this would benefit from further investigation – whether for example women are over-represented in minor offences because they commit serious offences at lower rates, whether the women registered and charged by the police are more likely to be repeat offenders who are not eligible for diversion, or whether there are structural barriers preventing the use of diversion such as difficulties in arranging sureties.

Women in detention do have special needs, and the Bangkok Rules[[30]](#footnote-30) were developed to recognise this, and provide guidance to Judges, prison officials and policy makers on the treatment, sentencing and conditions for women in detention.

Similarly, while females make up a smaller proportion of the prison population, they are also more likely to be serving a sentence of three years or less – 45% of females have a sentence of three years or less, compared to 17% of males. This may be linked to the issue below that women are more likely to be charged with a minor offence than a serious offence, however further investigation is warranted.

### Children

Children are one of the vulnerable groups targeted by the Access to Justice Project. The project prioritises assistance to children in detention, and also aims to divert cases with children from the criminal justice system, and to provide a more inclusive system of local justice through the village mediation service.

PASI paralegals provide extensive support to children in detention. This includes screening of child detainees, advocating for the separation of children and adults in detention, informing the MoGCDSW social workers when children are located in police detention, tracing family members (and assisting to reconcile family members), attending interviews with children, pursuing probation reports, and attending Children’s Court hearings in accordance with the Child Care, Protection and Justice Act 2010. The evaluation team was also informed that paralegals have gone above and beyond their role, for example in transporting suspects or witnesses on their motorcycle, or conducting social inquiries and actually preparing social reports, due to the absence or high workload of social workers. In an extraordinary and commendable example, one paralegal had raised funds from his friends and relatives to purchase building supplies to improve the police station cells, to reduce overcrowding of the adult males and create a separate cell to secure juvenile detainees.

*‘We have a lot of juvenile cases that we hear in Chambers, and the PASI paralegal usually comes. We rely on PASI more than the Department of Social Welfare because they regularly don’t come to the Court for the cases. I think the paralegal lacks technical knowledge about these [children’s] cases, but he is mostly available. If I’m going to release a child on bail, I want to know that they will be released into safe hands, so the quality of the social inquiry report is critical.’*

Box 7: Informant interview with Magistrate

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Notwithstanding the interventions of PASI, systemic children’s justice issues remain. In accordance with the law, children are not accepted into prisons by the Prison Service, however due to a shortage of appropriate juvenile facilities children are instead detained in police cells. Police cells were not intended or designed for long-term detention, and are frequently overcrowded, unhygienic, lack access to water and sanitation facilities, and expose children to abuse and exploitation by adults. The MoGCDSW personnel interviewed during the evaluation spoke of high workloads, and other stakeholders noted limited Children’s Court facilities, judges, children’s prosecutors and limited care centres which are not sufficient nor geographically accessible for many children and their families. The lack of children’s facilities emphasises the importance of early intervention and diversion, with coordinated support provided by PASI and social workers.

*‘We sometimes have to combine children with adults since we don’t have children’s cells. We’re not allowed to combine them but we don’t have a choice. The prisons also refuse to take the children, so we have to keep them. We have had four children here for over one month because the prison refuses them and there is no other place for them, so they are mixed in with the adults.’*

Box 8: Key informant interview

UNICEF is the leading UN agency on child protection and child justice, and provides support through the MoGCDSW. Closer collaboration between PASI and UNICEF could assist in highlighting the prevalence of child protection issues observed by PASI during screenings, and also further leverage UNICEF’s global expertise in promoting diversion of children’s cases. For example, there are opportunities for collaboration between PASI and initiatives under UNICEF’s ‘Scaling up Minority Rights’ project. In some areas PASI paralegals do participate in Child Justice Committee and / or Child Protection Technical Working Group.

In relation to local justice, PASI does not appear to record or report on cases of village mediation involving children. We would anticipate that children would normally be under-represented as parties in a community mediation service, unless efforts were made to integrate that service with schools.

### Disability

According to the latest Malawi census, there are 1,556,670 people aged five years and older living with at least one form of disability. The most common disabilities are people with difficulty in seeing, hearing and walking.[[31]](#footnote-31) Stakeholders reported that there were high rates of abuse and exploitation of women and children with disabilities, and that these people face significant barriers in seeking legal recourse. Although the Access to Justice Project does include a general community outreach programme, there do not appear to be sufficiently targeted approaches to make the service accessible to people with disabilities. PASI does not appear to record or report beneficiaries assisted who have disabilities.

The evaluation team was advised that as village mediators are based in the community, they are aware of the community members who have disabilities and may require special assistance. However, more proactive measures would likely be required to better target and assist people living with disabilities. People living with disabilities may be locked in their houses, or may face physical difficulties in reaching a mediator to lodge a complaint with them. If the complaint is also against a family member who is exploiting them, the family member may further obstruct or undermine access to a village mediator.

Respondents noted that living with a disability can also compound other forms of vulnerability – for example, if a disabled person cannot work, they are more likely to live in poverty. Interviewees gave examples where people with disabilities sought assistance with cases from traditional leaders, but were forced to let the cases lapse after they could not afford to give a gift to the leader to hear the case.

### Vulnerable detainees

While women, children and people with disabilities are commonly identified as potentially vulnerable populations, it should also be noted that people in places of detention are also extremely vulnerable. This vulnerability can be further compounded by other factors, such as gender and age, however all detainees have some measure of vulnerability.

One of the central focuses of the Access to Justice Project is for paralegals to provide assistance to vulnerable people in detention. PASI’s assistance is exceptional in this regard, spanning daily screening in places of detention, diversion, promoting bail, legal empowerment and facilitating release. These contributions were widely appreciated by stakeholders during the evaluation interviews.



Prison Legal Information Clinic  
Source: PASI

## Lessons learned

The following are proposed as lessons learned based upon the first two years of project implementation, for consideration and to assist in guiding future programming.

1. Project scale up – The Access to Justice Project reactivated activities which had been implemented under previous donors, while also expanding project activities to new locations. Building previous activities allowed the project to jump-start, since PASI had existing networks of staff, trainers and village mediators which could be activated. At the same time, expanding to new districts required a lengthy process of community engagement, community nomination of village mediators, training and supervision of village mediators. The simultaneous expansion into new districts placed heavy demands on PASI’s management resources and training budget, which limited the training that could be provided to project staff in ‘old’ districts. While acknowledging the intention to deliver services in the new districts as soon as possible, a progressively phased approach may have been easier to implement.

1. Community ties – the success of the village mediation activities is due in no small part to support provided by traditional authorities and village leaders. PASI has gone to significant efforts to engage with traditional leaders, and ensure that village mediation is framed in terms of support rather than competition with traditional leaders. The traditional leaders are now an important source of referral of cases to the village mediators, and provide a shadow of legitimacy which the village mediators operate under. The village mediators now resolve ‘simpler’ cases which leave traditional leaders available to spend more time on complex cases such as land disputes. It is critical to preserve this support by traditional leaders to ensure the ongoing success of village mediation.
2. Collaborative advocacy - PASI paralegals have negotiated access to places of detention by operating in a collaborative, rather than challenging way. Project implementation has demonstrated some of the benefits of this approach, including the close relationship with the Police and Prison Services, trust between PASI and the institutions, and the opportunities for continued access. At the same time, there is a risk of capture which paralegals and their supervisors must be aware of, to ensure that close relationships between PASI and security institutions do not jeopardise the willingness of paralegals to properly escalate cases when authorities do not agree to follow legal procedures. While PASI has adopted a collaborative approach, the complementary roles of formal accountability and oversight remain critical. UNDP and the EU have previously provided some support to oversight institutions such as the Malawai Human Rights Commission, however this component of UNDP’s programme portfolio is under-developed.
3. Redressing systemic issues - The Access to Justice project operates as a kind of ‘canary in the coal-mine’, which is capable of identifying and signalling systemic issues which could be addressed either by PASI or by other actors. PASI has had some incremental success in influencing justice reforms through its roles on various committees, such as CJCC, Prison Law Reform Committee and the Malawi Human Rights Consultative Committee. However, PASI’s primary focus as an organisation has remained on service delivery, and the implementation of research and advocacy components of the project has lagged behind other outputs. Closer coordination with the *Chilungamo* programme, greater involvement by UNDP in advocacy through its specialist expertise and convening role, and strengthened collaboration through consortium with other civil society organisations could help leverage PASI’s operational experiences into more effective systemic reform.
4. Camp courts - Initiatives such as Camp Courts have been an effective mechanism to decongest prisons. Stakeholders advised the evaluators that the preparation undertaken by PASI when organising Camp Courts is key to their successful outcomes – including the efforts made to screen and select appropriate cases, tracing sureties and witnesses, ensuring the event is organised with proper notice to participants, and following up on detainees who are ordered to be released to ensure that they are released. The evaluators were advised that Camp Courts arranged by other actors are not as well organised, or as effective in terms of the number of people released. We would encourage PASI to document and share the procedures they follow, so other organisers of Camp Courts can adopt these good practices and the Camp Courts can have a better impact, regardless of which organisation is supporting the event.
5. Serving vulnerable populations - As an Access to Justice project, the project focuses intensely on the needs of vulnerable people in prison, and on ensuring that village mediation is accessible to women. However, other categories of vulnerable people are not an explicit focus of the project – for example, people with disabilities, people with albinism, children, elderly, migrants, people with mental illness or serious illnesses etc. While the Project may assist some of these people, the support is not targeted and the results are not disaggregated in record keeping or reporting. Targeted outreach and network (perhaps in conjunction with existing CBOs that already service those clients), a stronger understanding of the legal needs of these groups, and adaptation of services offered could help the Project to meet the access to justice needs of additional vulnerable people.

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| Findings and recommendations |

Overall the information obtained and assessed by the evaluation team demonstrates that the Access to Justice project is performing very well, and is making a significant difference to the lives of beneficiaries through the village mediation and paralegal services. Detailed findings and recommendations are proposed by way of further refinements to the project, rather than expressing fundamental concerns about the project’s value or progress.

Based upon a review of available documents, key informant interviews with stakeholders and focus group discussions with community leaders and beneficiaries, the following findings and recommendations are made:

## Relevance

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|  | Overall findings |  |
|  | The project’s relevance was analysed with respect to its alignment to international goals and the national development agenda, with specific reference to facilitating Access to Justice for marginalised communities.  The Access to Justice Project is highly relevant to international goals such as SDG 16, is aligned with the UN Malawi UNDAF Outcome 1.1, the Malawi Growth and Development Strategy III and the fulfilment of rights guaranteed under the Constitution of Malawi. The project focuses on the needs of vulnerable people, especially those in detention, and in providing localised access to dispute resolution in communities in close cooperation with traditional leaders. | |
|  | **Specific findings** | **Recommendations** |
| 1 | Design:  The Access to Justice Project is the main component of UNDP’s access to justice programming, however the project is by design primarily ‘bottom up’. Ideally this bottom up programming would be reinforced by parallel initiatives and advocacy to engage with justice stakeholders. | For UNDP:   * UNDP (with other donors) should support advocacy based on PASI’s experiences to help redress systemic justice issues. UNDP can play a convening role in bringing together interested stakeholders, particularly other NGOs which may be less willing to cooperate with PASI. * UNDP’s rule of law portfolio should include some duty bearer initiatives in addition to supporting rights holders. Delivering paralegal services is invaluable for the clients who benefit, however the UN is not engaging sufficiently on many other access to justice issues noted in the evaluation. UNDP could be more technically engaged on issues including legal aid policy, mobile court policy, case management, alternatives to detention / diversion, community mediation (including linkages with the formal justice system), restorative justice / victim – offender mediation, sentencing policy, university legal aid clinics, pro bono schemes with law societies, implementation of the Bangkok Rules, strengthening oversight and accountability mechanisms etc. |
| 2 | UNDP is the lead UN agency on access to justice, and has deep technical expertise and guidance notes on access to justice and judicial reform. Similarly, UNODC also has extensive technical expertise on alternatives to detention, including the detention of Women and the implementation of the Bangkok Rules. However, the Access to Justice Project has not significantly benefited from the UN’s technical expertise in these areas, as UNDP’s support has focused on financial management and M&E rather than technical expertise. | * UNDP should make greater use of its own rosters of technical experts to guide and provide quality assurance on specific access to justice activities, such as those listed above. UNDP’s subject matter experts could also support PASI’s research initiatives and integrate global best practices. UNDP could also help facilitate specialised expertise from UNODC, UNICEF and UN Women as relevant. |
| 3 | The project document outlines most of the components of a theory of change, but does not include a theory of change. In particular, the linkages between the outputs and the desired outcomes / goals are not articulated, and the project does not appear to link to UNDAF indicators. | For PASI and UNDP:   * Review the logic model discussed at various places in the project document and articulate a clear project theory of change, including linkages between each stage and linkages to relevant UNDAF indicators. |

## Effectiveness

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|  | Overall findings |  |
|  | This criteria considers how effectively the project has delivered the planned outputs and outcomes, and whether the project strategies are effective in responding to the needs of beneficiaries including vulnerable people.  The project has met or substantially met the planned targets. The VMP component has resolved 25,073 cases over two years (target 27,954), with 55.7% of cases involving women, and a 99% client satisfaction rate. The paralegal component has assisted 216,751 beneficiaries in places of detention, and facilitated the release of 61,056 detainees.  PASI’s support to the implementation of Camp Courts, Court Users Committee meetings, Court consultation forums and outreach has been noted by respondents with approval. Traditional leaders also highly regarded the effectiveness of village mediation in resolving disputes and reconciling community members.  The project has been less effective in implementing planned activities relating to research and advocacy, and in collaborating with civil society, donors and justice actors to advocate for and implement access to justice reforms. These further reforms are essential to progress beyond reactive service delivery, whether delivered via PASI or in conjunction with other programmes. | |
|  | **Specific findings** | **Recommendations** |
| 4 | The Access to Justice Project document outlines an approach to research, studies and advocacy, however this component has been relatively undeveloped in comparison with the service delivery activities.  While noting that PASI’s primary focus is on service delivery, Research and documentation of PASI’s work (as foreseen in the project document) is also an important step in identifying and providing an evidence basis for advocacy to redress systemic justice issues. The limited amount of available resources will realistically continue to be inadequate to meet all service delivery needs, which highlights the importance of working in parallel on initiatives to enhance legal reform and seek systemic solutions.  These longer-term reforms are essential to allow civil society and donor funding to progress beyond reactive service delivery, whether the advocacy and reform efforts are addressed by PASI, by other organisations under UNDP and the EU’s access to justice portfolio, or by other programmes. | For PASI:   * Place greater emphasis on action-based research and mini-studies to document access to justice issues observed by PASI, with technical assistance from UNDP as appropriate to incorporate international best practices on access to justice and legal reforms. The discussions within this report highlight several areas where PASI could usefully under-take thematic studies and action research, including researching justice issues relating to vulnerable people, women’s experiences in prison, the impact of legal empowerment on bail decisions and trial outcomes, etc. * Greater emphasis should be placed by PASI on the dissemination of their results and case studies, for example through social media. |
| 5 | The Paralegal component of the project serves a very vulnerable group, ie people in detention, and the VMP component provides additional pathways for women to settle disputes. However, the Access to Justice Project has had a limited focus on the access to justice needs of people with other types of vulnerability, including people living with disabilities and albinism. | For PASI:   * Improve disaggregation in case files and reporting on cases with particular vulnerabilities, to better document and articulate the support PASI provides to vulnerable people. * Assess the feasibility of collaborating more closely and formally with other civil society organisations for specialised referrals of clients, and on research and advocacy, particularly where those organisations have a niche expertise which PASI does not have (eg disability organisations, child protection organisations, SGBV focused organisations etc). |
| 6 | The screening and provision of basic legal information to detainees conducted by PASI paralegals provides a foundational level of level assistance. However, it is important to note that the project design does not seek to meet more advanced legal needs of detainees, including individual legal advice relating to their case, or representation.  The project strategies are effective in meeting the basic level of legal empowerment and legal awareness. However, the project strategies are not effective in fully meeting the legal needs of detainees (and nor do they aspire to be). This leaves an unmet need for detainees to access legal advice and representation. | For PASI, donors and the Legal Aid Bureau   * Explore the feasibility of providing additional legal assistance to people in places of detention, including legal advice on their case. This service could be delivered in various ways, including by duty lawyers at Court from the LAB, MLS pro-bono roster or civil society organisations staffed with lawyers. Due to the existing restrictions on paralegals providing legal advice, it is not feasible for PASI to provide this service as it is currently structured. |

## Efficiency

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|  | Overall findings |  |
|  | This criteria considers whether the results justify the costs incurred, and whether financial management processes affected the performance of project implementation.  The Project has executed their available budget at a high rate (96.9% in 2018 and 99.8% in 2019), and has sought supplementary funding for items not included in the original budget.  The evaluation assessed value for money for money of key project activities, including the average cost to resolve a case via village mediation ($12.09 in 2019), average cost to facilitate the release of a detainee ($11.70 in 2018-2019) and average cost per detainee released via camp courts ($14.31). These costs appear relatively modest, especially in comparison with the cost per day of detention and the avoided or delayed investment in additional prison infrastructure.  However, project implementation has been constrained at the start of each quarter due to the financial management processes associated with reporting, verifying and disbursing each tranche payment.  Additionally, PASI and donors should be aware of the risks of creating perverse incentives by embedding allowance funded activities such as Camp Courts as a routine part of the justice system. | |
|  | **Specific findings** | **Recommendations** |
| 7 | The reactivation of PASI’s prior activities and simultaneous expansion to include additional districts for paralegals and additional TAs for village mediation has potentially exceeded PASI’s capacity to fully train and fully support these personnel. Paralegals working alone in busy districts struggle to manage workloads and manage personal leave. Training for paralegals and village mediators has been deferred while new sites were launched. Paralegal and village mediator service delivery is exceeding targets, however the planned budget is potentially insufficient to support the management and overheads which are required to sustain this level of service delivery. | For PASI:   * PASI should seek additional funding to complement ongoing funding, particularly for training of paralegals and village mediators, and incidental expenses for village mediators for bicycle repair, phone use etc. * District-based Paralegals and village mediators should be able to confidently access a mechanism to fund or reimburse valid operational expenses. * PASI should ensure that appropriate human resource management policies are in place to support the well-being of staff who work under difficult conditions, and encourage staff to take leave as accrued. Particular attention should be given to paralegal staff who work alone in districts, where support is more remote. * While there is an understandable desire by both PASI and donors to maximise coverage and resources allocated for service delivery, investment in the management and operational processes of PASI is also essential for sustainability and quality service delivery. * Any future expansions should be carefully phased and potentially rolled out more slowly, to ensure PASI has sufficient management, training and budget resources to meet the requirements associated with the expansion. Alternatively, an increased provision should be made for additional training budget to be frontloaded, to accommodate the needs of new personnel in addition to the refresher training needs of existing personnel. |
| 8 | The current project reporting / verification / funding disbursement cycle means leaves PASI without funds to programme activities at the beginning of each quarter for periods up to or exceeding one month per quarter. PASI does not have sufficient funds from other donors to self-fund activities during these periods, and in the event of significant delays PASI’s payroll may also be affected. UNDP’s role in verifying that expenditure is eligible for the European Union is essential. However, the current process is not timely and impacts on service delivery, as PASI is constrained in planning and implementing activities for three to four months of each year. UNDP is also unable to disburse funds from mid-December to mid-January due to operational end of year closure activities. | For UNDP and PASI:   * UNDP and PASI should agree on a revised approach to reporting, expenditure verification and disbursement. Potentially PASI could continue to provide narrative reports on a quarterly basis, but provide expenditure reports and funding requests as disbursement targets are met – for example, PASI makes a request for the next tranche of funding to be released as it reaches 70% or 80% utilisation. Longer funding cycles could also be considered – eg disbursement of six-month tranches rather than three months.   For UNDP:   * UNDP should avoid scheduling payments to implementing partners in early January when it is operationally not feasible for UNDP to make payments at that time. |

## Implementation

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|  | Overall findings |  |
|  | The Access to Justice Project has been recognised by stakeholders as being very successful to date, and has been delivered substantially as designed and budgeted. The project has generally achieved its targets, and in some indicators has significantly exceeded those targets. PASI has implemented lessons learned from their experience in implementing similar activities for other donors, and has successfully scaled up these activities by expanding to additional districts and TAs under the current project.  Project implementation has been hindered in some regards by delays in reporting / verification and disbursement of funds to PASI, and turnover of programme management staff at UNDP and the EU. However, PASI has generally been able to implement its workplan and make up for these delays.  PASI has established partnerships under formal MOUs with key stakeholders. However, further attention is required to maintain collaborative relationships with some few justice actors. PASI’s advocacy would potentially be more effective with better coordination with *Chilungamo* and closer collaboration with coalitions of civil society actors and donors. | |
|  | **Specific findings** | **Recommendations** |
| 9 | Some paralegal personnel demonstrated excellent knowledge and understanding of criminal justice processes, while other paralegals appear to require further training and support. Some paralegals have a legal background, while others have no previous exposure to the justice system or a legal background.  Paralegals are not lawyers and should not be required to have a law degree, since they need to fulfil many different roles. However, if PASI prioritises the recruitment of young but relatively inexperienced paralegals (particularly those without a legal background), it is essential that they receive proper training, mentoring, support and ongoing supervision, to ensure that beneficiaries receive an appropriate level of service delivery. This would also help to mitigate against the risk of institutional ‘capture’ which paralegals can be exposed to when they work in a collaborative partnership with police and prison authorities on a daily basis, particularly faced by paralegals who work in a district alone. | For PASI:   * Ensure that paralegals receive appropriate training, refresher training, ongoing support and supervision, as a way to ensure that knowledge is accurate and up to date and skills are developed, including training on working with vulnerable populations (SGBV, children, people with disabilities). Paralegals with a non-legal background may also require additional training, support and supervision to meet quality standards. * Institutional capture should be explicitly discussed during professional development sessions, with paralegals identifying their personal risks and strategies to mitigate these. |
| 10 | Partnerships and collaboration:  PASI has established partnerships under formal MOUs with key stakeholders. However, further attention is required to maintain collaborative relationships with some few justice actors.  PASI’s collaboration with other civil society organisations is less structured, perhaps taking into consideration the sensitive space society that PASI operates in, and also competition for funding between civil organisations. PASI has faced some challenges negotiating with stakeholders who wish to preserve the role of legal assistance for qualified lawyers. At present PASI can facilitate referrals to LAB lawyers but does not appear to access pro-bono lawyers more generally.  Although PASI is part of the *Chilungamo* Project funded by the EU, the project components are implemented separately and there is limited coordination between the PASI activities and institutional capacity building activities. PASI would potentially have greater impact with better coordination with *Chilungamo* and closer collaboration with coalitions of civil society actors and donors. | For PASI:   * Closer integration between PASI and the *Chilungamo* Project, particularly by using PASI’s experiences as an evidence base to guide and prioritise the larger funding allocated to support justice institutions. * PASI’s village mediators could be linked more closely with other community peacebuilding initiatives – eg District Peace Committees[[32]](#footnote-32), Multi-party Liaison Committees during elections, CCJP; and with mechanisms/organisations focusing on service delivery to vulnerable people (including people with disabilities, albinism and survivors of SGBV). * As the LAB lawyers are too few to handle all criminal cases, we recommend PASI refine referral arrangements to allow for more effective referral of beneficiaries with particular vulnerabilities to a lawyer – potentially via strengthened coordination with the LAB / MLS, or by reviewing the feasibility of other modalities of legal aid service delivery, including duty lawyer schemes. |
| 11 | Project oversight:  UNDP’s support to strengthening PASI’s management capacity is appropriate both as a way of promoting PASI’s institutional development, and as a risk mitigation measure. Steering Committee and project management meetings have taken place irregularly, due in part to staff turnover and workloads. | For UNDP:   * Further attention should be paid to ensuring that project steering committee and project management meetings take place as scheduled, that minutes are produced and action points are followed up. |
| 12 | Court Users Committees:  Court Users Committee meetings are a potentially valuable mechanism at District level to coordinate on technical issues. At present the CUCs are used variously for outreach, public relations and case management. Previously the chair of CUC rotated, however the meetings are now chaired by the Judiciary. As such, the CUC meetings are now highly dependent on the availability and discretion of the Resident Magistrate as Chairperson. | For Rule of law institutions:   * Give increased priority for Court Users Committee meetings to identify and address issues affecting service delivery, with meetings held regularly and follow up on action points. |
| 13 | Child justice:  PASI’s effectiveness in promoting justice delivery for the young and vulnerable is constrained by the very limited access to juvenile safe homes, especially in districts. As the Prison Service refuses to accept children, Police detain child suspects in police stations, where for long periods they remain exposed to adults. Many police cells lack basic facilities, including toilets and running water. In addition, PASI paralegals treat child cases with urgency, which means their regular tasks such as screening are interrupted to support children. Paralegals explained how they attend Court and may even prepare social reports, in the absence of a social worker. Ironically, the requirements for social reports may have some perverse outcomes, since some Magistrates described how they were unwilling to release child suspects until they were certain the child had a safe place to be released to – which then results in longer detention while social inquiries are made. | For the UN:   * UNICEF is the lead UN agency on child justice, and these issues should be directed to UNICEF for appropriate technical assistance. While noting the lack of juvenile safe homes, we understand that UNICEF generally prefers to divert and reintegrate child offenders, rather than detain them in safe homes where they may be at further risk. PASI, UNDP and UNICEF could collaborate on initiatives such as strengthening child diversion. * As PASI paralegals gave several examples where they appear to be filling the roles of Government social workers, UNICEF may be in better position to engage with the MoGCDSW and identify strategies to resolve the need for PASI to intervene. |

## Sustainability

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|  | Overall findings |  |
|  | The Access to Justice Project has been designed and implemented from a sustainable perspective. Village mediators work on a voluntary basis, and operating costs once personnel are recruited and trained are relatively limited. The value for money of paralegals is quite high, as they assist the Government to reduce the costs of detention by diverting cases, and a case could be made that an investment in paralegal funding will save money for the Government by delaying or avoiding investment in prison infrastructure and justice services.  PASI has developed a sustainability plan to guide its strategic development. The plan provides several options for PASI’s future development, and sets out advantages and disadvantages of each option. However, in reality, virtually all legal assistance services remain reliant on a combination of Government and / or donor funding, and full sustainability is difficult to achieve. | |
|  | **Specific findings** | **Recommendations** |
| 14 | Organisational sustainability:  PASI’s ‘Sustainability plan and exit strategy’ sets out various options for future sustainability, including ten models to sustain PASI without donor funds. PASI does not appear to be in favour of some of these models, while other models may not be realistic. It will take time to transition to any of these models, particularly if the transition is intended to be completed by the end of this project.  PASI remains heavily reliant on the leadership and expertise of its founding Director. Although the National Director provides training and mentoring for PASI staff members, and UNDP has supported PASI staff to undertake a short international course on corporate governance, the organisation remains heavily dependent upon his expertise and experience | For PASI:   * With the contributions of donors and stakeholders, assess the feasibility of the various options proposed by PASI to improve financial sustainability, and agree on one or two preferred models which PASI can commence transitioning towards under a sustainability implementation plan. * As part of its sustainability strategy, PASI should continue to develop the capacity of its management team to minimise its organisational reliance on one key staff member. |
| 15 | Sectoral coordination and advocacy:  The *Chilungamo* programme is a significant and much needed investment in the justice system of Malawi. The programme takes a sectoral approach with a EUR 48m Financing agreement which supports justice institutions[[33]](#footnote-33) under a private contract with Human Dynamics, NICE as their own contracting authority and PASI under a contract with UNDP. PASI is involved in coordination meetings (as the sole civil society organisation), however it is unclear how much impact they may have.  Under the *Chilungamo* programme, Human Dynamics has a provision for 4,000 working days of non-key technical experts which the beneficiary institutions may draw upon.[[34]](#footnote-34) Ideally the access to justice constraints identified through PASI’s work would help inform and provide an evidence base for the prioritisation of tasks to be undertaken by *Chilungamo* technical experts. There does not appear to be a linkage between the constraints identified by PASI and the allocation of tasks and technical expert working days. This leaves open the possibility that institutions will request technical assistance on tasks which are of high priority to the institution, but of low impact in readdressing justice constraints.  The space for Civil society to operate in Malawi is currently constrained, and the implementation of the NGO Bill has potential negative consequences for human rights-based organisations. However, civil society has an essential role to play in promoting and enabling the achievement of human rights. | For the European Union:   * Build stronger synergies between programme components by encouraging closer collaboration, including using information generated by PASI as an evidence base to identify and prioritise justice reforms. * Take into consideration which tasks are likely to have the greatest impacts on service delivery when prioritising the selection and funding of activities and the use of non-key expert working days under the *Chilungamo* programme, including consideration of the constraints and evidence base identified by PASI.   Support advocacy efforts on access to justice issues, including the promotion of space for broader engagement by civil society. In the current climate this may be possible in some niche areas – for example, on outreach, legal aid policy etc. |
| 16 | The justice sector in Malawi faces many challenges and constraints, including infrastructure, personnel, transport, budget and policy framework issues. These constraints are inter-connected and it is not possible to simultaneously resolve all of these issues. However, while these constraints exist, it impedes the ability of justice institutions to uphold and protect human rights. The Criminal Justice Coordination Committee workplan has one activity on reducing prison overcrowding (via parole system reform), and ten activities on other areas, including infrastructure, staffing and personnel. | For Rule of law institutions:   * Prioritise institutional capacity development activities which will directly improve service delivery and access to justice for beneficiaries, using practical studies from organisations such as PASI as an evidence basis where these are available. |

# Annex 1: Terms of Reference

# Annex 2: Evaluation matrix

|  | **Issue** | **Means of Verification** | **Data collection method** |
| --- | --- | --- | --- |
| **Results and Achievements** | | | |
| **1** | What has been the progress made towards achievement of the intended results? What are the reasons for this achievement or non-achievement? | Project progress reports  Monitoring framework  Stakeholder feedback | Document review  Key informant interviews |
| **2** | What are the implications for achievement or non-achievement of the project activities? | Stakeholder feedback | Document review  Key informant interviews |
| **Relevance** | | | |
| **3** | How relevant is the project to the global, regional and national development goals? | Evidence of project development based on Government and UN policy framework documents, international obligations and needs assessments | Document review  Key informant interviews |
| **4** | How relevant is the project to the development needs of the people/beneficiaries, in particular women and vulnerable groups including persons with disability and albinism? | Stakeholder feedback | Key informant interviews |
| **5** | What opportunities are there to better align the support to the changed context and the needs of the beneficiaries? Are there risks associated with some work areas, from a do no harm perspective? | Needs assessments  Stakeholder feedback | Document review  Key informant interviews |
| **6** | Whether the outcome and outputs of the projects were stated explicitly and precisely in verifiable terms with SMART indicators disaggregated by sex, age and location; | Project document and Annual workplan review | Document review  Key informant interviews |
| **7** | Whether the relationship between outcome, outputs, activities and inputs of the projects are logically articulated. | Annual workplan review  Stakeholder feedback | Document review  Key informant interviews |
| **Effectiveness** | | | |
| **8** | How effective are the project strategies in delivering expected/planned outputs and outcomes? | Progress report review  Project risks and issues logs  Monitoring matrix  Stakeholder feedback | Document review  Key informant interviews |
| **9** | Are the project strategies effective in responding to the needs of the beneficiaries especially the vulnerable population including those with disabilities and albinism, what results are being observed? | Project document review  Stakeholder feedback | Document review  Key informant interviews |
| **10** | Is there a suitable Monitoring and Evaluation Framework? How often is the framework used to monitor expected project outcomes? | Monitoring matrix  Back to office monitoring reports  Stakeholder feedback | Document review  Key informant interviews |
| **11** | To what extent are human rights, gender and disability issues mainstreamed in the project strategies and implementation? | Project document review  Progress report review  Stakeholder feedback | Document review  Key informant interviews |
| **12** | Regarding the project output on capacity building, how effective were the projects’ capacity building interventions. | Capacity assessments / training feedback forms  Stakeholder feedback | Document review  Key informant interviews |
| **Efficiency** | | | |
| **13** | Are the processes of achieving results efficient? Do the actual results justify the costs incurred and were the resources effectively utilized? | Stakeholder feedback  Monitoring results analysis | Key informant interviews  Document analysis |
| **14** | What project strategies or factors are contributing to project implementation efficiency? | Stakeholder feedback | Key informant interviews |
| **15** | Do the project interventions duplicate existing similar interventions in the targeted areas and were there any collaborations with similar interventions? | Stakeholder feedback | Key informant interviews |
| **16** | How did the project financial management processes and procedures affect the performance of the project implementation? | Stakeholder feedback | Key informant interviews |
| **17** | Are there more efficient ways and means of delivering results? | Stakeholder feedback | Key informant interviews |
| **Implementation** | | | |
| **18** | How did project management arrangements and procedures affect the performance of project implementation? What partnerships were built or strengthened to improve performance of project implementation? | Stakeholder feedback | Key informant interviews |
| **19** | How effective was the delivery of inputs specified in the project documents, including selection of responsible institutions, institutional arrangements, identification of beneficiaries, scheduling of activities and actual implementation; | Progress reports  Results framework  Stakeholder feedback | Document analysis  Key informant interviews |
| **20** | The fulfilment of the success criteria as outlined in the project document; | Progress reports  Results framework  Stakeholder feedback | Document analysis  Key informant interviews |
| **21** | The responsiveness of the project management to significant changes in the environment in which the project functions (both facilitating or impeding project implementation); | Stakeholder feedback  Risks and issues log | Document analysis  Key informant interviews |
| **22** | Determine whether or not lessons learnt from other relevant programmes/projects were incorporated into the project. | Lessons learned log  Stakeholder feedback | Document analysis  Key informant interviews |
| **23** | Were the monitoring and backstopping of the projects as expected by the key partners (Ministry of Justice, PASI and UNDP). | Stakeholder feedback | Key informant interviews |
| **24** | The role of UNDP CO and its impact (positive and negative) on project delivery. | Stakeholder feedback | Key informant interviews |
| **Sustainability** | | | |
| **25** | To what extent are the project positive results likely to be sustained after the completion of the project | Evidence of succession planning of project activities and analysis based upon evidence. | Key informant interviews |
| **26** | What strategies does the project have to ensure continuation and sustainability of the project outcomes after completion of the project? | Evidence of project succession planning, and programmatic approaches to promote sustainability | Key informant interviews  Document reviews |
| **27** | What are the key factors that will require attention to improve prospects of sustainability of project outcome? | Analysis based on succession planning and project progress to date | Key informant interviews  Document review |
| **28** | How are the capacities strengthened at individual and organisational level to ensure sustainability of project results? | Capacity assessments, training needs assessments and training feedback | Document review  Key informant interviews |
| **29** | What are recommendations for similar intervention in future to ensure sustainability? | Analysis based on evidence collected through the evaluation and feedback from stakeholders. | Document review  Key informant interviews |

# Annex 3: List of persons met

|  | NAME | ORGANISATION | TITLE |
| --- | --- | --- | --- |
| 1 | Claire Medina | UNDP | Deputy Resident Representative |
| 2 | Agnes Chimbiri | UNDP | RICE Portfolio Manager |
| 3 | Peter Kulemeka | UNDP | Planning, Monitoring, Evaluation and Programme Coordination Specialist |
| 4 | Fatuma Silungwe | UNDP | Legal Analyst |
| 5 | Linda Kamlomo | UNDP | Monitoring and Evaluation Officer |
| 6 | Clifford Msiska | PASI | National Director/Programme Manager |
| 7 | Chimwemwe Ndalahoma | PASI | National Programmes Coordinator |
| 8 | Hubert Nanthambwe | PASI | Monitoring and Evaluation Officer |
| 9 | Steven Kayuni | Ministry of Justice | Chief State Advocate |
| 10 | Sophie Racine | Chilungamo Programme | Team Leader |
| 11 | Smart Gwedemula | Ntcheu District Assembly | District Commissioner |
| 12 | Macleod Mphande | Ministry of Gender |  |
| 13 | Atiji Phiri | European Union | Programme Manager, Economic and Public Affairs |
| 14 | Boniface Chibwana | CCJP | National Coordinator |
| 15 | George Chiusiwa | CCJP | Governance Coordinator |
| 16 |  | Ministry of Gender, Children | Child Protection Officer |
| 17 | George Kayinja | Malawi Police Headquarters | Director of Research and Planning |
| 18 | William Nkhoma | Malawi Police Headquarters | Legal Officer |
| 19 | Andrew Banda | Malawi Police Headquarters | Information Management Officer |
| 20 | George Kayange | Malawi Police Headquarters | Policy Reform Officer |
| 21 | Peter Chisi | MHRC | Director, Civil and Political Rights |
| 22 | Chifundo Chipala Mbela | PASI | Paralegal, Dedza |
| 23 | Owen Levi | Malawi Prisons | Officer in Charge, Dedza |
| 24 | Don Kanguwo | PASI | Paralegal, Ntcheu |
| 25 | Sailes Kananji | Ministry of Local Government | Group Village Head Wanyemba, Ntcheu |
| 26 | Biliat Chikukula | Ministry of Local Government | Village Head Billiat, Ntcheu |
| 27 | Moffat Mahamba | Ministry of Local Government | Village Head Zalengera, Ntcheu |
| 28 | Feston Tsoka | PASI | VM Trainer, Ntcheu |
| 29 | Sarah Ziwawo | PASI | VM Trainer, Ntcheu |
| 30 | Beneficiary names on file | PASI | VM Beneficiary, Ntcheu |
| 31 | Beneficiary names on file Beneficiary names on file | PASI | VM Beneficiary, Ntcheu |
| 32 | Beneficiary names on file | PASI | VM Beneficiary, Ntcheu |
| 33 | Beneficiary names on file | PASI | VM Beneficiary, Ntcheu |
| 34 | Beneficiary names on file | PASI | VM Beneficiary, Ntcheu |
| 35 | Beneficiary names on file | PASI | VM Beneficiary, Ntcheu |
| 36 | Bostons Amanze | Malawi Police | Station Officer, Ntcheu |
| 37 | William Bunya | Malawi | VSU Coordinator, Ntcheu |
| 38 | Steve Samati | Ministry of Justice | 2nd Grade Magistrate, Ntcheu |
| 39 | Charles Kazembe | Ministry of Gender | Senior Assistant Social Welfare Officer, Ntcheu |
| 40 | Lawrence Amos Kachitsotso | Malawi Prisons | Officer in Charge, Ntcheu |
| 41 | James Siliya | PASI | Paralegal, Mangochi |
| 42 | Thomas Damba | Malawi Prisons | Officer in Charge, Mangochi |
| 44 | Faison Oloman | Malawi Prisons | Station Officer |
| 45 | Joshua Nkhono | Ministry of Justice | Senior Resident Magistrate, Mangochi |
| 46 | Clement Madeira | Malawi Police | Community Policing Coordinator, Mangochi |
| 47 | Joel Kachikuni | Malawi Police | Station Offier, Mangochi |
| 48 | T/A Chowe | Ministry of Local Government | T/A Chowe, Mangochi |
| 49 | Beatrice Yakobe | PASI | VM Trainer, Mangochi |
| 50 | John Linje | PASI | VM Trainer, Mangochi |
| 51 | Mahummad Wasili | PASI | Village Mediator, Mangochi |
| 52 | Asumini Tiyesi | PASI | Village Mediator, Mangochi |
| 53 | Jinny Kathumba | PASI | Village Mediator, Mangochi |
| 54 | Grace Mchoma | PASI | Village Mediator, Mangochi |
| 55 | Cedrick Jali | PASI | Village Mediator, Mangochi |
| 56 | Beneficiary names on file | PASI | VM Beneficiary, Mangochi |
| 57 | Beneficiary names on file | PASI | VM Beneficiary, Mangochi |
| 58 | Beneficiary names on file | PASI | VM Beneficiary, Mangochi |
| 59 | Ibrahim Asidi | PASI | Village Mediator, Mangochi |
| 60 | Fatima Jula | PASI | Village Mediator, Mangochi |
| 61 | Mkolowosi Mithenga | PASI | Village Mediator, Mangochi |
| 62 | Robert Kupengule | PASI | Village Mediator, Mangochi |
| 63 | Beneficiary names on file | PASI | VM Beneficiary, Mangochi |
| 64 | Masauko Chimkakala | Legal Aid Bureau | Director |
| 65 | Muteyu Banda | PASI | Team Leader (North), Mzuzu |
| 67 | Nixon Ngwira | PASI | VMP Coordinator (North),Mzuzu |
| 68 | Chisomo Tembo | PASI | Paralegal, Mzuzu |
| 69 | Baxter Chomo | PASI | Paralegal, Chitipa |
| 70 | Benedicto Mhango | PASI | Paralegal, Rumphi |
| 71 | Noel Kumwenda | PASI | Paralegal, Nkhata Bay |
| 72 | Martin Mazunda | PASI | Paralegal, Mzimba |
| 73 | Fanny Banda | PASI | Paralegal, Mzuzu |
| 74 | Untwa Mwang’onda | PASI | Paralegal, Mzimba |
| 75 | Victor Mhango | PASI | Team Leader (South), Blantyre |
| 76 | MacDonald Kaipa | PASI | Paralegal, Blantyre |
| 77 | Seona McLoughlin | Irish ROL International | Country Programme Manager |
| 78 | Macdara O’Drisceoil | Irish ROL International | Lawyer |
| 79 | Steve Sikwese | PASI | Paralegal, Lilongwe |
| 80 | Praise Munyenyembe | PASI | Paralegal Intern, Lilongwe |
| 81 | Alexander Nkunika | PASI | Paralegal, Lilongwe |
| 82 | Nellie Msowoya | PASI | Paralegal, Lilongwe |
| 83 | Cynthia Chabuka | PASI | Paralegal, Balaka |
| 84 | Rejoice Masebo | Disabled Women in Africa (DIWA) | Project Officer |
| 85 | Cecilia Zangazanga | Central Region Police Headquarters, Lilongwe | Regional Police Prosecutor |

# Annex 4: Discussion of project achievements and results by Output

The following sections provide an overview of the results and achievements of the project by Output.

### Output 1: Well-functioning Village Mediation and Paralegal Services backed by strengthened legal frameworks and procedures

*‘I’m a repeat user of village mediation. The first case was with my husband – we had irreconcilable differences, but somehow we managed to reconcile. I was amazed! So when I couldn’t repay my debt, I suggested to the creditor that we negotiate a payment plan with the village mediators, and that was successful too!’*

Focus group discussion with village mediation beneficiaries

*‘I thought I was just an ordinary guy, I never thought that I could have the skills to be a mediator. Now I can go anywhere and mediate conflicts!’*

Focus group discussion with Village mediators

The Village Mediation service provides accessible and free dispute resolution services to community members within their zone of operations.

The Evaluation Team would like to commence by recognising and emphasising the commitment of the village mediators we spoke to during the evaluation. The village mediators work completely voluntarily, and provide a valuable community service under difficult conditions. The mediators reported they handle on average approximately two cases per month each, although some mediators may be more active and some handle fewer cases. Village mediators may also volunteer for other services in their community (eg CCJP, NICE) and some organisations will provide a modest stipend for their expenses. PASI provides limited stipends to 22 Lead Village Mediators / Trainers, but does not provide any stipends for village mediators, which has the advantages that the service can be delivered in a more cost-effective and sustainable way, and that it attracts volunteers who are motivated by a desire to contribute rather than by financial incentives.

During 2018, the service was offered in seven ‘old’ districts where PASI had worked with funding from previous donors - Mchinji, Salima, Lilongwe, Blantyre, Zomba, Mangochi, and Mzimba. During 2019, mediation services commenced in the four ‘new’ districts of Ntcheu, Kasungu, Karonga and Mulanje, making a total of 11 districts where village mediation is offered, out of Malawi’s 28 districts.

Mediators are clustered within selected TAs of the districts. Village mediators are grouped into clusters of approximately ten mediators, who operate with the support of two village mediation trainers. There may be five clusters with approximately fifty village mediators in each TA, and PASI reports they have trained and deployed 1,060 Village Mediators and 79 village mediation trainers during 2018-2019.[[35]](#footnote-35) This approach suggests that there is good accessibility of mediation services within the selected TAs, however the village mediation service is not available in other TAs of the same district. Due to transport constraints and distance, it is not easy for villagers to travel to another TA, nor for mediators to travel to villages in other TAs, even if they were willing to provide services in other TAs.

The village mediators have received disputes as follows:

Table 1: Cases received by village mediators 2018-2019

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 2018 | | 2019 | | Total | | Grand Total |
| Male | Female | Male | Female | Male | Female |
| 3,648 | 4,032 | 8,677 | 11,210 | 12,325 | 15,242 | 27,567 |

The number of cases received during 2019 has increased over 2018, since during 2018 new districts were being added, the mediators in these districts were being trained, and outreach was conducted to inform communities about the availability of the VMP mediators. During 2019, with all the new districts and mediators fully operational, the number of VMP cases received has more than doubled.

PASI has reported registering 55.3% of cases by women, which is slightly under the target of 60%.[[36]](#footnote-36) However, in discussions with village mediators during the field visit, the evaluation team were informed that although mediators recorded ‘Party 1’ and ‘Party 2’ information on the case record form, it was not necessary that ‘Party 1’ was the party which had first contacted them about the case. This means that while women are definitely involved in the majority of cases, the assertion that women are more likely to initiate the cases may be less reliable – although anecdotally, Village Mediators and beneficiaries did report that women were comfortable approaching the Village Mediators to register a case, particularly in family disputes and cases of marital abandonment. It would be helpful for PASI to review the forms or to address this issue during refresher training courses.

The village mediators have resolved disputes as follows: [[37]](#footnote-37)

Table 2: Cases resolved by village mediators 2018-2019

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2018 | | 2019 | | Total | | Grand Total |  |
| Male | Female | Male | Female | Male | Female | Target **[[38]](#footnote-38)** |
| 3,244 | 3,592 | 7,888 | 10,349 | 11,132 | 13,941 | 25,073 | 27,954 |

PASI has resolved 25,073 cases out of a two-year target of 27,954, or 89.7% of targeted cases. PASI did not reach the targeted number of resolved cases in Year 1 (resolved 6,836 of targeted 11,817 cases). However, PASI exceed the Year 2 target (resolved 19,887 of targeted 16,137 cases), and appears well placed to exceed the annual targets for Years 3 and 4.

Notably Zomba district was responsible for approximately 43% of all village mediation cases resolved during 2019. The evaluation team was not able to visit Zomba, but has requested additional information on this from PASI.

PASI focused heavily on training of village mediators in the old districts during 2018 (660 village mediators trained), and in the new districts in 2019 (400 village mediators trained). The training for village mediators is split into phases and totals ten days training, including a five-day orientation course which may be residential depending on travel logistics. This training is a significant investment by PASI, and a significant commitment by the volunteer mediators. It also provides an opportunity for skills development of the village mediators, and many of the mediators we spoke to highlighted their participation with PASI as a way to contribute to their community while also developing themselves. Although PASI has made a significant training commitment, the village mediators, trainers, traditional leaders and other stakeholders all emphasised the importance of providing continuing training to the village mediators, both as a way of further building their skills (noting that illiterate people may take longer to learn), and as a way of team-building and recognition for the contributions made by the village mediators.

As noted above, village mediators (excluding Village Mediator Trainers) work without stipends or allowances. Some village mediators expressed concerns that their expenses were not met by the programme – for example, to provide refreshments for the parties during a mediation, the cost of transport to travel to a mediation, and the costs associated with being a ‘well-presented’ community member who people would feel confident approaching with a dispute. PASI has provided blue uniform vests, bags and ID cards to village mediators, which is a positive initiative that has been well received, and provides some recognition and additional status to village mediators within their communities. Some village mediators and stakeholders suggested that other (financial and non-financial) forms of recognition would be welcome, including recognition events for well-performing mediators, exchanges of mediators between TAs and districts and specialised skill-development opportunities.



*PASI’s blue vests and ID cards make paralegals and village mediators easily recognisable*

Recognising that village mediators may travel several hours to conduct a mediation, PASI has also provided 450 new bicycles. However, a number of the bicycles require simple repairs (eg replacement tyres, chains, inner tubes) and village mediators said they could not afford to maintain the bicycles themselves and were uncertain how to arrange any repairs through PASI. Other village mediators said that due to the rain and difficult terrain, bicycles can only be utilised in the dry season, so they are a useful but partial solution to the transport issues faced by village mediators.

During 2019, PASI reported that 682 community sensitisation meetings were conducted. These meetings reach important stakeholders such as the TAs, Group Headmen and Village Headmen, along with community members. In Q4 2019, PASI reported that community sensitisation reached 19,671 community members. In one ‘old’ district, village mediators and trainers said that sensitisation in their area had already reached saturation point and everyone was already aware of the village mediation service. This should be taken into consideration by PASI when scheduling subsequent community sensitisation sessions.

The Village Mediation Service works in close collaboration with the Traditional Authorities, Group Headmen and Village Headmen. Village mediators informed the evaluators that they update the Village Headmen on the disputes they receive (within the boundaries of confidentiality), and also that Village Headmen and direct contacts to the mediators were the two main sources of case referrals to the Village Mediation Service. One of the Traditional Authorities interviewed for this evaluation referred repeatedly to the Village Mediation Service as ‘Our mediation service’, suggesting that he felt some involvement or ownership of the service.

In addition to the benefits for individual parties involved in village mediation, the benefits of providing a locally accessible, free, confidential mediation service which enjoys the trust of community residents should be noted. The mechanism has consequential impacts in restoring relationships, reducing community tensions and helping prevent violent escalations of disputes, which are valuable especially in a context of political uncertainty and increasing conflicts over land driven by climate change and population growth.

No doubt a certain proportion of cases would have escalated to the formal justice system if they were not resolved, and this is an important consideration for backlog reduction. However, the barriers to accessing justice such as cost, distance, lengthy processes, complex procedures, absence of lawyers etc would realistically have precluded many of these cases from entering the formal justice system. While Village Mediation will avoid some cases from entering into the formal justice system, it cannot be assumed that every case handled by village mediation is a case avoided in the formal justice system. The exception to this is cases which are diverted to mediation from the formal justice system, which is the subject of Output 2.

### Output 2: An Effective Diversion Scheme for Minor Offences Established to Benefit Both the Formal and Informal Justice Systems

*‘The police used to dump prisoners on us – they used to transfer cases directly to us, including people with weak cases, expired warrants, children. They used to extend the remand dates in absentia too. Now they are forced to go through the courts. If there is a tampered or expired warrant, then PASI will find this.’*

Key informant interview with Prison officer

Paralegals perform a crucial role in screening cases at police stations, courts and prisons, and encouraging the diversion of people charged with minor offences to other mechanisms including informal justice systems and village mediation (in locations where village mediation operates).

Table 3: Percentage of minor cases diverted, by Stage in formal justice system

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Stage | Number of Registered Cases | | | Number of Minor Cases | | | Minor cases diverted | | | % of minor cases diverted | | | % of All Cases diverted | | |
| Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total |
| Police | 6,456 | 491 | 6,947 | 2,198 | 248 | 2,446 | 386 | 74 | 460 | 18% | 30% | 19% | 6% | 15% | 7% |
| Courts | 4,146 | 833 | 4,979 | 2,291 | 795 | 3,086 | 317 | 57 | 374 | 14% | 7% | 12% | 8% | 7% | 8% |
| TOTAL | 10,602 | 1,324 | 11,926 | 4,489 | 1,043 | 5,532 | 703 | 131 | 834 | 16% | 13% | 15% | 7% | 10% | 7% |

The table above is taken from data provided by PASI as a snapshot from quarter three, 2019. The data is a sample based on districts where PASI is operating, but does not include all districts. Annual data is not available or reported. Accordingly, this table is informative, but is not comprehensive.

In addition, the Evaluators understand that the data reported by the Judiciary in the table above categorises civil cases as minor cases. Accordingly the proportion of minor criminal cases in the Court cannot be determined from this table, since the number is inflated by including civil cases.

The table above notes that in Q3 2019, 15% of registered minor cases were diverted (16% of male minor cases and 13% of female minor cases). These cases comprised approximately 7% of the overall registered caseload. It should be noted that in addition to these cases, it is likely that both the police and PASI were involved in many other minor cases which were diverted prior to formal registration by the police.

The data available does not differentiate between the diversion of adult and juvenile accused. Juveniles benefit from a more formalised diversion process under the Child Care, Protection and Justice Act, including a schedule of case types to be diverted, and the requirement for a social worker or paralegal to appear during hearings to support the juvenile. Respondents including Police, social workers and the Judiciary explained the importance of PASI paralegal’s work in facilitating the diversion and hearing processes for juveniles. it would be useful to disaggregate and report on this data if feasible.

In addition to PASI’s work on diversion, PASI seeks to reduce the proportion of minor cases in the formal justice system. Two measures are used for this – the proportion of minor cases compared to total registered cases, and the percentage of prisoners serving a sentence of three years or less.

Table 4: Proportion of minor cases in the formal justice institutions in the target districts [[39]](#footnote-39)

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Stage | Number of Registered Cases | | | | Number of Minor Cases | | | | % of Minor Cases | | |
| Male | Female | Total | Male | | Female | Total | Male | | Female | Total |
| Police | 6,456 | 491 | 6,947 | 2,198 | | 248 | 2,446 | 34% | | 51% | 35% |
| Courts | 4,146 | 833 | 4,979 | 2,291 | | 795 | 3,086 | 55% | | 95% | 62% |
| Prisons | 9,162 | 128 | 9,290 | 1,449 | | 20 | 1,469 | 16% | | 16% | 16% |
| TOTAL | 19,764 | 1,452 | 21,216 | 5,938 | | 1,063 | 7,001 | 30% | | 73% | 33% |

The table above is taken from data provided by PASI as a snapshot from quarter three, 2019. The data is a sample based on most districts where PASI is operating, but does not include all districts. Annual data is not available or reported. Accordingly, this table is informative, but is not comprehensive.

It is not easy to compare the data in this table, since the basis of reporting across the three justice institutions appears to be different. The Judiciary has reported all cases, including civil cases, and has treated civil cases as minor cases. The comparison would be more direct if it included only criminal cases. The Prison Service appears to have reported the number of registered and convicted prisoners, however this does not take into consideration the number of remand cases, which could arguably include a higher proportion of minor offences if people are sentenced and released due to time already served in pre-trial detention.

If the data were directly comparable across the institutions, one would normally expect to see a progressive reduction in the number of cases from stage to stage – ie, the most cases are registered by the police, the police dismiss some cases and charge others to court, and the court dismisses some cases, provides alternative sentences such as fines for other cases, and sentences the remaining cases to custodial sentences. At each stage, the number of cases reduces, and typically, the proportion of minor cases also reduces.

It is not possible to identify this trend here, perhaps due to differences in the way the data is reported by the justice institutions. Accordingly, it appears most valid to compare the data of each institution over time, rather than aggregate the data across institutions.

PASI has a baseline of 40% minor cases, and a target of reducing minor cases for 2019 of 30%.

Taking this into consideration the comments above:

* The Police report 35% of cases are minor offences, with women over-represented (51%) – ie, women are more likely to be charged with a minor offence than a serious offence, although overall they are less likely than men to be charged with any offence.
* The Judiciary report 62% of cases are minor, however if this includes all their civil cases then no direct comparison can be drawn. The percentage of women with minor cases in the courts is extraordinarily high (95%), however if this figure includes civil issues such as family law issues then this may be a partial explanation. It would be more useful to include only criminal cases in this category, to better reflect the flow of cases in the criminal justice system.
* The Prisons report 16% of registered convicted prisoners are for minor offences. This exceeds PASI’s target. However, the figure does not include detainees on remand

We note the challenges in obtaining and collating comparable data from justice institutions across the districts where PASI operates. However, since diversion of minor offences is a critical objective of the Access to Justice project, it is important to obtain accurate and reliable information. Due to the importance of this issue, it may be useful for PASI to undertake some more detailed studies across several districts where data collection and reporting is stronger, to provide better insights into the data reported above, and to better understand the reasons why minor cases are diverted or are not diverted. For example, the evaluation team was informed that only first-time offenders could be considered for diversion, so this could significantly limit the use of diversion. Where sureties are required as a pre-condition to diversion, structural barriers including gender, poverty, education and geographic location may also hinder the use of diversion. PASI could conduct further thematic research on these issues and their impact on the diversion of minor cases.

Table 5: Percentage of Prisoners Serving a Sentence of Less Than Three Years, as at Q3 2019 [[40]](#footnote-40)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Prison | Number of registered convicted Prisoners | | | Number of prisoners serving less than 3 years | | | % of prisoners serving less than 3 years | | |
| Male | Female | Total | Male | Female | Total | Male | Female | Total |
| TOTAL | 9,162 | 128 | 9,290 | 1,580 | 58 | 1,638 | 17% | 45% | 18% |

The table above is taken from data provided by PASI as a snapshot from quarter three, 2019. The data is a sample based on most districts where PASI is operating, but does not include data from Chichiri Prison. Annual data is not available or reported. Accordingly, this table is informative, but is not comprehensive.

PASI has established a baseline of 40% prisoners serving a sentence of less than three years, and a 2019 annual target of 30%. PASI has significantly exceeded this annual target, as in 2019 18% of convicted prisoners had a sentence of three years or less. However, it should be noted that 45% of women were serving sentences of less than three years, compared to 17% of men. As above, the reasons for this gender difference would benefit from further investigation – perhaps as women commit violent and serious offences at lower rates than men.

PASI’s work to support the implementation of diversion processes is important. However, further systemic improvements are required to formalise the use of diversion for adult cases. PASI has also had a role in advocating for these systemic improvements, by sensitising stakeholders and advocating for the development of policies and procedures – for example, to advocate for the Chief Justice to issue Practice Directions on diversion, for the development of a legislative amendment on diversion under the Criminal Procedure and Evidence Code, to develop a concept note to scope the inclusion of village mediation under the Judiciary’s Mandatory Mediation Rules.

PASI’s initiatives in this area are to be encouraged, however it should be noted that the introduction of diversion and alternatives to detention is a significant judicial reform undertaking, and is not the role of one NGO, however capable the NGO may be. A broader approach to research and systemic advocacy would provide more support for valuable initiatives such as this, and could include donors such as UNDP and the EU, UNICEF in relation to their mandate of children in contact with the law, and other NGOs active in criminal justice and conflict resolution.

Diversion and mediation are not included on the Criminal Justice Coordination Committee workplan of 2018, which aims to reduce prison overcrowding by reforming the use of parole. The extent to which diversion has been a focus of the Committee in 2019 is not clear. Closer alignment between the work of PASI and other components of the *Chilungamo* Programme could yield synergies and better justice outcomes.

The alternative dispute resolution mechanisms sought should also be carefully calibrated. PASI village mediation is not present in all TAs, so it is not currently feasible to refer diverted cases to village mediation in some locations. In locations where there is currently only one PASI paralegal, workload constraints limit the opportunities for the paralegal to become heavily involved in conducting mediations. During Key Informant Interviews, Magistrates also described how in practice they are constrained from mediating cases directly as anticipated under the Mandatory Mediation Rules, because if the case does not settle at mediation the Magistrate will then be precluded from continuing to hear the case, and the limited number of available magistrates meant that the case could not easily be reassigned to a colleague. Other potential constraints should also be reviewed, such as the practice that only first offenders are eligible for diversion, particularly in relation to child suspects.

**Case note: Paralegal workload**

*‘There’s only one paralegal officer in this district, and we have many cases so they are understaffed. The same paralegal goes to the police, prisons and court each morning. The accused are supposed to be told basic things before they come to the court, but the people who are illiterate don’t understand well and PASI doesn’t have enough time to help them understand properly. We rely on PAS to tell the suspects basic rights - It was a better before when there were two paralegals in the district.’*

Box 9: Key informant interview with Magistrate

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It may be feasible for PASI to identify and train a pool of district level / court-annexed mediators who could resolve cases referred from the police and courts, based on the successful village mediation model. However, the village mediation approach relies heavily on the endorsement of Traditional authorities and village headmen for legitimacy, so although the procedures may be similar the orientation of a court-annexed mediation service may be slightly different.

Similarly, close attention should be given to the selection of mediators – in the absence of a functional district level mediation service a minority of paralegals described efforts at mediation using police prosecutors, with limited benefits as the police prosecutors lack mediation training and the objectives of mediation may conflict with their roles as prosecutors. While in general a co-mediation approach is strongly recommended, it may be preferable for a paralegal to either conduct a sole mediation or decline to conduct a mediation, rather than conduct a mediation with an untrained and potentially biased co-mediator.

It is also essential to ensure that Magistrates are sensitised on the availability and operations of PASI mediation services, where these are available to receive diversions. While notably a minority, one Magistrate based in a PASI district for several years reported he was unaware that PASI offered a village mediation service in some TAs of the district and could potentially receive case referrals. It appears in that district that referrals to the VMP were predominantly made by the village headmen and perhaps police, rather than the Courts.

Police and paralegals also described situations where the arrest process was used to facilitate investigation, rather than the police having probable cause at the time of the arrest. The explanation provided was that the police feared suspects would flee the area if they were aware they were under investigation. While these fears may be correct, in order for the police to have reasonable or probably cause to make an arrest, there must be:

*‘An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which assuming them to be true would reasonably lead any prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charge was probably guilty of the crime imputed.’ [[41]](#footnote-41)*

The Malawi Courts have also been critical of the Police in initiating arrests and prosecutions merely on the information of the complainant, without reviewing the evidence of the complainant or taking independent action to take charge of the process.[[42]](#footnote-42) For example:

*‘Speaking for ourselves we believe that law enforcement should only effect an arrest when they have evidence of more than mere suspicion of criminality. We also believe that such evidence should only be the product of investigations. Where there is no investigation there cannot, we believe, be any evidence. We therefore find it rather perverse that law enforcement should arrest with a view to investigate.’[[43]](#footnote-43)*

**Case study: Arrest and police detention**

The Evaluation Team met with a beneficiary who was arrested on a charge of theft from his workplace and placed in police detention for five days without appearing before the Court. The arrest was conducted for the purpose of facilitating a police interview, and potentially did not meet probable cause requirements. Further, due to the reassignment of the investigating officer and the intervening weekend the officer did not conduct the interview until five days had elapsed after the arrest. The suspect was released on bail following the police interview.

It is essential to ensure that there is a proper legal foundation for arrests, and that PASI paralegals continue to zealously advocate for the application of pre-trial detention rules so suspects can be brought before the court as early as possible. Paralegals should have timely access to qualified lawyers who can provide support where the police are unable or unwilling to respond to the advocacy efforts of the paralegal.

Box 10: interview conducted with PASI beneficiary (details recorded on file)

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### Output 3 Strengthened Provision of First Legal Aid Services (Advice, Assistance and Legal Empowerment) to the Poor and Vulnerable People in Conflict with the Law in Malawi

Under this Output, PASI provides paralegal services at police, courts, and prison by conducting paralegal aid clinics; screening suspects, tracing sureties, witnesses and guardians; facilitating the release of detainees and conducting quarterly national management meetings with regional managers.

The work of PASI’s paralegals was noted as an exceptional contribution by all stakeholders. Respondents emphasised the commitment of paralegals, especially the work ethic of those paralegals who are the sole paralegal in a district, and must manage to balance competing work demands by themselves.

Respondents highlighted the critical roles that paralegals play in:

* Helping detainees to understand their rights in Court
* Helping detainees feel more confident about claiming their rights in Court and applying for bail
* Reducing the instances of unlawful detention and lengthy pre-trial detention
* Screening and facilitating the diversion or release of detainees
* Facilitating communication between justice actors
* Facilitating justice actors to respond to cases involving vulnerable people, particularly children.

A Court ruling delivered in the Gable Masangano case (2007)[[44]](#footnote-44) determined that conditions of Malawi prisons are unconstitutional. It interpreted the right to human dignity under s19 of the Constitution as including the right of prisoners not be subjected to conditions of prison overcrowding. The court held the state had consistently breached prisoners’ constitutional rights and that overcrowding and poor ventilation in the prisons amounts to inhuman and degrading treatment of the inmates.

Experience in Malawi has shown that lengthy custodial sentences handed to offenders committing petty offences is one of the major factors contributing to congestion in prisons. To address the overcrowding problem, largely following the Gable Masangano case ruling, courts in Malawi have adopted as a sentencing principle that imprisonment should be the exception and used ‘more sparingly’ against violent offenders for purposes for rehabilitating them, while non-custodial punishments are more appropriate for first-time offenders.

In view of the above, the following are the range of non-custodial punishments courts have been intensifying to reduce congestion in prisons:

* Payment of fines
* Probation
* Community Service Order (CSO) sentence
* Suspended sentence
* Immediate release orders
* Reduction of sentence by two-thirds
* Reduction of sentence by half
* Reduction of sentence by one-third

However, the above notwithstanding, there remains much to be done to decongest Malawi prisons and to improve conditions under which people are detained and uphold the enjoyment of their rights as detained persons. For example, the extremely limited use of Community Service Orders (CSO) is a case in point. The Guidelines on eligibility for CSOs reportedly limits their application to the most minor of offences (which the Police may normally decline to prosecute). The use of Community Service Orders also requires a supervisory and administrative framework, which does not appear to be operational in many locations.

Paralegal service delivery

PASI’s coverage of districts and sites of paralegal service delivery have increased significantly under the project. Since commencing the project in 2018, PASI now provides services in 98 police stations (from a baseline of 16, target 2019 56), 68 magistrates courts (from a baseline of 25, target 2019 35) and 27 prisons (from a baseline of 20, target 2019 25). PASI has exceeded or significantly exceeded its targets for increasing the sites where paralegal services are delivered. In turn, this provides increased accessibility of services and increased access to justice.

Chart 1: Sites of Paralegal service provision

PASI reported assisting over 134,000 clients in 2019, and facilitating the release of 33,337 people from places of detention.[[45]](#footnote-45) These numbers are exceptionally high, especially taking into consideration the limited number of PASI paralegal staff.

Without detracting from the performance of PASI paralegal staff, it should be noted that one consequence of PASI’s high volume paralegal work is that they are not in a position to provide individualised advice to clients.

Paralegal advice and assistance

The project document outlines that under this Output PASI will provide:

‘first legal aid services (advice, assistance and legal empowerment) to the poor and vulnerable people in conflict with the law in Malawi … The paralegal services to be supported by the Programme will include: providing appropriate basic legal advice and assistance to people awaiting trial in places of detention; assisting in defending the legal and constitutional rights of those in detention, especially women and girls; providing Paralegal Aid Clinics to suspects, accused, victims, witnesses, relatives, guardians …‘ *[[46]](#footnote-46)*

PASI paralegals provide a range of assistance to detainees, including conducting legal information clinics in places of detention, encouraging detainees to apply for bail, tracing of witnesses and sureties and providing information about the legal processes and what is expected of detainees at each stage.

However, PASI paralegals are unable to provide legal advice, individualised advice or legal assistance to detainees. PASI paralegals are not lawyers who are accredited to appear before the court, and PASI paralegals are not currently authorised to appear before the Court.[[47]](#footnote-47) The circumstances under which PASI paralegals work are not conducive to confidentiality, and it may be inappropriate to delve into case details in such environments. Thirdly, the volume of workload prevents PASI paralegals from engaging deeply with individual cases, and from providing individual and tailored information or advice. Rather, information is provided through group information sessions, which may cover general legal principles (eg bail is free, awareness of pre-trial detention periods etc) but does not necessarily assist the suspect to understand the intricate legal issues relating to the charges they face.

PASI notes that the Access to Justice Project is designed in such a way that Paralegals should reach as many people as possible in a day, rather than targeting an individual. Any prisoner with complicated issues is to be referred to Legal Aid lawyers by paralegals, under the MOU with the Legal Aid Board.

However, in practice Legal Aid lawyers are unable to assist in many cases – the number of legal aid lawyers are few, a legal aid lawyer is not present in all districts, and the Legal Aid Act limits the categories of cases in the Magistrates Courts where legal aid lawyers can represent clients. During the evaluators visit to Mangochi, the Prison authorities informed the evaluators that the prison currently held 87 suspects on remand. The (relatively new) Legal Aid office in Mangochi advised the evaluators that they had opened cases to represent two of these detainees. While some of these detainees may have retained a private lawyer, many will not have received any individualised legal advice specific to their situation.

This illustrates that there remains a gap in the provision of individualised legal advice and assistance. PASI paralegals do not fill that gap, as they are not lawyers, and their high-volume caseload would also preclude them from providing individualised advice and assistance. Legal aid lawyers are unable to fill this gap, as the number of lawyers is insufficient, and their geographic coverage remains incomplete.

Given that many of the suspects PASI supports are illiterate, the extent to which they can apply and act upon the general information they receive is an open issue which would benefit from further study.[[48]](#footnote-48) For example, during the evaluation a legal information session was observed for pre-trial detainees in a prison, and the detainees certainly appeared highly engaged and empowered as a result of the session. However, the extent to which the suspects are capable of applying the information in the sessions and achieving different justice outcomes is not clear. Creating a sense of empowerment and some understanding is already a worthwhile achievement, however ideally the project will also deliver better justice outcomes for vulnerable people. Further studies could be conducted to ascertain the extent to which this occurs, for example by looking at the different bail and case outcomes for detainees who participate in legal empowerment or receive legal advice compared to those who do not.

‘Perhaps the information the accused gets is not enough? Or their capacity is low?. Now they come to Court and say ‘I’m from Malawi, I have a family, I’m a good man, I want to apply for bail’.

They know they can apply for bail, which is something. But in most cases the information I get from them is not what I need to make a bail decision, so I have to probe further. I can ask them ‘Is there anything else?’ but if they remain silent I have nothing to work with. It’s also the same issue with people giving statements in mitigation at sentencing. The Defendants are not prepared enough or organised enough.’

Box 11: Key informant interview with Magistrate

‘Perhaps the information the accused gets is not enough? Or their capacity is low?. Now they come to Court and say ‘I’m from Malawi, I have a family, I’m a good man, I want to apply for bail’.

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Box 3: Key informant interview with Magistrate

In High Court trials, PASI has a working relationship with the Legal Aid Bureau and the Irish Rule of Law International programme. Under this arrangement, PASI paralegals assist in screening and interviewing detainees, and conveying this information to a Legal Aid Bureau lawyer who can then provide customised advice and representation to the detainee. Legal Aid Bureau services are more difficult to access for detainees with Magistrate Court cases,[[49]](#footnote-49) and PASI’s operational arrangements with the Legal Aid Bureau similarly differentiate between High Court and Magistrate Court cases.

As stated above, the Project document notes under Output 3 that PASI paralegals will provide first legal aid services (advice, assistance and legal empowerment), and that interventions will include basic legal advice and assistance to people awaiting trial in places of detention.

It should be made explicit that this basic legal advice and assistance does not include individualised legal advice in relation to the detainee’s case. Rather, it compromises general legal information - for example on pre-trial detention rules and court procedures.

This illustrates an unmet justice need for the provision of individualised legal advice and assistance to detainees. PASI paralegals are unable to provide individualised advice, and Legal Aid lawyers are also not in a position to routinely provide this legal advice, as they are insufficient in number, not based in every district, and focused more on representation rather than pre-trial advice.

This unmet need for individualised legal assistance could be met in several ways. It is also not obligatory for PASI to adapt their service to meet this need, should they wish to continue to focus on general paralegal services. There could be space and advocacy for other actors to assist in meeting this gap – whether by advocating for additional legal aid resources for the Legal Aid Bureau, collaborating with other NGOs to provide specialised legal assistance (especially for clients with particular vulnerabilities, such as disabilities), by advocating for a lawyers duty roster service at Courts or by advocating for a model of service delivery which allows paralegals to provide limited assistance providing they operate under the supervision of a lawyer. However, it is important to acknowledge that this gap exists as step towards identifying solutions.

While recognising that PASI paralegals are not legally qualified and do not currently have a right of appearance before the Court, it should be noted that Police Prosecutors are generally also not legally qualified yet they do benefit from the opportunity to appear in Court. A clearer discussion on the extent to which PASI is able (financially, organisationally and philosophically) to address currently unmet justice needs and the extent of the gaps which remain could lead to continuing innovations in the model of paralegal work which is used in Malawi. Notably, Sierra Leone’s engagement with paralegals has been heavily informed by the experience in Malawi specifically influenced by the lessons learned of PASI – and Sierra Leone’s Legal Aid Act now authorises paralegals to provide ‘advice, legal assistance and legal education’ and case diversion.[[50]](#footnote-50) Although Malawi (and PASI) inspired Sierra Leone’s paralegal development, similar provisions have not been included in Malawi’s legal aid legislation.

However, paralegals do have some recognition under the amended Legal Education and Legal Practitioners Act (which mandates the Malawi Institute for Legal Education to train paralegals) and under the ongoing review of the Prisons Act. PASI advise that they plan a symposium in 2020 to further promote paralegal recognition, building upon the 2018 Paralegal Conference. The Criminal Justice Coordination Committee chaired by the Chief Justice is also considering a limited right of audience for paralegals.

Prison decongestion

Returning to the questions of PASI’s results and achievement in decongestion, PASI has facilitated the release of over 61,056 detainees from police stations (33,828), courts (17,795) and prisons (9,433).

The number of facilitated releases exceeds substantially exceeds PASI’s targets for 2018 and 2019 of 21,000 per year, or 42,000 cumulative release target (ie actual 61,056 versus cumulative target of 42,000).

Chart 2: Number of PASI facilitated releases, by site

The majority of people released were adult males (47,785), followed by women (6,530), boys (6,132) and girls (609).

Chart 3: Number of PASI facilitated release, by gender

Although PASI has facilitated the release of over 61,000 detainees in two years, including almost 10,000 people from prison, the prison population has decreased only slightly from 15,192 (2017) to 14,778 (2019).[[51]](#footnote-51) This is shown on the following charts:

Chart 4: Prison Population of Malawi by Year

The decrease is slightly higher when taking into account Malawi’s growing national population, as the rate of prison population per 100,000 of Malawi’s national population has decreased from 88 in 2017 to 79 in 2019.

Chart 5: Rate of Malawi Prison Population per 100,000 national population [[52]](#footnote-52)

Although PASI is facilitating the release of a large number of detainees, the prison population has declined only slightly, with extensive overcrowding and poor conditions such that the prisons are largely unfit for occupancy, according to a 2019 report of the Malawi Inspectorate of Prisons.

Accordingly, while PASI makes a very positive contribution in assisting to divert cases and release detainees, as one civil society organisation PASI are limited in the impact they can have on reducing the overall prison population. To further reducing overcrowding, broader criminal justice reforms should be pursued in Malawi including diversion (as discussed above), strengthened bail provisions, alternative sentencing options (with greater use of non-custodial sentences), use of early release and conditional release with strengthened probational and parole systems.

Some of these initiatives (such as parole reform) are already on the workplan for the Criminal Justice Coordination Committee. As the sole Civil Society representative on the CJCC, PASI has advocated for these systemic improvements, and participated in initiatives such as the National Conference on the Decriminalisation of Petty Offences (Lilongwe, August 2019), drafting of plea-bargaining rules, and the revision of the Magistrates Handbook.

These reforms require a system-wide approach, and given the budget constraints and competing strategic and operational issues, the priority and pace with which these reforms are taken by up the rule of law institutions and the *Chilungamo* mechanism are not clear. PASI plays an important role in helping to ameliorate the impact of the criminal justice system on vulnerable people, and could play a further role in providing a solid evidence basis for criminal justice reform initiatives. However, even as the sole civil society representative on the CJCC, it is beyond the role and capacity of any single civil society organisation to drive the systemic criminal justice reforms which are required – this is an issue to be taken up for advocacy by the UN, EU and donors more generally. UNICEF (in relation to child justice) and UNODC also have specific technical expertise in diversion and alternatives to detention, and UNDP could make more use of both its’ in-house technical expertise on access to justice, as well as playing a convening role to draw upon the respective expertise of sister UN agencies.

Despite PASI’s best efforts on screening and bail advocacy, it should be noted that problems with bail do continue. The Draft Report of the Malawi Human Rights Commission notes that police still charge defendants to process bail, lawyers take an advance but do not advocate for the client, and there are:

*‘some problems bordering on corruption and fraudulent practices on the part of some law enforcement agencies.’ [[53]](#footnote-53)*

While the presence of PASI’s paralegals may deter some instances of these fraudulent practices, it appears that the practices still remain.

In relation to bail, the evaluation team was advised by some paralegals that they encourage all suspects to plead not guilty, partly so they have the opportunity to test the prosecution’s case, but primarily so they will be eligible to apply for bail and potentially be released. This may be an appropriate strategy given the justice constraints in Malawi. However, it highlights the opportunities for the reform on sentencing policy, so Judges can offer sentencing incentives to suspects who plead guilty at an early stage and avoid the judicial investment required for a full hearing.

### Output 4 Strengthened Coordination Mechanisms to Ensure Efficient and Effective Flow of Information and Delivery of Justice in the Criminal Justice Agencies and Communities

This output aims to:

‘*address the need for improved communication, coordination and collaboration among key stakeholders to ensure timely and efficient access to justice for the vulnerable people who are in conflict with the law.’ [[54]](#footnote-54)*

Under this output, PASI supports Court Users Committee / Case management Committee meetings at Community, district and regional levels, Camp Courts, Case coordination meetings, and preparation of status reports on conditions in places of detention.

Court Users Committee meetings

*‘The police or Court or PASI can call for the Court Users Committee meetings, depending on who has issues and who has funding. The meetings are always chaired by the Judiciary and we hold them quarterly … If we held them more regularly it would help.’*

Key informant interview with Police officer

*‘If we invite chiefs and NGOs to the Court Users meetings once and we don’t give them something then they don’t come back the next time.’*

Key informant interview with Prison officer

PASI provides limited support to the implementation of Court Users Committee meetings. These meetings are chaired by the Magistrate, and involve a range of justice actors and community stakeholders. PASI can provide support for the meetings to take place monthly, although in some districts such as Lilongwe the meetings are reportedly more irregular.

This discussion is also applicable to the case coordination meetings, as in practice respondents were unable to differentiate between ‘Court Users Committee meetings’, ‘Case management Committee meetings’ and ‘case coordination meetings’ – respondents used CUC interchangeably to describe these meetings. However, Case Coordination meetings are intended to refer to a meeting which deliberately reviews specific cases and considers whether it is appropriate to discharge or bail the defendant, or whether the court date should be renewed.

Respondents provided mixed feedback on the implementation and effectiveness of these committees. Firstly, respondents had different understandings of the purpose of the CUC meetings. Some respondents regarded them as a small technical meeting at district level, including justice actors, Government representatives and some community leaders. Other respondents perceived the CUC meetings as being a large-scale public event, convened for the purpose of outreach and public relations. As CUC may be convened at regional, district and community levels, the implementation approach taken may be very different at the various levels. Some respondents said that CUCs were arranged on a regular basis, while other respondents said that the CUCs were convened as required when there were issues to resolve.

There are several mechanisms to fund CUC meetings – *Chilungamo* funds the rule of law institutions to convene one CUC each year, Irish Rule of Law provides funding via PASI to convene CUC meetings, and EU / UNDP also fund PASI to convene monthly CUC meetings. This is not necessarily a duplication, since one donor may fund a community CUC and another donor may fund a district CUC event. However, it may also contribute to unclear operational arrangements.

The Judiciary provided a short report on CUC which were funded by *Chilungamo* in February 2019 (and which were not supported by PASI). The CUCs were held in fourteen districts, and discussed a range of issues including SGBV, land issues, community policing and the relationship between the Court and communities. The report identified some successes and challenges of the justice system. However, there were no action points noted to follow up on the issues raised.

We understand that DFID and Coffey will undertake a study of the effectiveness of CUCs under the *Tithetse nkhanza* SGBV programme. This study will no doubt be very informative. In addition, some simple contributions could be made to improving the effectiveness of the CUC meetings:

1. Develop the Terms of Reference for Court Users Committee meetings, setting out roles and responsibilities.
2. Allocate responsibility for following up on issues at each meeting, and review the minutes and action points at the following meetings until the issue is addressed.
3. Use different names to differentiate between
   1. small technical meetings which are intended to address technical policy and coordination issues between justice actors,
   2. technical meetings which are intended for case tracking, to discuss specific cases and facilitate the release of specific detainees, and
   3. broader community events which are intended for outreach, public relations and to provide an interface for external actors.

Each type of meeting has a specific purpose, and the effectiveness of each is undermined if they are inter-mingled and stakeholders cannot differentiate between them.

PASI could propose these improvements, using its own experiences as an evidentiary basis, and *Chilungamo* and the Judiciary could potentially coordinate the implementation of a strengthened sectoral approach to CUC meetings.

Camp Courts



Lilongwe Prison Camp Court

*‘We have sometimes looked bad because we aren’t able to do enough preparation. We want around seven to ten days, but sometimes we get the case list on Thursday or Friday and the camp court is on Monday so we don’t have time to prepare. I think this is also related to funding for them – when they get the funds they want to do the camp court straight away.’*

Key informant interview with lawyer

Camp Courts are conceived as a way of convening a Court session inside the prison, as a way of reducing case backlog and overcrowding. They are intended to target suspects whose pre-trial custody time limits have been exceeded, suspects whose remand warrants have expired, suspects who have applied for police or court bail but have not been released, and suspects with special circumstances eg due to vulnerability. Camp Courts are convened on an ad-hoc, as needed basis, and up to twenty cases are deal with in each day of a Camp Court. The national expert had the opportunity to observe one Camp Court during the evaluation period.

During 2018 – 2019, PASI convened 158 Camp Courts. PASI’s target was to convene 220 Camp Courts through this period, so the target was not reached. However, some additional Camp Courts were convened by other justice actors, so the total number of Camp Courts convened would be higher than the Camp Courts convened by PASI alone. Interruptions to the disbursement of funds reportedly had some impact upon the number of Camp Courts convened, as the Camp Courts cannot be arranged until funding is available. While the funds required to support a Magistrate’s Camp court are fairly minimal (less than $100), the cost of a High Court Camp Court may reach $900 - $1,000 as the Judge, Prosecutors and lawyers may need to travel from another district.

The outcomes of the PASI convened Camp Courts were as follows:

Chart 6: Outcomes of PASI convened Camp Courts 2018-2019, by gender and age

As a proportion, the PASI convened Camp Court outcomes were as follows:

Table 6: Outcomes of PASI convened Camp Courts by Gender and Age

|  |  |  |
| --- | --- | --- |
|  | Outcome –  Discharge / bail | Outcome –  Court date renewed |
| Men | 1,880 (56.2%) | 1,464 (43.8%) |
| Women | 123 (76.9) | 37 (23.1%) |
| Boys | 105 (73.4%) | 38 (26.6%) |
| Girls | 16 (55.2%) | 13 (44.8%) |

Women and boys received bail or had their cases dismissed at relatively high rates at Camp Courts. Girls had lower rates (consistent with adult men), although the number of girls in this sample was relatively limited. It should be noted that renewing the Court date is still a constructive case management result (although unfortunately less favourable for the defendant), since the Court has reviewed the case file and decided it is appropriate that the defendant remains in custody until the next hearing date.

Respondents were generally very positive about the impacts of Camp Courts. While most Camp Courts are facilitated by PASI, other rule of law stakeholders and NGOs may also fund and arrange a Camp Court, or approach *Chilungamo* and request funding to convene a Camp Court.[[55]](#footnote-55)

There do not appear to be any published guidelines, policies or procedures on how to convene a Camp Court. PASI have their own approach which they follow, and the Prison Service and PASI both regarded the Camp Courts organised by PASI as the most effective, due to the extra effort placed in screening the cases to ensure they are appropriate for a Camp Court, in locating the cases which have delayed and which should be expedited by a Camp Court, in persuading the witnesses and sureties to attend, and in ensuring that all preparations are made. Without this detailed preparation, respondents said it is more likely that the cases listed for the Camp Court will not succeed for various reasons – for example, if the detainee’s circumstances are not appropriate for bail, if the witnesses do not attend, if the Magistrate handling the case has not noted their instructions on the file, if the correct police prosecutor is not available to attend etc.

Noting that Camp Courts are a very important mechanism to alleviating backlogs and overcrowding, it would be a valuable contribution for PASI to document the procedures which they follow to properly organise and convene a Camp Court. This could then serve as the guidelines to be followed by other stakeholders if they chose to convene a Camp Court, whether they are a rule of law institution or another NGO. If PASI keeps their approach internal, the opportunity to improve justice practices more generally in Malawi is missed.

Follow up on Camp Courts is also a critical issue. For example, while a Camp Court may order bail subject to conditions, a detainee may not be able to meet those conditions and may remain in detention while the Court is under the impression that he has been released. Although the outcome may be recorded as bail granted, in practice a small proportion of detainees will not be able to meet the set bail conditions. Prison personnel and PASI paralegals estimated that perhaps four to five detainees per Camp Court who were granted bail had difficulty meeting their conditions and required further assistances, with a smaller proportion unable to arrange bail even after PASI assistance. Detainees may also receive bail on one charge, but remain in detention due to unrelated serious offences for which bail has been refused.

In a draft report, The Malawi Human Rights Commission has noted that some prisoners are granted bail or set free by the Court, but are not released by police officers until the detainee pays money.[[56]](#footnote-56)

An area of potential further study would be to track a sample of detainees who are awarded bail at Camp Courts, and monitor the extent to which they are able to exercise bail by themselves, with PASI assistance, or unable to meet the conditions required for bail.

It should be noted that there is a risk of creating perverse incentives in relation to Camp Courts – that is, that the Camp Courts will become perceived as a solution, and that the rule of law stakeholders will be unwilling to address issues except via mechanisms such as the Camp Court where they obtain modest allowances. For example, the evaluation team was told in some locations that it was not possible to convene Camp Courts because the budget was not available – the rule of law actors were not willing to attend a Camp Court unless their allowances were paid. On another occasion, PASI reported that the CUC identified a systemic issue with detainees remaining in detention after the expiration of their remand warrant, and the CUC members resolved that the Camp Courts would address this issue[[57]](#footnote-57). Camp Courts are intended as a means of identifying and redressing backlog issues, but they should not be relied on as the primary mechanism to address systemic issues – in cases like this, it would be appropriate for CUC members to identify and address the root causes of the expired warrants, rather than continuing to respond to the consequences of the problem through Camp Courts.

### Output 5: Strengthened, Effective and Efficient Management, Partnership Formation, Research, Monitoring and Evaluation Services

Under this Output PASI includes institutional management of the project (such as Steering Committee meetings / PASI Board meetings, Project management meetings), partnerships, communications and visibility activities, project monitoring and project management capacity building activities supported by UNDP.

Institutional management

Minutes of some project management meetings were provided to the evaluation team. The records show that some Steering Committee meetings, PASI Board Meetings and Project management meetings have been more irregular than planned. For example, one Steering Committee was reported in both 2018 and 2019, although Steering Committees should be convened each six months. One Project Board meeting was reported in both 2018 and 2019, although under PASI’s Constitution Project Board meetings should be convened every six months. Several project management meeting minutes were provided, however it appears that there may also have been gaps in project management meetings as the minutes of many months were not provided.

While noting the difficulties of staff turnover, high workloads and staff travel, further attention is required to ensure that required institutional management meetings can take place as scheduled.

The evaluation team has not been advised of any specific audit recommendations relating to the Access to Justice Project.

Partnerships

PASI has successfully negotiated MOUs with a range of justice institutions, after a lengthy process. MOUs have been signed with the Malawi Judiciary, Malawi Prison Service, Inspectorate of Prisons, Malawi Police Service, Directorate of Public Prosecutions, Legal Aid Bureau, Ministry of Health, and Ministry of Local Government and Rural Development. This is a significant achievement for a civil society organisation, and is a positive reflection of the esteem in which PASI is held by Government institutions.

MOUs are still pending with the Malawi Law Society and the Human Rights Commission. The evaluation team was able to meet with a representative of the Human Rights Commission, who explained that they are very satisfied with the collaboration between PASI and the Human Rights Commission. However, due to the Human Rights Commission’s current institutional issues, they are not in a position to sign any MOUs at present. Unfortunately the evaluation team was unable to meet with a representative of the Malawi Law Society during the evaluation, as the representative was forced to cancel the appointment due to a personal emergency.

PASI is the sole civil society representative on the Criminal Justice Coordination Committee, a member of the National Task Force on the Universal Periodic Review, and a member of the Task Force on the African Charter on Human and People’s Rights, and has official observer status granted by the African Commission on Human and People’s Rights. The PASI National Director was also appointed as a Law Commissioner for the review of the Prisons Act.

In general, it appears that after a long process, institutional agreements have been completed with almost all key stakeholders. This is important as a way of formalising the relationships between PASI and rule of law stakeholders, and establishing cooperation at an organisational level rather than being reliant on personal persuasiveness and connections.

Communications and visibility



PASI / EU poster at Mangochi Magistrates Court

PASI and UNDP have developed a Communications and Visibility Plan, which is also one of the requirements of European Union funding. The Plan includes outreach materials, press releases, media visits, social media and audio-visual productions. [[58]](#footnote-58)

PASI and UNDP have produced notable visibility items, such as short documentaries on village mediation and paralegal services which have been released on UNDP Malawi’s Youtube channel. These documentaries appear very well produced, and would benefit from broader distribution.

PASI has recognised the challenge of ensuring that their communications must be ‘newsworthy’ if they are hoping for free distribution in mainstream media. A sharper focus on impact and human interest stories may help obtain more coverage, as may cultivating relationships with journalists who typically report on justice and legal issues.

Noting the heavy reliance upon traditional leaders as a source of legitimacy and referrals to Village Mediation activities, it is appropriate for the project to consider traditional leaders and village headmen as key stakeholders and directly target them in some communications, rather than seeking to target the general community at-large.

PASI’s social media presence is quite limited. Given the prominence of smart phones in Malawi, especially among young people, a reactivated social media presence may be an effective mechanism to communicate with beneficiaries.

Project monitoring and learning

The project monitoring approach appears to have strengthened over time during project implementation. While the Project Board appears to have raised some concerns over some indicators and whether the targets were appropriate, these issues appear to have been resolved. The project baseline report was completed in 2018, along with User Perception Surveys on the Village Mediation Project in 2018 and 2019. Regular monitoring visits have been scheduled by the Access to Justice Project management team, including some visits supported by UNDP’s monitoring and evaluation officer, and joint PASI / UNDP / EU donor monitoring visits.

On the basis of the highly positive evaluation interviews, reports reviewed and the successful activities observed during the evaluation period, the Evaluation Team is satisfied that the routine PASI activities such as daily screening in the police stations, prisons and courts; legal information clinics and similar daily events are taking place on a regular basis. Ad-hoc activities which are subject to demand, dependent on funding and / or the cooperation of stakeholders (such as Camp Courts and CUC meetings) are occurring on a slightly more irregular basis, but are still taking place regularly. We acknowledge that the recording and reporting of activities will remain a challenge, particularly when relying on paper-based data entry and collation by village mediators, courts and prison officials. However, notwithstanding the data challenges, the evaluation team is satisfied that the activities appear to be taking place as planned.

Some monitoring by PASI and UNDP must remain in place for compliance, quality assurance and reporting reasons. However, given that the established monitoring system appears to be operating reasonably effectively, we would encourage UNDP and PASI to take advantage of the monitoring resources they have available and be somewhat more ambitious in their monitoring approach, by replacing some activity level indicators with a fewer number of outcome / impact indicators, and by placing a greater emphasis on the ‘learning’ component of monitoring.

The Access to Justice Project assists such a large number of people that it runs a risk of becoming a victim of its own success, as the impacts of PASI’s work can become overshadowed by the numbers. The learning component of PASI’s monitoring and evaluation work can help to identify the lessons learned, the impacts of PASI’s work and the human faces which are behind the impressive quantitative data.

The Access to Justice Project document notes that the project will provide:

*‘action-orientated research aimed at advocating for a more efficient and equitable justice system with the principal aim of informing and influencing policy change.’ [[59]](#footnote-59)*

The following types of research were noted:

1. *General research – including the identification of best practices in the various fields that the paralegals operate in, drawing on best international practices and research in the field. This would require sufficient internet research training and capacity;*
2. *Legal research – monitoring changes in local, regional and international laws that impact on the work of paralegals in all spheres; and*
3. *Empirical research – developing systems of doing and collecting empirical research from courts, prisons and villages; publishing this research in occasional research papers; disseminating the results of the research to all paralegals and relevant role players; incorporating research results in training materials; and using the results to develop annual policy. [[60]](#footnote-60)*

Based upon this, PASI originally targeted the preparation of two occasional research papers. The first nominated study was the Village Mediation Project User Perception Survey. The evaluation team considers that this is an important area of PASI’s role which could be expanded as originally proposed in the project document, to provide action orientated, evidence-based research. The evaluation has flagged several additional areas of PASI’s work which would benefit from short studies, including:

* The impacts of legal empowerment clinics on bail outcomes
* Follow up study on Camp Court outcomes
* Comparison of TAs caseloads in areas with village mediation compared to areas without village mediation
* Access to justice issues for people with disabilities
* Impact of Court Users Committee meetings (noting that DFID intends to review this topic)

Project management and financial capacity building

UNDP has provided some project management and financial management capacity support and oversight to PASI during implementation. PASI personnel expressed appreciation for the support, but simultaneously expressed some concerns that this support was unnecessary, due to the professionalism of the organisation and PASI’s past performance in managing grants for donors such as DFID.

As the evaluation team understands the project history, the European Union is not able to give funds to PASI directly under its current window, but must pass funding through a pre-approved recipient such as UNDP. As the fund recipient, UNDP is then responsible to ensure compliance with the European Union’s somewhat complex eligible expenditure process – more simply, if PASI spends EU funding on ineligible expenses then UNDP is financially responsible for this. This creates a necessity for UNDP to oversee and develop PASI’s organisational capacity, although it appears there have been occasional frustrations with this process on both parts, particularly in relation to the release of payments as discussed under Efficiency.

PASI has a long organisational history and is world renowned for its leadership on paralegal service delivery. At the same time, the organisational has invested almost all of their resources into service delivery, and has invested relatively little in institutional development. As a result, institutional procedures such as procurement, asset management and financial management were relatively undeveloped at the start of the current project with UNDP. For example, PASI had a paper based financial management system, had a limited asset management system (as PASI owned few assets), and had a limited procurement system (since major procurements were conducted directly by former donors rather than PASI). PASI remains heavily reliant on the leadership and expertise of its founding Director. Although the National Director provides training and mentoring for PASI staff members, and UNDP has supported PASI staff to undertake a short international course on corporate governance, the organisation remains heavily dependent upon his expertise and experience. PASI has developed its institutional capacities during this project with technical assistance from UNDP, however it is likely that further financial investment in these management systems will be required to create a strong and financially stable organisation.

Case study:

‘*There was a case where the family was separating and they reached the stage where they were dividing their assets, which involves the chiefs. The couple went to the chiefs to arrange the divorce and told the chiefs that they had given up, and wanted to divorce and divide their property. They lived in a grass shack, and they had bought bricks to build a house, but now they wanted to divide the bricks and sell them.*

*The chiefs adjourned the case for a week and the parties found out about village mediation. The mediators were able to bring both parties to the table to discuss their problems. Over two mediation sessions they managed to resolve their issues. Instead of selling the bricks they used them to build their house, and they are still together now.*

*As mediators, our source of happiness is seeing people go from an overwhelmingly hopeless situation and see people walk away happy because of our help, and the community don’t know that it happened.’*

Box 12: Interview with village mediator

Box 4: Interview with village mediator

Box 12: Interview with village mediator

Box 4: Interview with village mediator

# Annex 5: Access to Justice Project relevance

The evaluation considered the Access to Justice Project’s relevance in terms of alignment to international goals, alignment to national development goals, alignment with the national and regional context, alignment with existing structures and relevance to vulnerable people.

### Alignment to global and national development goals

The Access to Justice Project is aligned with the global Sustainable Development Goal 16, “promotion of peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

It is plausible that PASI’s work will contribute towards the fulfilment of SDG 16.3 targets:

Table 7: SDG 16.3 target and indicators

|  |  |
| --- | --- |
| Target | Indicators |
| 16.3  Promote the rule of law at the national and international levels and ensure equal access to justice for all | 16.3.1  Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms |
| 16.3.2  Unsentenced detainees as a proportion of overall prison population |

SDG Indicator 16.3.1 may be partially relevant. The growth in PASI’s village mediation services does indicate increased access to primary justice for many people in the bomas, however the majority of these disputants are not victims of violence. The 2018 Justice and Democratic Accountability Survey found that five percent of respondents or members of their households had been a victim of crime in the previous 12 months, with 22.4% being victims of assault and 14.9% victims of robbery.[[61]](#footnote-61) 61.8% of victims of crime reported the crime to an authority, although the actual authority reported to was not included in the study.[[62]](#footnote-62)

SDG Indicator 16.3.2 appears directly relevant to PASI’s paralegal and diversion work. According to PASI’s baseline study, in 2017 5,925 remandees / unsentenced detainees were imprisoned, which was 38% of the total prison population (total 15,192). In 2019, the Malawi Prisons Inspectorate reported that the total prison population was 14,778, which still meant significant overcrowding considering the official prison capacity of 5,000.[[63]](#footnote-63) The desegregation of remand and convicted prisoners was not reported.

### Alignment with Regional and National context

In recent years, there has been a global movement towards promoting Access to Justice, as part of a broader strategy to reduce poverty, encourage economic development, and promote stability and security. Even more crucially ensure the equitable realization to human rights to all citizenry. This is particularly the case for Africa. Currently, Africa is the world’s second fastest growing region after Asia, with annual GDP growth rates in excess of 5% over the last decade (AfDB, 2013). However, this impressive growth has not translated into inclusive growth. In all this, Malawi is no exception. Even after 56 years of independence, Malawi continues to struggle in many areas of society, including the justice system. Although access to justice has been highlighted as one of the pillars of the Malawian justice system under the Constitution,[[64]](#footnote-64) ordinary Malawians are rarely empowered to access it. Poverty has increased in rural areas where 85% of the population lives, compared to urban areas where it fell significantly from 25 to 17%. A key obstacle to reducing poverty is low agricultural productivity, as the majority of the poor remain locked in low productivity subsistence farming. This social context means the majority of Malawians cannot afford legal fees charged by lawyers and are heavily dependent on the services of the Legal Aid Bureau or NGOs. The agricultural sector remains the bedrock of Malawi’s economy, accounting for 39% of gross domestic product (GDP), 85% of the labour force and generating about 83% of foreign exchange earnings. However, in recent years the sector has been characterised by low productivity due to various structural challenges in the sector. All this has impacted on the Government’s capacity to provide resources for most sectors of Government including the justice sector.

Against this background, and in a bid to promote broad based access to Justice, particularly among the marginalised communities, Malawi along with many African countries now recognise customary law as part of their legal framework, requiring that is compatible with the Constitution as well as international human rights standards.[[65]](#footnote-65) Accordingly, the Malawi traditional justice system is based on the recognition of traditional authorities. Specifically, the Chiefs Act of 1967 provides that traditional authorities are the administrative head of local communities. Although the Chiefs Act does not specifically provide an adjudication function for traditional authorities, in practice it is considered to be part of their functions and is recognised as such in local communities. Article 110 of the Constitution recognises customary law, which the traditional authorities generally apply in resolving disputes. They have a hierarchical structure that goes from village headman to group village headman, sub-traditional authority to Traditional Authority (TA). However, in terms of authority, the TAs form part of the executive branch, and technically report to the Ministry of Local Government and not the Judiciary. Their functions include preserving the peace and carrying out the traditional functions of office under customary law, provided that this is not contrary to the Constitution. TAs are also involved in dispute resolution in a variety of matters, including civil disputes, family law matters, inheritance, minor damage to property and land disputes.

The weakness of the formal justice system and the preference for dispute resolution by traditional authorities mean that in practice traditional authorities exact a token fee for their services,[[66]](#footnote-66) which in some instances may be beyond the reach of the poor and vulnerable litigants in the community. In this regard, the Access to Justice Project has been a focused attempt to make justice accessible and streamline the justice system at the local level with a more cost effective, efficient and inclusive approach for promoting access to justice by the poor and vulnerable groups especially women and children. It does so without exacting any fee from the clients. Most significantly, this project was implemented against the backdrop of interrelated systemic shortcomings in the judiciary system, such as: shortage of qualified personnel, under resourced courts, geographic access challenges and issues of mistrust concerning the courts and law enforcement agencies by communities (see further Schärf, et al, 2002).

### Alignment to national development agendas

The assessment also finds that the Access to Justice Project is highly relevant to the Malawian development context and also well linked to national development policies, such as the Malawi Growth and Development Strategy (MGDS); the Education Sector wide Approaches (ESWAp) and other policies pertaining to Civic Education, Community Empowerment, Gender Equality, Human Rights, among others. Even more importantly, PASI is implemented in line with Malawi law, which specifically provides for the ‘inclusiveness’ of all people through Section 20(1) of the Constitution, which provides that ‘Discrimination of persons in any form is prohibited’ and that ‘all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property or other status’.

Key informant interviews with various stakeholders unequivocally show that the PASI design has been responsive to the challenges of Access to Justice in Malawi by strengthening the justice delivery system at the district and local level so that the sector is positioned to address bottlenecks in the delivery justice to the poor and the marginalised. This was evidenced by the wide ranging capacity building opportunity district and community facilitators (mainly the paralegals and the village mediators) were exposed to and the notable difference these cadre of staff had made among the beneficiaries. This is mainly in terms of facilitating diversion in the communities, monitoring the observance of the pre-trial detention rules and child incarceration in police stations, and decongesting the prisons.

### Alignment with existing implementation structures

The project is also relevant in that it has avoided creating parallel structures, rather it focuses on alleviating justice bottlenecks in the existing rule of law structures (police, judiciary, prisons). For example, the evaluation has affirmed that the paralegals have been endorsed by all stakeholders at the district and are housed within reach of all their district counterparts (Police, Prisons, Department of Social Welfare and the courts). This strategic positioning has facilitated communication, consultation, referrals and responsiveness to emerging issues in real time. The paralegals have also collaborated closely with the police and prison authorities in operationalising pre-trial detention rules and addressing issues related to the extended incarceration of inmates. PASI’s alignment with existent structures was also evident in the high awareness levels of the project and its objectives by all stakeholders. The project’s assimilation with existing structures has also been a major attribute at the community level in the sense that it has been embraced by the traditional authorities, this was particularly evident with the Village Mediation component. During key Informant interviews it was generally acknowledged that traditional leaders initially viewed the Village Mediation component of the project with a considerable level of suspicion, fearing that it would usurp their authority in the village leadership hierarchy. However, following intensive capacity building programmes organised by PASI, the chiefs’ guarded stance has significantly softened. They are now highly supportive and laudatory of village mediation. Even more, they are now instrumental in promoting the work of village mediators, particularly in facilitating referrals for mediation. The interviewed chiefs also openly embrace the Village Mediation principle, touting it as emancipating them to concentrate on critical matters, such as adjudication on land matters, sorting chieftaincy wrangles and inter village conflicts, etc. In sum, the project’s focus on strengthening and aligning itself with, as opposed to duplicating or ignoring, the existing village structures has uniquely cemented its relevance.

### Relevance for vulnerable people

The Access to Justice Project is designed to assist vulnerable people to access justice. Under its paralegal component, PASI has an explicit focus on people in detention, who are very vulnerable group with complex legal, psycho-social, health, educational and livelihood needs. Within the overall population of people in detention PASI also provides targeted support to juveniles and women who face particular vulnerabilities.

PASI collaborates closely with the social workers from the Ministry of Gender, Children, Disability and Social Welfare, particularly in relation to juveniles in contact with the law. PASI paralegals assist in the diversion process, attend Children’s Court, and have also completed social reports on behalf of absent social workers to expedite children’s cases.

The Village Mediation component of PASI’s project also seeks to assist vulnerable people to access justice locally. In this instance, people may be vulnerable due to illiteracy, due to poverty, due to lack of accessible presence of the formal justice system, due to lack of capacity to retain a lawyer etc. PASI’s village mediation statistics show that the service is widely used by women, with women participating in 55% percentage of cases. It is not clear from PASI’s data whether women are initiating or responding to the cases, however anecdotally PASI’s paralegals told the evaluation team that it is frequently women who initiate the case.

PASI does not appear to have an explicit focus on people with disability, or people with albinism. People with disabilities may use PASI’s services, but statistics on this are not collected by PASI. PASI does not use specific approaches to target their services to people with disabilities, although community representatives and staff of community-based organisations may assist people with disability to access PASI’s services if required. The Ministry of Justice has advised that civil society organisations should prioritise support to people with disabilities and women, and has established a 24/7 emergency hotline for police and paralegal assistance.

People with albinism have specifically been targeted in Malawi in recent years, due to perceptions that their body parts have magic properties which can be used in rituals to gain power.[[67]](#footnote-67) Persecution, abductions and murders have been particularly documented in association with the elections. PASI has not specifically targeted people with albinism in their work. PASI’s paralegal support is more orientated towards criminal suspects rather than victims, although PASI does collaborate with the Police Victim Support Unit in some areas.

1. 25,073 cases were resolved in 2018-2019, out of 27,567 registered cases – ie a resolution rate of 91% source PASI Access to Justice Annual Progress Reports 2018 and 2019 [↑](#footnote-ref-1)
2. 2018 User Perception Survey on Village Mediation Programme (n=139) and 2019 User Perception Survey on Village Mediation Programme (n=376) [↑](#footnote-ref-2)
3. 82,370 clients in 2018 and 134,381 clients in 2019, source Access to Justice Annual Progress Reports 2018 and 2019 [↑](#footnote-ref-3)
4. 27,719 clients released from places of detention in 2018, and 33,337 clients released from places of detention in 2019. [↑](#footnote-ref-4)
5. Access to Justice Annual Progress Report 2019, page 19 [↑](#footnote-ref-5)
6. Historical Malawi prison population data is sourced from the World Prison Brief, cited at [https://www.prisonstudies.org/country/malawi retrieved 8 March 2020](https://www.prisonstudies.org/country/malawi%20retrieved%208%20March%202020). See further the discussion on page 27. [↑](#footnote-ref-6)
7. Masangano v Attorney General & Others ((15 of 2007)) [2009] MWHC 31 [↑](#footnote-ref-7)
8. Note that this calculation only considers the PASI organisational costs of the Camp Courts – it does not include fixed costs such as the salaries of the Judges, Prosecutors, Police and the PASI paralegal, which are paid from other budget lines. [↑](#footnote-ref-8)
9. Ministry of Justice and Constitutional Affairs, Judiciary, Police, Prisons, Malawi Human Rights Commission and Legal Aid Bureau [↑](#footnote-ref-9)
10. Note that additional information was gathered from headmen, village mediators and beneficiaries through focus group discussions. [↑](#footnote-ref-10)
11. Chilungamo - Access to Justice through Village Mediation and Paralegal Services project document 2018, page 2 [↑](#footnote-ref-11)
12. 2018 User Perception Survey on Village Mediation Programme (n=139) and 2019 User Perception Survey on Village Mediation Programme (n=376) [↑](#footnote-ref-12)
13. Source: Access to Justice Annual Progress Reports 2018, 2019 [↑](#footnote-ref-13)
14. Source: Access to Justice Annual Progress Reports 2018, 2019 [↑](#footnote-ref-14)
15. Target 1.1 Number of cases resolved by mediation in target districts, Project document logframe, page 33 [↑](#footnote-ref-15)
16. The Judiciary regards all civil cases as minor cases, so this figure is not directly comparable to the data for the Police and Prisons. [↑](#footnote-ref-16)
17. Access to Justice Annual Progress Report 2019, page 19 [↑](#footnote-ref-17)
18. Access to Justice Annual Progress Report 2019, pages 23-24 [↑](#footnote-ref-18)
19. Project Document, Chilungamo - Access to Justice through Village Mediation and Paralegal services, page 28 [↑](#footnote-ref-19)
20. Project Document, Chilungamo - Access to Justice through Village Mediation and Paralegal services, page 13 [↑](#footnote-ref-20)
21. PASI Communications and Visibility Plan, undated [↑](#footnote-ref-21)
22. <https://www.amnesty.org.uk/ritual-murders-people-albinism-malawi> [↑](#footnote-ref-22)
23. Malawi UNDAF 2019-2023, Results matrix page 78 [↑](#footnote-ref-23)
24. Key informant interview, details on file [↑](#footnote-ref-24)
25. [**R and Children in Detention at Bvumbwe and Kachere Prisons** (Review Case No. 21 of 2017) [2018] MWHC 3 (05 June 2018);](https://www.malawilii.org/mw/judgment/high-court-general-division/2018/3-0) [↑](#footnote-ref-25)
26. Note that this calculation only considers the PASI organisational costs of the Camp Courts – it does not include fixed costs such as the salaries of the Judges, Prosecutors, Police and the PASI paralegal, which are paid from other budget lines. [↑](#footnote-ref-26)
27. This also compares very favourably to the cost per day per inmate in the US (USD 91 in 2015), UK (USD 133 in 2018) and Australia (USD 197 in 2018). [↑](#footnote-ref-27)
28. Access to Justice Project document [↑](#footnote-ref-28)
29. Access to Justice User Perception Survey on Village Mediation Programme, page 17 [↑](#footnote-ref-29)
30. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (‘the Bangkok Rules’) 2010 [↑](#footnote-ref-30)
31. Malawi Population and Housing Census Report 2018 page 28 [↑](#footnote-ref-31)
32. PASI notes that since November 2019, they have been requested by the President and Cabinet to provide conflict resolution training to DPCs, and the VMP also operates in the most volatile districts of Malawi including Kasungu, Karonga, Mangochi, Malanje and Salima. [↑](#footnote-ref-32)
33. Ministry of Justice and Constitutional Affairs, Judiciary, Police, Prisons, Malawi Human Rights Commission and Legal Aid Bureau [↑](#footnote-ref-33)
34. As PASI is not a beneficiary institution they are not eligible to benefit from these working days directly. [↑](#footnote-ref-34)
35. Access to Justice Annual Progress Report 2019, page 8 [↑](#footnote-ref-35)
36. Target 1.3 Ratio of women to men accessing village mediation services in target districts, Project document logframe page 33 [↑](#footnote-ref-36)
37. Source: Access to Justice Annual Progress Reports 2018, 2019 [↑](#footnote-ref-37)
38. Target 1.1 Number of cases resolved by mediation in target districts, Project document logframe, page 33 [↑](#footnote-ref-38)
39. Access to Justice Annual Progress Report 2019, page 18, incorporating data collected from justice institutions. Chichiri Prison was excluded as no data was available. [↑](#footnote-ref-39)
40. Access to Justice Annual Progress Report 2019, page 19 [↑](#footnote-ref-40)
41. **Hicks v Faulkner**[1878] QB 167 by Hawks J [↑](#footnote-ref-41)
42. For example, ***Manda v Ethanol Company***[1993] 16 (2) MLR 572; **Soko v Opportunity International Bank of Malawi** (Criminal Case No. 622 of 2012) [2017] MWHC 118 (29 May 2017) [↑](#footnote-ref-42)
43. **KettieKamwangala v Republic**: Miscellaneous Criminal Appeal No 6 of 2013 (unreported), *per*Chikopa J.A [↑](#footnote-ref-43)
44. **Masangano v Attorney General & Others** ((15 of 2007)) [2009] MWHC 31 [↑](#footnote-ref-44)
45. Access to Justice Annual Progress Report 2019, pages 23-24 [↑](#footnote-ref-45)
46. Project Document, Chilungamo - Access to Justice through Village Mediation and Paralegal services [↑](#footnote-ref-46)
47. Although note that PASI is continuing to advocate for a greater recognition of the roles of paralegals, as discussed further in the following pages. [↑](#footnote-ref-47)
48. The evaluation observed one case of theft being tried in a Magistrates Court, where the accused’s defense was that the stolen goods had been placed in his room without his knowledge by witchcraft. The Magistrate was unconvinced. [↑](#footnote-ref-48)
49. Only more serious cases are eligible for legal aid in the Magistrates Courts, as provided by Section 5(1) of the Malawi Legal Aid Act 2010, including rape, robbery, forgery and riotously preventing the sailing of ship. [↑](#footnote-ref-49)
50. Section 14(2) Sierra Leone Legal Aid Act, 2012 [↑](#footnote-ref-50)
51. Historical Malawi prison population data is sourced from the World Prison Brief, cited at <https://www.prisonstudies.org/country/malawi> retrieved 8 March 2020. [↑](#footnote-ref-51)
52. Historical Malawi prison population data is sourced from the World Prison Brief, cited at <https://www.prisonstudies.org/country/malawi> retrieved 8 March 2020. Malawi population data is sourced from the 2018 Malawi Population and Housing Census Main Report. Population estimates for intervening years where census data is not available is sourced from <https://www.worldometers.info/world-population/malawi-population/> retrieved 8 March 2020 [↑](#footnote-ref-52)
53. 33 Draft Report on Prison Monitoring, Malawi Human Rights Commission November 2019, page 14 [↑](#footnote-ref-53)
54. Project Document, Chilungamo - Access to Justice through Village Mediation and Paralegal services, page 28 [↑](#footnote-ref-54)
55. The Evaluation Team observed two Camp Courts in session – one facilitated by PASI and the second facilitated by an NGO named ‘Amazing Grace’. [↑](#footnote-ref-55)
56. Draft Report on Prison Monitoring, Malawi Human Rights Commission, November 2019 page 14 [↑](#footnote-ref-56)
57. Access to Justice Project Annual report 2019, page 38 [↑](#footnote-ref-57)
58. PASI Communications and Visibility Plan, undated [↑](#footnote-ref-58)
59. Project Document, Chilungamo - Access to Justice through Village Mediation and Paralegal services, page 13 [↑](#footnote-ref-59)
60. Project Document, Chilungamo - Access to Justice through Village Mediation and Paralegal services, page 19 [↑](#footnote-ref-60)
61. Justice and Democratic Accountability Survey Report, Malawi National Statistics Office 2018, p145 [↑](#footnote-ref-61)
62. Justice and Democratic Accountability Survey Report, Malawi National Statistics Office 2018, p147 [↑](#footnote-ref-62)
63. Malawi Prisons Inspectorate Report 2019, cited 29 September 2019, <https://mwnation.com/malawi-prisons-not-fit-for-occupancy-inspectorate/> [↑](#footnote-ref-63)
64. Constitution of Malawi, 1994, section 41. [↑](#footnote-ref-64)
65. International human rights standards set minimum legal standards and specifically recognize the diverse nature of legal systems in various parts of the world, including those that have embraced legal pluralism (UNHR, 2016). [↑](#footnote-ref-65)
66. The token fee could be both in kind and cash and could range from several chickens to a goat. [↑](#footnote-ref-66)
67. <https://www.amnesty.org.uk/ritual-murders-people-albinism-malawi> [↑](#footnote-ref-67)