The Paralegal Advisory Service (PAS)

In Practice

A manual for non-lawyers working in the Criminal Justice system

June 2005
“There is an inseparable link between the protection of individual and collective human rights and democracy. The field of battle in which democracy and human rights are tested is the administration of criminal justice, which encompasses all processes and practices by which a state affects, curtails, or removes basic rights.” Cherif Bassiouni

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Introduction

This volume contains a compilation of documents which act as guidance, tools and procedures for the 15 women and 22 male paralegals of the Paralegal Advisory Service as they work on a daily basis in the prisons, courts and police stations of Malawi. They are being constantly added to, as the paralegals continue to develop their work in the criminal justice system to support the criminal justice agencies, complement the work of lawyers and contribute to a more equitable justice system especially for the poor.

This work has been continuous since May 2000. In this time, the paralegals have expanded their advice and assistance to include more prisons (they cover 84% of prisoners in Malawi today) and assist at court and in police stations. This is part of the aim of the PAS, namely to provide a national legal aid service offering appropriate advice and assistance on the front-line of the criminal justice system, ie the police (at interview), courts (at first instance) and prisons (for remand prisoners).

In this period of five years, the PAS has contributed towards the reduction of the remand population making it one of the lowest in Africa (from 50% at the beginning to 25% today). It has gained entry into and acceptance in the police stations. PAS paralegals have been trained by Malawi Police trainers in ‘investigative interviewing skills’ and attend at adult interviews. At court, they assist people orient themselves and push the cases through the system.

In 2004, the PAS produced a short film (13’) *Path to Justice*, introducing its work.

In view of its impact in ‘energising the criminal justice system’ (as described in the first independent evaluation report – Kerrigan:2002), the PAS was internationally recognized by a Good Practice Award of UN Habitat in 2004.
In 2005, PRI produced a longer (52’) film Freedom Inside the Walls, detailing the work of paralegals in Benin, Kenya and Malawi.

PRI wishes to acknowledge the work of Adam Stapleton and Clifford Msiska in the development of the PAS from its inception and early support and advice from Shenard Mazengera and Dorothy de Gabriele.

PRI particularly wishes to acknowledge the steady professionalism of the paralegals themselves over five years - and the four teams from Youth Watch Society (led by Muteyu Banda), Centre for Legal Assistance (led by Alekeni Menyani), Malawi CARER (led by Boniface Mhango) and Centre for Human Rights Advice, Education and Assistance (formerly with Eye of the Child and led by Chimwemwe Ndahaloma). They have brought ‘freedom within the walls’ of Malawi prisons. And it is due to their efforts and achievements, that the PAS is inspiring similar schemes elsewhere on the continent and in South Asia. Something of which they can be rightly proud.

This draft will benefit greatly from the practices of our friends and colleagues in Benin, Kenya, Uganda and Tanzania and we invite them to contribute their thoughts and suggestions, so that together we can produce a set of practices that will inform us all and those to come.

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Document 1. What paralegals are, what they do and how they operate

What a paralegal is… Paralegals, like paramedics or bare foot doctors, provide ‘first’ legal aid to ordinary people on the front line of the criminal justice system (in the police station at interview; at court on first appearance; in prison on entry).

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

‘Paralegalism’ is not new… and has been around for a long time though perhaps called by other names. Traditionally, ‘paralegals’ have been respected and trusted members of the community offering advice and assistance on a range of issues including: inheritance, land and matrimonial matters. Recently, paralegals have proved they have an important role to play in providing basic services to those in conflict with the criminal law.

Normally they do not represent people in court, nor charge a fee for their services. Paralegals provide basic education, advice and assistance free so that those caught up in the criminal justice system do not feel lost and are better able to fend for themselves and exercise their constitutional and human rights. Rather than compete with the criminal justice agencies or legal profession, paralegals provide complementary services; and rather than confront people, they seek to confront the problem by working in a spirit of co-operation with people.

Paralegals working in the criminal justice system is a relatively new departure. It started in Malawi as the Paralegal Advisory Service (PAS) which is based on four cornerstones:

- **legal literacy** to help prisoners understand the law, how it affects them and how to apply it in their own case
- **legal advice and assistance** to provide those in conflict with the criminal law with appropriate advice and assistance in prison and police stations as well as guidance at court
- **linking the criminal justice system** improving communication, co-operation and co-ordination between the prisons, courts and police
- **informing policy makers** identifying problems in the criminal justice system and bringing them to the attention of decision and policy makers
What the PAS does…

**Legal literacy: Helping prisoners understand the law**

Paralegals conduct paralegal aid clinics (PLCs) daily in the prisons. These are aimed at those prisoners awaiting trial. The paralegals employ interactive, forum theatre techniques so that through drama and debate, prisoners are able to represent themselves in court. The PLCs cover the whole criminal justice system from arrest and detention through to appeal.

They produce visual aids and hand-outs for those in detention (whether in the police station or the prison) explaining the criminal justice process in vernacular languages.

**Legal advice and assistance: enabling people to apply the law**

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

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

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

Paralegals work with police officers in the police station initially focusing on young offenders. They trace their parents. They interview them according to a screening form which emphasizes diversion over prosecution in appropriate cases. Recently they have won the approval of all police regional heads to start attending at adult interviews to ensure the constitutional rights of the accused are adhered to.

Paralegals work in the courts to assist the accused who are on bail and link up with those in the court cells. They assist witnesses (explaining the court lay-out and procedures). They assist ordinary members of the public (to orientate themselves around the court).

Paralegals work closely with friendly lawyers to whom they refer cases or turn when in need of expert advice or guidance.

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

The paralegals provide the link in the chain that constitutes the criminal justice system. They seek to promote communication, co-operation and co-ordination between the various criminal justice agencies. They liaise with all actors in following up cases. They facilitate regular (monthly or at least quarterly) meetings between courts, police and prisons personnel in the local area to address local problems and come up with local solutions.
How they operate…

In Malawi, paralegals in the PAS are guided by a number of principles:

**Partnership**

The PAS is a partnership with the prison service, police, courts and legal establishment. Codes of Conduct govern the working of paralegals in prisons and police stations because they are security institutions.

The preamble to both Codes recognize the tension that exists between promoting trust and confidence with prison and police officers on the one hand; and requiring the same officers to respect the independence and integrity of the paralegals as human rights monitors.

The paralegal is bound by the Code. S/he is not a fully independent human rights activist able to blow the whistle on misconduct whenever it is encountered. That said, human rights violations cannot be tolerated and allowed to pass unnoticed or remarked on. Paralegals are encouraged to make use of other independent mechanisms or groups that exist in the country to take forward enquiries into human rights violations, by referring cases to the national human rights institutions (such as Human Rights Commission, office of the Ombudsman etc) or to other NGOs dealing with such matters. In extreme cases, matters may be referred to external agencies such as Amnesty International and the Human Rights Watch committees to apply pressure on government without revealing sources.

The PAS places high emphasis on the discretion and maturity of the paralegals.

The situation in most prisons in Africa is bad and falls short of the international minimum standards as set down in the UN Standard Minimum Rules for the Treatment of Offenders. Often the conditions are life-threatening. Prison officers know these problems. They are not of their making. They need assistance to make conditions better. This is not an overnight task. It will take time. Police officers too are not always at fault for failing to process their caseload expeditiously: they lack basic stationery, transport and even training. Many are transferred suddenly and lose track of their caseload. Paralegals are there to assist all criminal justice agencies rather than criticize them.

Partnership is two-way, however, and where the police or prison officers consistently abuse their powers, it may be that the paralegals can no longer work in these institutions and maintain silence in all conscience under the operating Codes.

This takes us to another principle:

**Respect**

The paralegal respects the people s/he works with and the people s/he is working for: each one.

**The people the PAS works for**

They are the poor and the weak: the people who cannot speak for themselves. Everyone in prison, in the police station, is important because they are human beings (whatever they are alleged or proven to have done).
If one case takes a week to follow up and resolve, so be it. No one is forgotten because sometimes it is the system that has forgotten them and because one day it could be any one of us.

They are not just the prisoners and those caught in the criminal justice system. They are also the prison and police officers and court staff. The paralegal is confronted by the conditions in which they have to work in a daily basis. So, the paralegals work for them too by lobbying for improvements in their terms and conditions of service.

**Respect for each other**
Paralegals respect each other’s working practices. People work at different speeds in different ways. Some write better than others; while others communicate with people better. It is not a question of saying: ‘all right then you do the reports and I will conduct clinics in prison’: each should try and improve on the areas in which s/he is weakest and help and support each other.

Some paralegals become friends, some fall out or dislike one another. Professionally paralegals in a team should act as one if socially they cannot stand one another. Gossip or backbiting is not to be tolerated. If there is a problem within a team, members should sit down together and work the matter through within the team so far as possible.

**Flat management**
The PAS works on an approach that has no boss or hierarchy, ie it is flat. Why? Because all paralegals depend on each other. Prison work can be sensitive or even dangerous by its very nature: the paralegal needs to depend on his/her colleagues for back-up and support when called on. The work plan is agreed according to the set of results to be achieved. The work cannot be supervised. The paralegals are selected on the basis of maturity and an ability to work alone unsupervised. There is no one looking over the paralegal’s shoulder to make sure the person is doing what s/he is meant to be doing or turning up or knocking off on time. The paralegal will know if s/he is pulling his/her own weight and the team members and people s/he purports to assist certainly will: the paralegal is accountable to his/her team and people s/he serves.

**Providing a service**
The PAS is a service as its title suggests. It is a free service. At present it is unregulated too. The paralegal has no ‘client’ base. S/he serves everyone who needs help, be they prisoners in police or prisons, witnesses at court, members of the public who are lost, prison or police officers who need help or referral to someone who can help.

It is unable to provide the type of service that a lawyer may, ie advise in the individual case on a 1:1 basis. Instead, the paralegals focus on reaching as many people as they can in any one day so that they aim for a 1:100 ratio.

**Professionalism**
Paralegals are not lawyers. They depend on lawyers for advice and guidance and to whom they can refer serious or complex cases. The work they do complements the work of lawyers. Considerable emphasis is placed on the training of paralegals. The education they impart must be accurate. The advice and assistance they offer must be appropriate.
The work in police and courts will also be scrutinized. The manner in which they hold
themselves and the standards they set themselves will impress and influence other
actors in the criminal justice system.
Document 2: **How to conduct a prison visit**

*Introduction*

Prisons are closed spaces. As such they have their own culture. What goes on behind closed doors is the business of the prison officers and prisoners acting in positions of authority. A visitor is an ‘outsider’ in every respect and senses it at once. S/he is made aware of rules, the ‘do’s and don’t’s’ of prison life the moment s/he sets foot inside. Items that are innocuous outside suddenly become subversive inside.

Prisons are not normal places. This places a prime importance on the need for the visitor to behave as normally as possible. Prisons are wholly unequal places where one minority group holds complete power over another majority group. This means that it is imperative for the visitor to treat everyone equally and with respect.

The prison’s rules and regulations are binding on the visitor while inside but they can be tempered by the visitor’s own ‘ground rules’ of normality and respect which the visitor can quietly assert from the moment s/he enters the institution in the way in which s/he holds him/herself and greets staff and prisoners.

Since a visit is known about in advance, most prisons make efforts to show the visitor what they want the visitor to see and present the best possible appearance. New clothes may be issued to prisoners; the toilets will be disinfected; noisy or political prisoner(s) may be removed for the day … The place will be brightened up a bit so that the right impression is created. Few will show you the situation as it is (‘warts and all’) and discuss their problems (usually lack of resources).

Prison visits lift the veil on life behind the walls but do not necessarily reveal the full picture – what ‘seems’ is not necessarily what ‘is’ (eg: removing certain categories of prisoner for the duration of the visit). The full picture can only be obtained by extensive cross-checking of facts outside of prison (with NGOs, human rights institutions, medical personnel (in hospitals), prison chaplains and other visiting groups, ex-prisoners and prison staff) and research conducted inside the prison.

However, an informed observer can identify signs which give an idea of the relations that exist within the prison and the approach of the authorities towards those in their charge. This section aims to provide the monitor with a practical guide on how to conduct a visit, what to look for and how to conduct interviews with the people who live and work in prison.

*Preparing a visit*

Brief yourself on the situation in advance (newspaper reports, other reports from HR institutions, NGOs, religious groups). This will alert you what to look out for. It may be some groups will ask you to make representations to the authorities on behalf of certain categories of prisoner or individuals. You should be aware of the national constitutional provisions and applicable criminal laws; international standards on the treatment of prisoners and relevant regional rules or guidelines.

*What to bring*

Always carry a small notebook with you.

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Gifts:
You might ask in advance what prisoners most lack. Otherwise, postcards (brighten walls), exercise books and pens (assist education), sheet paper and envelopes (facilitate communication with relatives), footballs, tennis balls (provide recreation). In addition, second-hand books, magazines and even old newspapers are helpful. More expensive gifts such as radios (wind up) can change the atmosphere in a prison dramatically by providing music and current affairs.

You should give the presents publicly and directly to the prisoners as otherwise they may not reach them.

Consideration should be given equally to the staff as their conditions of service tend to be very poor in less fortunate countries. Thus if you bring three balls for the women, juvenile and adult sections, you might add a fourth ball for the staff. This would also deter staff from diverting gifts for prisoners for their own use.

*Use of Cameras and video cameras – some considerations …*

The visual image communicates the reality with an immediacy words often fail to attain.

However, the prison is a security institution and for understandable reasons, the authorities may have good reasons for restricting or prohibiting the use of cameras inside. Where authorities are emphatic about this prohibition, there is little to be gained in contesting the matter.

Where the authorities are committed to a rights-based approach and reform agenda, there are strong reasons in favour of using cameras.

Arguments in favour:

- Allowing filming is strong evidence of a commitment to open up and promote reform (by showing the ‘true’ picture)
- It enables the authorities to show conditions to a wider audience (public, politicians, donor agencies) who would otherwise not be aware of the nature nor urgency of the problems
- It provides a means of communicating the working and living conditions of staff as well as prisoners. In many countries, staff conditions are little better than those of the prisoners they watch over.
- Where reform programmes are underway, it enables the authorities to chart progress (conditions then and conditions now)

The purpose of the film needs to be clearly stated. It may be to record the progress of reform; or to awaken public debate; or to secure more funding and resources – there may be any number of reasons.

Even if the authorities grant permission, prisoners’ right to privacy (severely compromised already by the fact of imprisonment) and their inherent dignity as people (not objects) underline the importance of obtaining permission from the individual prisoner before pointing the camera – particularly if his/her face is to be shown. Where there is evident discomfort, the camera should be put away even if the authorities have granted permission.
As a courtesy, provision should be made to make copies available to the individuals (including staff) afterwards.

The introduction of cameras should not be rushed. Cameras are invasive. It may be better judgement (especially where follow-up visits are anticipated) to wait until trust has been developed with staff and prisoners before introducing the subject.

Meeting the person in charge of the prison

The first port of call will be the office of the governor, officer in charge, director of the prison – the person in charge of the establishment. This is a courtesy call and should be kept short. This avoids wasting time on unnecessary questions (that are either uninformed or will be answered more accurately in the course of the visit); it also sets a professional tone.

The visitor(s) should introduce him/herself, state the purpose of the visit and make some general enquiries, for instance:

- the conditions of detention and of the persons in his/her charge
- the problems s/he faces, their causes and his/her proposals for solving them
- the degree to which s/he works with outside groups to improve matters (religious, media, civil society).

Basic facts and data on the prison population are usually available in written form from the registry or reception area (ie on a wall chart). This will indicate the numbers on the day of prisoners: convicted, remand, women, men, juveniles, condemned, sick etc. This is public information and rather than write them down a copy of this list should be requested from the person in charge.

Useful further data includes:

- the capacity of the prison as against the total population (as this gives an indication of the problem of overcrowding)
- longest serving remand or pre-trial prisoner (as this gives an immediate indication of the slowness of court process and/or police investigation)
- the number of prisoners who have been granted bail but are unable to meet the conditions set by the court (indicates judicial attitudes)
- the number of pre-trial prisoners who are legally represented (as this indicates the extent to which poor people can gain access to justice)
- the percentage of first offenders serving sentences of 2 years or less (indicates whether prison is used as a punishment of first rather than ‘last resort’)
- the age of the youngest prisoner and nature of the offence (indicates judicial attitudes to young persons in conflict with the law)
- the date of prison legislation (does it pre-date the UN conventions, rules and principles governing those in detention?) and the type of disciplinary sanctions applied (are they unduly punitive? do they include the use of corporal punishment?)

Other Questions …

- about health can be asked of those working in the health unit
• about women in the women’s section
• about prisoners’ activities (education, recreation, vocational skills training etc) can be observed inside the prison – and so on

Check the answers provided by the person in charge with the prison officers and prisoners as you proceed on the tour. Do not be surprised if the official version conflicts with the unofficial accounts you are told. Remember however, prisoners are not always truthful. Accounts need to be checked and cross-checked – preferably with disinterested groups outside.

Registers

The registers are key sources of information. They are many: they will include admissions, exit and entry, property, discipline, complaints, death, execution. There are medical registers, rations, work, recreation and registers of incidents. You should look at them in the various sections as you proceed on tour. Some may be more sensitive than others (ie the register of deaths or discipline). The readiness, or not, of the authorities to share this information is an indicator of their confidence that they have nothing to conceal.

At the beginning of the visit, it is worth visiting the reception area or registry and calling for the admissions register. This will give an indication of the type of sentence meted out for what offence and the extent to which, for instance, persons are serving prison terms because they could not pay the cost of a fine. It will also provide – if properly kept – an idea of the frequency with which remand prisoners are taken before a court. A random cross-check should be made with the property register since it may be that a convicted person is recorded in the admissions register as still being in custody while the property register reveals that s/he signed for his/her property on release. The admissions register may not always be up to date – the property register always is.

Prison lay-out

Prisons come in all shapes and sizes. The visitor should try and keep a mental map of the lay-out as the visit progresses so that parts are not forgotten and places that are off-limits or closed can be opened or the reason explained.

You should chart a map in your notebook as the tour continues indicating convict blocks, remand blocks, juvenile and women’s sections, condemned section, kitchen, showers etc. Jot down impressions and observations in the notebook as you go around as this will aid your memory when you write up the visit later.

Most prisons have a reception area (outer area) before a main gate leads into the prison proper. You might glance at the Prison Register to note if it appears to be filled in and up to date. You should ask to see the cells, ablution blocks, kitchen, medical clinic, punishment cells and workshops.

Entering the prison

General observations – note:

• the presence of prison officers or lack of it
• the dress of prisoners: are they in prison uniform, or their own clothes, do the clothes suit the climate, do they appear to be in good repair, do some appear better dressed than others
• the age of prisoners; note their skin, particularly the hands and knees (for signs of scabies and other skin conditions).
• whether prisoners appear active or sit around with nothing to do.

Note the general appearance of the buildings: are they in an adequate state of repair?

Note the relations between staff and prisoners:
• do prisoners appear to mingle easily with prison officers
• do some prisoners appear to exercise authority over others (do some carry batons, look better dressed, occupy single cells when others occupy dormitories)
• do they turn their faces away as you approach
• is your escort close or relaxed - are you taken swiftly along or allowed to linger and talk to prisoners
• do you feel any threat to your personal security

**Entering the cells**

Note the smell – is it stuffy? Note the windows – do they provide adequate natural light? Do they let in enough air? Note the numbers of occupants per cell and pace out the space. Note the bedding and availability of electricity. Note those cells with less numbers of occupants – why do they have special privileges? Note whether sanitary facilities exist inside the cell and ask what happens at night. If overcrowding is a problem, invite the occupants to describe how they sleep at night. Note the weather conditions and how suited the cells/bedding are to the ambient climate.

**Entering the WCs and showers**

Note:
• the smell (freshly disinfected? Ask a prisoner or officer what it is usually like)
• whether there is any privacy
• the flow of water and whether it is hot or cold
• whether the WCs flush
• numbers of WCs/showers against the overall prison population

**Entering the kitchen**

Note the state of the kitchen:
• does it appear clean (do the cooks)?
• How/where is the food prepared?
• Is it properly equipped? Is there sufficient air?
• taste the food – is it palatable?
• how many times a day is food served and at what times?

**Entering the medical clinic**

Note the smells and general hygiene standards in the medical clinic. Inspect the drugs and note the stock, particularly the expiry date on some specimen jars. Note
the beds and the numbers of prisoners. Check whether isolation is available for patients (eg TB). Look at the medical registry and check to see if it is properly filled in.

View the visiting area

Are prisoners separated from their family members? Are they allowed to touch, or separated by a wire mesh or bars? Are they searched before the visit and afterwards? Are conjugal visits allowed? How often are relatives allowed to visit (remand and convicted prisoners)

View the punishment cells

Note the conditions: the space, the light, the flow of air; check the diet. Enquire as to other disciplinary sanctions and the procedure. Interview the prisoner in private. What was s/he detained for? Was s/he given a hearing? How long is the period of detention? Is s/he seen by a medical professional? Is s/he visited by the head of the institution? Is s/he allowed out for exercise each day?

INTERVIEWS

Interviews provide opportunities for:

fact-gathering – therefore try and validate impressions and cross-check facts provided from elsewhere (press, person in charge etc). Where translation is required keep questions short and simple and to the point.

assessing the degree to which the authorities adopt a rights-based approach in practice. Does the junior officer appear at ease in answering your questions? Are prisoners encouraged to address you or inhibited? Do prison staff allow you to address prisoners and ask them questions?

confidential enquiries with individuals (staff as well as prisoners).

NB: Caution is needed to ensure the person interviewed is not prejudiced thereby nor suffers retribution as a result. If in doubt, ask the person if the interview will place him/her in difficulties.

Group interviews

There are many and varied categories of prisoners (eg: remand, convicted, condemned, male and female. There are vulnerable groups, such as: young (‘juvenile’) prisoners, women, foreign nationals, sick, mentally ill, elderly). Time will (probably) prevent you from meeting with them all individually.

Group interviews are a useful means of gaining an overall impression of atmosphere and the fairness of the system.

The prison authorities may prefer to arrange in advance an interview with pre-selected prisoners. This can be accommodated, but preference should be stated for a more spontaneous interaction with prisoners inside if it is possible.

If you appear professional and open-minded at the outset, you may gain their trust early on, in which case the authorities may take their lead from you.
Group meetings can involve hundreds of prisoners. Ideally, you should keep remand prisoners separate from the convicted prisoners if possible.

The purpose of the group interview is to:

- obtain an idea of the prisoners’ complaints
- test the accuracy of the information provided from elsewhere
- assess the quality of justice

**Conducting the group interview**

Where language is a problem, ensure interpretation is to-hand. Where large numbers are involved it assists to have a respected prisoner available as master of ceremonies to keep control and focus.

As a courtesy you should start by explaining who you are and where you come from. You should thank the authorities for providing this opportunity to talk with the prisoners. You should encourage prisoners to talk to general conditions and complaints, rather than their own individual cases.

You might start by indicating the type of information you require with a series of short targeted questions – eg: an enquiry into the application of fair trial standards (ICCPR 14) might include the following questions:

**Convicted prisoners**

- How many of you were represented at trial?
- How many are satisfied with their conviction and sentence?
- How many have appealed?
- Why not?

**Remand prisoners**

- Who has been here the longest?
- How many have had legal advice?
- How many have been granted bail but cannot meet the conditions set by the court?

Individual case studies illustrate problems in the criminal justice system and general grievances. You should have an assistant ready to take down essential particulars

*Name, age, offence, time spent in custody (remand) or sentence (convicted), whether legally represented. Any grievance the person has articulated. Later you will need to cross-check the files or with prison staff where they have direct knowledge of the case in question.*

You will have other questions derived from the SMR.

Let the prisoners take the floor and allow them to raise their concerns and problems. A wall of silence and downcast eyes may say as much about the prevailing regime as an outspoken tirade against the prison authorities. Note whether the people appear inhibited or checked from asking questions.
Do not let one prisoner dominate the dialogue, unless s/he appears to be the spokesperson for the other prisoners. You will know when a prisoner advocate is speaking for the majority, because each point s/he makes will be met with spontaneous applause.

**Closing the session**
You should explain what you are going to do with the information they give you. You should not extend any promises you do not intend to/cannot keep.

*(at the beginning: I am making a report which will be forwarded to the authorities; or at the end: I have noted your complaints/observations and will include them in the report)*

**Conducting interviews with vulnerable groups**

**Women**

Women usually constitute a very small minority of the prison population. They constitute a vulnerable group and should be accorded priority attention in follow-up.

**Legal situation**
- establish the range of offences (eg prostitution, homicide)
- establish the range of sentences passed
- establish from the awaiting trial (remand) prisoners who has been there the longest, how many have legal representation, how many have been granted bail but cannot meet the conditions set down by the court
- enquire into the facts of one or two specimen cases

**Personal circumstances**
- how many have children – ages, who is looking after them
- how many are single parent/heads of household
- check if any are pregnant and how long they have been in custody

**Children (accompanying their mother)**
- was the child born in prison or in hospital?
- do they receive a special diet?
- do they have access to medical care?

Women do not pose a security risk and therefore are left alone – with nothing to do. Find out what activities they have access to and educational support.

**Follow-up:** check the criminal law regarding transmission of sexual offences – do they discriminate against women? Find a local organization (religious or NGO) to assist the women with some materials (recreational or educational) to occupy their time. Find a local organization to obtain bail for the remand prisoners or include a recommendation to this effect in the report.

**Juveniles**

Juvenile or young persons (under 18) are also a vulnerable group in international law.
Juveniles should be kept separate from adult offenders.
Prison should be used strictly as a last resort in the cases of young people in conflict with the law. The law should focus less on punishment and more on the ‘best interests’ of the child.

Look closely at the children, note in particular:

- the age of the youngest and type of offence
- how long the longest has been waiting for trial
- how many have asked for bail – do they understand what bail means
- whether the social services/ their family members visit
- whether they have had access to legal advice
- whether any official body visits them (ie a Board of Visitors)

Check the accommodation and identify those who seem to be ‘prettier’ – if possible secure a confidential interview to see if the child is being sexually exploited.

What education do they receive – access to books, paper and pens. What recreational facilities exist?

Follow-up

What alternatives to prison exist for juveniles? Visit a reformatory, or special school for young offenders. Check if any official body exists to monitor children in custody (ie a Board of Visitors), meet with them afterwards. Copy your report to the international network on JJ.

Condemned prisoners

The purpose is to establish whether the UN Safeguards guaranteeing protection of the rights of those facing the death penalty and ICCPR are adhered to, thus:

- ask about legal representation: did they have confidential access to a lawyer of their choice, did they have an opportunity to prepare their case and call their witnesses
- did they understand the proceedings (was interpretation available)
- how long was the period between arrest and trial?
- How many were convicted on their confession – did they raise police mistreatment at trial?
- Have any applied for pardon?

Check their conditions: are they manacled or restrained with mechanical instruments? Are they allowed to mix with other prisoners? Do they have work, recreational activities, education, other activities?

Medical clinic

- Ask for the medical qualifications of the medical personnel and whether prisoners have access to independent (ie not prison staff) medical care
- Enquire into access to outside hospital in more serious cases
- What are the most common ailments? Are the drugs available to treat these illnesses
- Where conditions are overcrowded what efforts are made to promote hygiene education and sanitation promotion
- Check the numbers of deaths recorded per annum and from what cause
• Establish the incidence of HIV/AIDS and TB and what programmes are in place to deal with it.

_Closing the visit_

The visit should close with a further interview with the person in charge. This will be the time to clarify observations and obtain an official response to any matters that have come to your attention. It will also be the time to call for the file(s) of an individual prisoner to cross-check facts.

The authorities may be anxious for your impressions. You should give praise where praise is due but should not feel courtesy-bound to commend where this is not justified (for instance, you could side-step the enquiry by acknowledging the difficult nature of their job).

You should guard against offering any subjective response, but frame your reply in line with international human rights minimum standards and draw attention to the relevant Rules or Principles set out therein which appear to have been contravened.

You should end by thanking the authorities for their co-operation in permitting the visit, acknowledge the difficult task they face and important public service they perform. You should ask for an opportunity for a follow up visit at a later date.

_Write up and follow-up_

As with all report writing, the initial write-up should be completed as soon as possible while impressions and details are still fresh in your mind. Any matters calling for immediate action should be taken up promptly with the relevant authorities.

Follow up interviews should be conducted with individuals or groups who have detailed knowledge of everyday conditions in the prison as mentioned above – especially prison chaplains, visiting health professionals and NGOs – so that impressions can be checked and findings validated.

The report should contain recommendations. These will require more consideration and should be categorized according to the audience for whom they are intended (ie: to the government, to the prison authorities, to NGOs etc). They should also be practicable and sequenced (short-term, medium-term, long-term) and while they make take account of prevailing economic and social conditions outside the prison, should not be ruled by them. For instance the fact that food is short outside prison is not a justification for failing to supply ‘adequate’ food to prisoners. Government has positive obligations to follow the minimum standards set out in the SMR bearing on health, nutrition and living conditions.

The report should contain a prominent expression of thanks to the prison authorities for permitting the visit.

Any pictures taken should be copied and sent to the prison officers and prisoners concerned. Copies of the report should be sent to the prison director and line ministry.

A follow-up visit should be considered six months to a year later, or sooner depending on the conditions and relationships inside.
**What to do with the report**

The report should be sent to the line ministry responsible, head of the prison service and officer in charge of the prison. In the interests of constructive engagement, you may invite them to comment on the contents – particularly if you are making serious allegations, in which case it should be a ‘draft’ report. Time should be allowed for any comments or responses and these should be included at the end of the final report in a clearly marked section and submitted thereafter. This report should then be made public and distributed to any independent inspector mechanism (such as a judge, ombudsman, committee or commission) as well as parliamentarians, NGOs, the Law Society or Bar Association - and the media.

You might consider copying the report to: the UN Special Rapporteur on Torture, the Special Rapporteur on Prisons and Conditions of Detention in Africa (ACHPR), the Committee for the Prevention of Torture (in Europe), International Centre for Prison Studies, the regional office of Penal Reform International, the researcher for the country at Amnesty International, Human Rights Watch, the regional office of the ICRC as well as other regional bodies. Addresses and contact points are listed in the Appendix.
Document 3: **The Prison Code of Conduct**

Each paralegal signs a Code of Conduct when working in the prisons. The Code is designed to encourage trust and hold the paralegal to account. Any breach of the Code shall result in immediate dismissal from the PAS because a) the breach constitutes a de facto breach of trust and may compromise the security of the institution; and b) puts the PAS at risk. The Code is set out below

**CODE OF CONDUCT FOR PARALEGALS WORKING IN PRISONS**

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

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

Accordingly I, the undersigned, agree the following:

1. To work in co-operation with the prison authorities at all times and to seek the advice and guidance of prison staff when in doubt. In particular, to notify the prison authorities in good time of dates and times of proposed visits and to advise promptly of any cancellation.

2. To submit at all times to the authority of prison staff while on prison premises including the right of prison staff to search my person.

3. To refuse any request made to me by a prisoner or relative/friend that might compromise the security of the prison and, specifically, not to communicate messages (verbal or written), or any item whatsoever (concealed or openly) for a prisoner or relative/friend of a prisoner.

4. To refer any communication from the press to the prisons public relations officer or the paralegal co-ordinating team; and not to issue any press statement or otherwise communicate with the press myself save through the channels prescribed.

5. To wait for permission before entering the prison; and even when prior consent of the authorities has been granted to abide by any decision withholding right of admission.

6. To hold open meetings with prisoners and welcome the attendance of prison officers.

7. To refuse any meeting with a prisoner to which the rules of confidentiality should apply unless either the consent of the authorities has been requested and granted beforehand; or in the company of a certified legal practitioner or other member of a formal body.

8. To withdraw promptly from any scene in which prison staff and prisoners are in dispute.
9. To quit the prison premises promptly at the invitation of a recognized staff member.

Signed

Notes

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

To work alongside a person on a daily basis in close proximity while maintaining a professional distance is not easy; to suggest furthermore that one can sustain the other person's trust ventures into the realm of the improbable.

However this is the balance the paralegal seeks to strike: a professional relationship based on trust and mutual respect. If the paralegals are dependent on the good will of the prison authorities for them to work inside the prisons, they are at the same time independent observers of the situation that prevails inside.

Para 1 of the Code

To work in co-operation with the prison authorities at all times and to seek the advice and guidance of prison staff when in doubt. In particular, to notify the prison authorities in good time of dates and times of proposed visits and to advise promptly of any cancellation.

This provision sets the tone and spirit of the Code: the work in prisons of the paralegal is first and foremost about 'co-operation'. Secondly, it is about communication. Nothing can be taken for granted and paralegals need to go out of their way to ensure the lines of communication are open and everyone is clear about what you are doing when. It goes to professionalism as much as courtesy.

Para 2 of the Code

To submit at all times to the authority of prison staff while on prison premises including the right of prison staff to search my person.

Each person in prison is subject to the authority of the prison officer: being a paralegal confers no special privileges (save to leave at will). This provision emphasizes the fact.

Para 3 of the Code

To refuse any request made to me by a prisoner or relative/friend that might compromise the security of the prison and, specifically, not to communicate messages (verbal or written), or any item whatsoever (concealed or openly) for a prisoner or relative/friend of a prisoner.

This provision is aimed at protecting the paralegal as much as preventing any breach of prison discipline or security. If a paralegal starts smuggling any document or
article, however innocent, s/he is compromised and prisoners and outsiders can pressure the paralegal to smuggle less innocent documents or items. Paralegals should insist on being searched on entry and exit by the prison officer responsible. In the event of an escape using articles smuggled in from outside, the paralegal must be above suspicion.

Para 4 of the Code

To refer any communication from the press to the prisons public relations officer or the paralegal co-ordinating team; and not to issue any press statement or otherwise communicate with the press myself save through the channels prescribed.

This is one of the provisions aimed at developing trust between staff and paralegals. The relationship between paralegal and staff is a privileged one – not in the sense that a client:lawyer relationship is ‘privileged’ (ie confidential). It is privileged in the sense that paralegals have no right of access to prison but are there because the prison authorities allow them access. This permission can be withdrawn at any time.

Conditions in prisons are poor, tensions between staff and prisoners will arise, violence may break out. These are headline grabbing stories and a matter for the prisons service to report and not the PAS. The PAS has other channels for communicating outside, ie through such constitutional bodies as the Inspectorate of Prisons and Human Rights Commission.

The provision requires discipline and discretion on the part of the paralegal. After a day in prison, s/he should not recount what s/he has seen as a ‘good story’ to be related to friends over a drink. Any event that takes place should be reported and discussed by the team before being referred to the National Co-ordinator with a recommendation for action.

Para 5 of the Code

To wait for permission before entering the prison; and even when prior consent of the authorities has been granted to abide by any decision withholding right of admission.

This emphasizes the provision in para 2 above, that even where permission has been granted by the Chief Commissioner him/herself, the paralegal should not seek to ‘pull rank’ on a junior prison officer. The paralegal shall respect the decision of every prison officer (however unreasonable) and abide by it. S/he can then seek a remedy by speaking to the officer in charge or making a phone call.

Para 6 of the Code

To hold open meetings with prisoners and welcome the attendance of prison officers.

Transparency in all dealings is vital if trust is to be engendered and criticisms to be silenced. The paralegal does not enjoy the ‘privileged’ or confidential relationship that a lawyer enjoys with his client (ie the prison officer may stay within sight but not sound of a conference between a lawyer and his/her client - SMR Rule 93).

As with para 3 above, this provision is designed to protect the paralegal from manipulation by a prisoner and mischievous criticism by others. All dealings with prisoners shall be open and in the plain sight and hearing of a prison officer, unless the prison officer expressly gives the paralegal permission to continue in his/her absence.
Furthermore, the paralegal is expressly encouraged to include prison officers in any activity.

**Para 7 of the Code**

*To refuse any meeting with a prisoner to which the rules of confidentiality should apply unless either the consent of the authorities has been requested and granted beforehand; or in the company of a certified legal practitioner or other member of a formal body.*

Para 7 follows logically from para 6. Again it is designed to protect the paralegal both from manipulation and/or assault or other act that might put the paralegal at risk. The provision is also aimed at quieting the fears of the Law Society some of whose members may perceive paralegals to be a threat. It reiterates that paralegals do not hold themselves out as lawyers or persons able to advise in an individual case.

**Para 8 of the Code**

*To withdraw promptly from any scene in which prison staff and prisoners are in dispute.*

This recognizes the tensions that arise in prison and referred to in para 4 above. The presence of a paralegal might deter the use of excessive force by prison officers; it may also aggravate the tensions among prisoners who seek to ‘play to the gallery’.

This is not the purpose of para 8. It is another protection measure: such situations place the paralegal’s own security and physical well being at risk. At any sign of heightened tension or potential or actual violence, the paralegal shall withdraw from the scene.

**Para 9 of the Code**

*To quit the prison premises promptly at the invitation of a recognized staff member.*

Even if the situation does not appear tense or violent, the paralegal shall in any event leave the site at the invitation of a prison officer and not enter into a dispute on the matter but simply quit. If the paralegal thinks the prison officer was wrong to request his/her departure, the matter should be discussed by the team and referred to the NC as deemed necessary.
Document 4. **Paralegal Clinics (PLCs)**

The Paralegal Clinics (PLCs) constitute the basic, daily work of the PAS. The PLC is the means of **educating** prisoners on the law, **explaining** how they have got into the situation they find themselves and show them how they can **apply the law** to alleviate their own situation.

**Remember**: the one thought that dominates life in prison is ‘getting out’. People on remand think of bail, people awaiting trial think of their trial date, people who have been convicted and sentenced think of their appeal or date of release. They think of these things **all the time**. The PLCs should enable them to understand the law so that they can apply it themselves (if they do not have a lawyer) to get out (whether on bail, acquittal or appeal).

PLCs should take place in prisons with large remand populations on a daily basis and follow a ‘curriculum’ so that prisoners are able to follow a ‘course’ that enables them to understand the criminal justice system and where they are in the process and what will happen next (see ‘The PLC Handbook’). Accordingly, the PLCs for the week should be indicated in a public place in the prison for prisoners to consult.

PLCs should be inter-active and highly participatory: they should be entertaining and attract large numbers of prisoners. If numbers are falling off, it may be something is wrong with the format of the PLC, or that prisoners do not feel they have anything to gain by attending – in either case, enquiries should be made to establish the cause.

**Note**: in one prison, prisoners started appearing in higher numbers than before for the bail modules. When enquiries were made, prisoners responded that they had noted their fellow prisoners were not returning to prison after attending these sessions prior to their court appearance. They had deduced that the clinics improved their chances of getting out on bail.

Some PLCs will appear to be more important than others. Others will be more entertaining to run. Paralegals need to consult with their audiences to ensure they are meeting the needs of the prisoners while covering all the material (an understanding of evidence may, for instance, inform a prisoner on whether to plead guilty or not guilty) and should not sacrifice information for ‘fun’.

On the other hand, when a circuit is about to be launched to try persons charged with capital offences, the teams should focus on the relevant PLCs and target those coming up for trial.

It may be that on certain days (eg the beginning of the week), the police produce a large number of people at prison, many of whom are eligible for bail. In which case, the PLCs covering arrest, detention and bail need to be introduced early on and prisoners assisted to complete the bail forms for lodging with the relevant court.

**Action-oriented PLCs**

Some PLCs raise expectations among prisoners as they address specifically the ‘exit strategies’ ie mechanisms for getting out of prison, such as: bail, plea in mitigation, appeal.

Accordingly after conducting a PLC on one of these topics, other team members should be on-hand (depending on the numbers involved) to assist prisoners complete
bail or appeal forms; and discuss with those who express an interest (particularly those charged with homicide) whether they intend to plead guilty or not.
Document 5. The Bail Form

Background...The bail form was drawn up in extensive consultation with the judiciary (judges of the High Court and resident magistrates) and the version reproduced below has been endorsed by them.

While judges of the High Court approve of the form, some magistrates may prove more resistant. Time needs to be taken to explain in the presence of a resident magistrate or police prosecuting officer the purpose of the form and how it works.

Purpose...The form is aimed at assisting police, prisons and judiciary screen out and remove people from prison who need not be there while they await a trial date. While they may be filled out by any one who so wishes they are not really designed for the person charged with a serious offence (as s/he, or his/her lawyer, will need to attend court and argue for bail). It is primarily aimed at the person charged with a non-serious offence, where the facts are not in issue and where the constitutional presumption in favour of bail should operate unless the police show good cause why it should not.

The form contains a cover page with the following heading

```
IN THE ..............................................................MAGISTRATE COURT

.................................................................v REpublic

APPLICATION FOR BAIL PURSUANT TO SECTION 118(3) OF THE CRIMINAL
PROCEDURE AND EVIDENCE CODE AS READ WITH ARTICLE 42(2)(e) OF THE
CONSTITUTION OF THE REPUBLIC OF MALAWI
```

This sets out the legal basis for the form.

The substance of the form is reproduced below.

1. **Personal details** are self explanatory, they set out who the person is and where s/he is from

2. **Case details** are vital and set out a short case history. The facts must be endorsed by a prison officer as accurate (with a stamp or signature) so that the police and magistrate need not waste time in verifying them

3. **Arguments in support of bail** are pertinent matters the magistrate/senior police officer will take account of in reaching his/her decision whether or not to grant bail. Whichever boxes are appropriate, the paralegal will tick, any number of boxes may be ticked

4. **Observations** these boxes allow police or magistrate to make any observations they so wish.
Once filled in, the prison paralegal should fill in the reference number, copy the form and place one in the file in the office while providing the court paralegal (CPL) with two additional copies for processing with police and magistrates.

The bail form is the easiest matter to follow up for paralegals and (arguably) most important document. The process of these forms should be followed up closely. Prisoners will remember the time of the day they sat with you and filled out the form and by so doing you have raised their expectation and hopes.

**Caution:** do not make promises ('we'll have you out by the end of the week') or reckless statements ('you should definitely get bail'). Simply tell the individual what you will do with the form (hand it to my colleague at the Magistrate/High Court) and what then will happen to it (s/he will speak to the police about it and the magistrate will decide whether or not to grant bail).

Even where bail forms have been submitted, the person may be produced at court where s/he will make a bail application.
IN THE .............................................................. MAGISTRATE COURT
MISCELLANEOUS CRIMINAL APPLICATION NO: OF:

.......................................................................................................... v REPUBLIC

STATEMENT IN SUPPORT OF BAIL APPLICATION

1. PERSONAL DETAILS

Name:
Age: Sex: Village:
TA: District:

2. CASE DETAILS

Charged with:
Held at:
Date of remand: Date first produced at court:
Number of adjournments:
Prison confirmation that facts check with file:
Prison Officer:

3. ARGUMENTS IN SUPPORT OF BAIL

☐ First offender
☐ Family person with dependants
☐ In employment (Name of employer and address, position held and nature of work)
☐ In school (Name and address of school, class)

☐ Residential address:

☐ Time spent in custody awaiting trial is excessive
☐ Numerous adjournments through no fault or omission on my part (list dates):
☐ Poor health (supported by a medical report)
☐ Other reasons

Circumstances surrounding the offence:

☐ No act of violence
☐ Small amounts involved
☐ No profit motive
☐ Property recovered
☐ Other (state them):


WHERE OBJECTIONS ARE RAISED

- I have an address I can stay at far from any witnesses in the matter (name of house owner and address):
- I can provide the court with a surety for my next appearance at court (name of surety):
- Other

SIGNED: 
Date: 

WITNESSED: 
(print name)

APPLICANT
PARALEGAL

OBSERVATIONS
Police:

Signature: 
Date: 

Magistrate:

Ref No: PL/MoYr/Folio No
Document 6. **Appeal against sentence form**

**Background...** In the same way as the bail forms, these forms are the result of extensive consultation with the judiciary.

**Purpose...** The form is for those who wish to appeal against sentence and not against conviction. Because the paralegal is not qualified to advise a person whether or not s/he has an appeal against conviction because of an error in law or because of a finding against the weight of the evidence or because some new evidence has suddenly come to light.

Again the form is for everyone but specifically aimed at the non-serious offender who has received a custodial sentence. It is not really appropriate in cases of serious violence or dishonesty. However, the paralegal cannot refuse the request of a prisoner for assistance to complete the form. S/he may inform the person that the matter should be referred to a lawyer for expert advice.

Paralegals may need to do more work in completing this form because they will need to establish for instance the grade of the sentencing magistrate and case history. This will need to be checked in the prison registry or even at the court registry.

Delays in processing the appeals often occur because individual magistrates ‘hide’ the case file or refuse to send it up to the High Court for review or do not have the means so to do. Such delays are outside the control of the paralegal and should be noted and sent to the National Co-ordinator for inclusion in a policy note or letter to the registrar of the High Court.
NOTICE OF APPEAL TO THE HIGH COURT AGAINST SENTENCE

I, 
Name m/f age
District Chief Village

WAS CONVICTED AS FOLLOWS

Date of conviction Case no Court

Grade of Magistrate Offence 1) Sentence

2)

3)

Time spent on remand Date of committal warrant

Date of confirmation Expiry date of sentence

AND WISH TO APPEAL MY SENTENCE ON THE FOLLOWING GROUNDS

☐ The Magistrate sentenced in excess of his/her powers

☐ The time I spent on remand was not considered when passing sentence

☐ The sentences should have run concurrently

☐ Insufficient consideration was given to my personal circumstances, namely:
   • I am a first offender
   • I am a young person (under 18)
   • I am employed
   • I have strong community ties
   • I have a family and dependants and am the main breadwinner
   • Other
   (delete where inapplicable)

☐ Insufficient consideration was given to the circumstances surrounding the offence, namely:
   • the victim made a complete recovery
   • the property stolen was fully recovered
   • the offence was committed from need rather than greed: I made no profit
   • I entered a plea of guilty at the first opportunity
   • Other
   (delete where inapplicable)

☐ No consideration was given to a community service order in place of imprisonment

AND the sentence was excessive in all the circumstances

Signed: Date:
Document 7. **Case Screening and Follow up**

1. **Identify the caseload**

**Remand**
In the prison registry, the paralegal will review the number of prisoners present in the prison on that particular day, which is already disaggregated between remands/convicted, women/men, juvenile/adults; and ask to see the remand register and those newly admitted.

At the same time, the paralegal will review the remand register to check for persons who have been overstaying on remand.

**Convicted**
At the same time, the paralegal should review the sentences passed on new arrivals and check whether those serving less than 12 months (Malawi) or 3 years (Kenya) were assessed by the magistrate for a community service order as an alternative to prison.

**Foreign nationals**
Periodic reviews should be conducted of foreign nationals and notification sent to their diplomatic missions informing the person responsible of the presence in prison of their national.
Priority should be given to persons who are held on immigration infringements (ie non criminal matters such as expired visa or unlawful entry) and the young.

2. **Identify urgent cases in the health unit**
A visit to the health unit should be a daily event. The paralegal will check with the medical assistant whether any cases are judged terminal. In which event, the paralegal should request the necessary report is made by the MA so that the case can be followed up with the appropriate authorities and the process started for the individual to be release on compassionate grounds to pass away peacefully in his/her village with his/her family.

3. **Interview prisoners**
Since it is not practicable to meet large groups all at once, check with the prison officer responsible that it is all right to see prisoners in small groups (suggest 10-15 per group) to conduct the screening exercise.

The purpose of the screening is to identify who is in prison unlawfully or inappropriately. Therefore, paralegals will interview prisoners who appear to be:

- Illegally detained (ie under age, expired warrant, no file, non production before court)
- Overstayers (ie spent longer on remand than they would serving a sentence passed by a court following a conviction)
- Capital charge overstayers (ie spent over three years awaiting trial)
- On bail but cannot meet the conditions of the court

The interviews should always be done in the presence of a prison officer. The paralegal should explain to the group the purpose of the screening and what will happen to the information obtained. This is to avoid raising too much hope and to protect the paralegal from any misunderstanding.
Where the person is illegally detained, the paralegal will follow up with the authorities (prosecution or court) to request the situation be regularized (i.e. by issuing a warrant of detention, producing the person before the court, or issuing a notice of discontinuance (prosecution) or discharge (court) or granting bail.

Where the person has overstayed, s/he should be tried at once or discharged.

Where the person waiting trial on a capital case has stayed overlong, the matter should be referred to the criminal registry for listing in the next circuit; or, if the person is minded to plead guilty to the lesser charge, referred to the Legal Aid department and DPP.

Where the person cannot afford the bail terms set by the court (i.e. the surety is too high), the court should be invited to lower the threshold or dispense with any conditions whatsoever.

Once the interviews have been completed, the paralegal will compare the information provided by the prisoner with what is entered on his/her file in the registry.

The paralegal then follows up with the authorities in question or refers the matter to the paralegals working in the court.

Information to note when screening:

- name
- date of arrest
- offence charged
- home address
- age
- case numbers
- when available which court and magistrate are responsible for the case
- when available the name of the prosecutor in charge of the case.

**What to do with the information**

a. Send the information compiled together with a cover letter to the Chief Resident Magistrate and Regional and Stations Prosecution officers, always cc to the O/C of the prison where the prisoner is held

b. Provide a copy direct to the officer in charge of the registry in the prison, so that s/he can inform the prisoner or place the letter on the file

c. Foreign nationals: write to the relevant Embassy/Consulate

d. Community service: refer the list of eligible convicted prisoners to the CS Officer (it is not necessary to interview the prisoner as the CS officer will undertake this on a visit)

**Follow-up**

All information above is entered on the appropriate data capturing form (see Document 26). The paralegal monitors the data and where there has been no action in an individual case, follow up with the responsible person in authority. Provide feedback to the prisoners concerned so that a) they are kept informed; and b) to show you have not forgotten them.
In Bihar, India, judicial officials periodically visit prisons to review cases and dispense rulings on the spot. These ‘camp courts’ only handle matters involving minor offenders. The courts are seen as a useful way to reduce overcrowding, speed up justice delivery, and restore the ‘hope’ factor in the life of prisoners.

Prior to the camp courts, over 12,000 pre-trial prisoners were lodged in various jails of Bihar, waiting to be tried for minor offences. Many had been languishing for more time than the sentences when the local high court directed jail authorities to organize ‘camp courts’ in the State's jails to hasten the disposal of minor cases. The 'camp courts' handle only petty offenses, such as breach of the peace. The camp courts are organized under the auspices of the Bihar State Legal Services Authority, by order of the Chief Judicial Magistrate. Judicial magistrates and executive magistrates of respective districts preside over the camp courts. Before each session, a superintendent of the local prison submits a list of prisoners eligible to participate.

The Bihar camp courts convene on the last Saturday of every month. The camp courts have been highly effective at reducing the backlog of simple bailable criminal cases.

In Malawi, encouraged by paralegals, magistrates have applied this practice. They visit prison to screen the pre-trial caseload and screen those who are there unlawfully or unnecessarily and fix dates for trial. The exercise has been effective in reducing congestion and in restoring prisoners' confidence in the justice system by seeing justice in action.

The ‘Camp Court’ follows normal court procedure and comprises the same actors (magistrate, clerk, prosecutor – only the usher is left out).

**Features of the Camp Court**

- The hearings are conducted openly in the prison yard in full view of the prisoners and prison officers. No external visitors are allowed.
- The magistrates work to a list pre-prepared by the paralegals and discussed in advance with the prosecution.
- A record of the proceedings is maintained.
- In hearing applications for bail, the ‘court’ only has jurisdiction over those cases where defendants have not appeared before any other court, i.e; they do not subvert the authority of another magistrate.
- In any case where the matter is pending before another court, the Camp Court cannot intervene but confine itself to a recommendation to the court that the matter should be set down as soon as possible.
- The ‘Court’ does not ‘try’ any issue of fact nor accept a plea. The Court acts to screen the caseload.
- The ‘Court’ has power to make any other order which it can make in a normal court sitting (i.e dismiss a case, discharge an accused, grant bail, order a case to be listed at the next available opportunity, etc)

The lists prepared for the Camp Court may be the outcome of the screening exercise mentioned above concerning the remand caseload and conducted by paralegals.
Document 9. Case backlogs

Reviewing the caseload

The long delays awaiting trial that many people endure often for many years constitutes a breach of the criminal law, constitutional guarantees and right to trial within a reasonable time. Many developing governments plead poverty by way of defence. The UN Human Rights Committee has dismissed this defence: ‘The Committee acknowledges the difficult economic situation of the State party, but wishes to emphasize that the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe.’

Heavy case backlogs tend to distort the administration of criminal justice, as mentioned above. The understandable temptation to seek ‘quick fixes’ should be resisted as they usually turn out to be costly and short-term. Case backlogs develop because the system is not functioning properly — principally because of under-resourcing but also because of failures in communication, co-operation and co-ordination between the various agencies concerned.

A concerted effort can be useful initially to rationalise the caseload and set in motion a process of justice reforms with a ‘quick win’ that raised morale and signals to prisoners and the public at large that something concrete is being done to manage cases more efficiently.

In 1998, the court system in Uganda had an extreme backlog of criminal and civil cases. For example, in one court, during a nine-month period only one case was decided. This led to the appointment of a Case Management Committee with representatives from the police, probation, prosecution, the prisons and the judiciary. The Committee meetings were soon held on a monthly basis, as it immediately became apparent that poor communication was largely behind the lengthy court delays.

By tracking the progress of cases through the system from the very beginning, the Committee was able to identify the major “bottlenecks” between the police, courts, and prisons. The Committee initiated the practice of transferring cases from police to court immediately and taking evidence from available witnesses by the available magistrate to ensure fast disposal of simple cases. Another achievement was the development of a ‘joint simplified procedure’ to discontinue prosecution of certain cases in which the accused had not been formally arrested. Some 600 ‘deadwood’ cases clogging up the administrative system of the judiciary in the Masaka district were disposed of in this manner.

One category of remandee that PRI has noted to be particularly at risk of lengthy delays before his/her case can come to trial is the person charged with homicide.

In Malawi, in October 2003, paralegals conducted clinics in prison for homicide remand prisoners as a result of explaining the difference between murder and manslaughter, 32 prisoners indicated they wished to plead guilty to manslaughter. Following consultations with legal aid lawyers, the cases were listed before the High Court for plea where 29 entered a plea and were sentenced resulting in savings to the judiciary of more than $33,000 earning thanks from the Chief Justice.

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In Kenya in January 2004, the Kenya Prison Paralegal Project cut the remand population in Thyika women’s prison from 80 to 20 prisoners following a case by case review of the prisoners.

**How to cut case backlogs**

In many respects this is an administrative exercise to be conducted by the court and police. Old cases or trivial or vexatious complaints can be dismissed by prosecutors and clerks reviewing the case files, as happened for instance in Uganda with the case management committees.

There is a clear role that has been developed by paralegals here that can assist. The constant daily review of remand cases (as mentioned above) is one way. However serious backlogs build up especially with homicide cases.

**The specific case of homicide remandees**

The following is an approach that has worked in Malawi.

1. Following a PLC on the difference between murder/manslaughter, paralegals ask the participants if the facts in their case correspond to manslaughter and whether any would be minded to plead guilty to such a charge.

2. The paralegals then compile a list of these persons. They ask permission to refer the list to the Legal Aid department and to the DPP. Paralegals advise the prisoners that this in no way binds them to an eventual plea. Paralegals then forward the list to the Chief Legal Aid advocate, DPP with a copy to the national co-ordinator.

3. Paralegals then invite legal aid lawyers to visit prison and conduct group clinics with those who have expressed interest in pleading guilty to explain the law and answer any questions. Once a date is fixed, they advise the prisoners on the list to attend the meeting if they so wish.

**This is important:** *as is constantly repeated - paralegals are not lawyers and depend on the lawyers for guidance and support. While the majority of homicide cases are not complex (the facts are often simple), nevertheless the consequences for the accused can be drastic (and end in the death penalty). It may be the defendant is confused about the law and enters a plea on the wrong basis (ie s/he has a complete defence to the charge); or the defendant enters a plea and receives a sentence far higher than was anticipated. In both instances, the paralegal needs to insure against complaint by bringing in a lawyer to advise the defendants before the final step is taken. Therefore the matter should proceed in stages with lawyers (in private practice or in the legal aid department) involved at each stage. Paralegals here act as facilitators no more.*

4. The Legal Aid department should then liaise with the DPP (on a counsel to counsel basis – ie: in confidence and without prejudice to the eventual outcome) and
identify in which cases, state advocates consider the ‘correct’ charge should be the lesser offence of manslaughter. Legal aid lawyers will then inform the prisoner (through the paralegals) who will decide whether or not to continue with his/her proposed plea of guilty. This can be relayed back through the paralegals.

5. Legal aid lawyers then inform the DPP and clerk in the criminal registry of the names on the list and request that a date be fixed in court for the cases to be mentioned, a plea entered, a conviction recorded, the facts opened, mitigation entered and the person sentenced.

6. The paralegals can assist the legal aid lawyers further by interviewing the prisoner and capturing the points s/he wishes to raise in mitigation of sentence.
Document 10. **Terms of Reference for work in police stations**

Paralegals working in police stations (PPLs) also sign a Code of Conduct. While not strictly necessary, in the absence of a general Code of Conduct regulating the work of paralegals in the criminal justice system, a special code governing their work in police stations (where the idea is quite novel) is a good idea for building confidence with police officers (see Malawi Code below).

It is common ground that most abuses take place at the beginning (or front-end) of the criminal justice process where police charged with the investigation of a crime, whether as a result of 'time honoured' practice, or due to resource constraints, rely on 'confession-based' evidence as the chief basis for the prosecution.

The presence of paralegals in police stations is seen as vital to the provision of any effective and meaningful legal aid service as it a) provides suspects with prompt advice and assistance on arrest; b) supports those professional police investigators intent on carrying out their work in compliance with the law; and c) deters those officers who seek to ‘short circuit’ the law and apply undue pressure or hold out inducements to the accused in interview to admit to the offence in question.

The **entry point** for working in police stations in Malawi was the juvenile caseload. Meetings were conducted with police officers to agree the terms of reference that paralegals would work to and are set out below:

**Terms of reference for Police Paralegals (PPLs) working in police stations**

The PPLs cover three areas:

**Screening juveniles**

PPLs assist juveniles in completing screening forms for the purposes of a possible diversion programme (SF2: ‘Young persons in police stations’)

**Parent tracing**

PPLs assist police in tracing parents / guardians of young persons in custody

**Assisting juveniles at police interview**

PPLs sit with young persons in police interview and advise them of their rights under the Laws of Malawi (ie Penal Code and Constitution)

**Arrival at the police station**

**Introductions**

- Visit the counter and OB and log in the register
- Meet the OC or SO and obtain permission to start work
- Identify number of juveniles to be seen
- Request permission to visit police cells to see the juveniles in custody

**Screening of juveniles (SF2)**

- **Arrival at the police station**

  **Introductions**

  - Visit the counter and OB and log in the register
  - Meet the OC or SO and obtain permission to start work
  - Identify number of juveniles to be seen
  - Request permission to visit police cells to see the juveniles in custody

  **Screening of juveniles (SF2)**

  - meet with the investigating officer and prosecutor and explain the purpose of SF2
  - obtain police agreement before conducting the interview and agree which police officer is to be present (preferably a female police officer from the
Victim Support Unit as the police officer should not be concerned with the case in question and therefore be ‘neutral’; or obtain the written consent of the OC or SO to proceed in the absence of a police officer

- introduction to the young person; establish if s/he has any parents or other relatives or guardians present or nearby – check outside the police station
- if they are nearby they will need to be traced and brought to the PS before the interview can proceed; if they are not, the interview can proceed if the juvenile agrees
- set the mood (bring sweets) explain the purpose of the interview – go over the form first without writing anything and answer any questions
- conduct interview according to SF2 with the juvenile in the presence of a) the parent(s) or guardian; and b) a police officer
- read the contents of SF2 over to the juvenile and check that a) s/he understands what is written there and b) agrees with the contents
- meet with the prosecutor or CID/IB officer to review contents and get the PD
- consider your recommendations in consultation (telephone) with other team members and in complex cases with the NC (PAS and NJJF)
- review your recommendations with the prosecutor/CID/IB officer and note their comments on the form
- see juvenile again and recap the purpose of the interview in order to clarify the position rather than make promises
- make 5 copies of the document and submit to relevant agencies (NJJF, Police, Court, Social welfare, PAS)

**Parent tracing**

Parents must attend police interviews and screening interviews unless wholly impractical. Efforts must be made to locate the parents/guardians at the time

- at the beginning stages, PPLs to trace parents who are local to the police station and bring them to the PS
- at the same time, PPLs to identify parent tracers in the community (TAs and heads of schools) and near to the police station (volunteers)
- any costs associated with parent tracing to be agreed in advance with the NC

**Attending at interviews**

The role of the PPL before the interview stage is to assist the police trace the parents so that they can be present during the interview. At interview, the role of the PPL is: a) to ‘hold the hand’ of the juvenile; b) ensure s/he is treated in line with the Laws of Malawi; and c) witness the fairness of the proceedings.

Accordingly, the PPL will:

- note the names of all those in the interview room; the time the interview started and the time it finished
- sit next to the young person
- tell him/her plainly that s/he does not have to say anything and can exercise his/her right to silence
- be present throughout the interview and at the end when the police officer reads the statement over to the young person
General follow up

- write up notes of the interview immediately after. Retain a hard copy on file and send an electronic copy to the NC
- send hard copy of SF2 to the NC of the NJF, provide police with a hard copy for their file, provide social welfare with a hard copy, provide the CPL with a hard copy for the court and retain a hard copy in the PAS office
- discuss cases with social welfare and encourage closer working relationship both in and outside police station
- contact TAs or heads of school to communicate with parents who could not be reached or live far away to advise them of the situation of their son or daughter

The pilot scheme was successfully evaluated by police officers in each region of Malawi and was followed by discussion and consultation (at the regional level) between the paralegal teams and police officers.

The outcome of these regional meetings was a national meeting in police headquarters during which the paralegals were granted permission to extend their services to all police stations and include assisting at adult interviews.
Document 11. The Police Code of Conduct

CODE OF CONDUCT FOR PARALEGALS
WORKING IN POLICE STATIONS

The purpose of this Code is to provide clear guidance to and regulate the conduct of the paralegals in the Paralegal Advisory Service inside the police station in their role of providing legal advice and assistance to young persons in conflict with the law who so request it within the spirit of Section 42(1)(c) of the Constitution of Malawi.

Paralegals will be bound at all times by this code

Accordingly I, the undersigned, agree the following:

1. To work in co-operation with the police authorities at all times and in no way impede the legitimate work of the police.

2. To attend the police station at times agreed with the Officer in Charge.

3. To assist young persons in conflict with the law in tracing their parents and respected members of the community, contacting social welfare, locating sureties, screening them in accordance with the screening form provided and attending at police interview and advising them of their rights under the laws of Malawi.

4. To treat all information concerning the juvenile as confidential and not discuss it with any other unauthorized person.

5. To refuse any request made to me by a juvenile that is not made within the sight and hearing of a police officer and that is not agreed to by the police officer.

6. To meet openly with a juvenile in the sight and hearing of a police officer, unless in the company of a certified legal practitioner in a situation where the rules of confidentiality apply.

7. To assist and advise a juvenile in the sight and hearing of a police officer, unless in the company of a certified legal practitioner as above.

8. To visit police cells only with the consent of, and accompanied by, the officer in charge or by an officer designated by him/her.

9. To leave police premises on being so requested by the officer in charge or an officer designated by him or her.

10. To refer any communication from the press to the police public relations officer and/or the National Co-ordinator of the PAS; and not to issue any press statement or otherwise communicate with the press myself save through the channels prescribed.

Signed:

Document 12. Screening form in police stations

PL/MoYr/Fol.no
SCREENING FORM 2: YOUNG PERSONS IN POLICE CUSTODY

Date: __________________________

File number: __________________________

PD No.: ____________________________

Court No.: __________________________

Police station: ________________________________________

Charge: _________________________________________________________

________________________________________________________________

Name of investigating officer: _______________________________________

Details of child
1. Surname: ______________________ Other names: ___________________
2. Age: _______________________________
3. Estimated age: __________________________________
4. Sex: _______________________
5. Current residence: _________________________________________
6. Place of alleged offence: ______________________________________
7. Police station where taken to first: __________________________________
8. Date of arrest: __________________________________________________
9. Time of arrest: _________________________________________________
10. Where were you taken after arrest: _________________________________

________________________________________________________________

11. Time spent at police cell: _______________________________________
12. Were parents informed of arrest: __________________________________
13. If yes, when: __________________________________________________
14. Do you understand the charge: ___________________________________
15. How were you treated on arrest: _________________________________

________________________________________________________________

16. By whom: __________________________________________________
17. If you were abused, describe what happened: ______________________

________________________________________________________________

18. What action did you take: ______________________________________

________________________________________________________________

19. Were you mixed or transported with adult offenders: ______________
20. Were you abused, assaulted or harassed by fellow detainees: ___________
21. How long have you been in custody: ________________________________
22. Do you have legal representation: _________________________________
23. Did you understand questions put to you at time of charge:

24. Do you feel that you have been treated fairly by,
   ♦ Police: ______________________________
   ♦ The victim: ______________________________
   ♦ People who arrested you: ______________________________

25. Briefly, describe your experience: ______________________________
                                             ______________________________
                                             ______________________________

26. Do you intend to admit or deny the police version of events:

27. Do you have anyone to be your surety if you are granted bail: ___________

28. If so, what are their names, address and relationship: _________________
                                             ______________________________
                                             ______________________________

29. Briefly, describe how the event occurred; ____________________________
                                             ______________________________
                                             ______________________________

30. Action recommended by screener: ______________________________
    • Diversion
    • Remand to approved school
    • Bail not recommended
    • Bail recommended
    • Normal trial
    • Normal trial with legal representation
    • Further investigation

31. Police comments
                                             ______________________________

Parent/guardian information
Parent/guardian present: ______________________________
Name of parent/guardian: ______________________________
Contact address: ______________________________
Occupation: ______________________________

Personal information of screener
Surname: ______________________________ Other names __________________
Profession: ______________________________
Organisation: ______________________________
Contact address: __________________________________________________
Telephone(s): ____________________________________________________
Assisting at Police interview of suspect

Purpose of the interview

The aim of police in the interview is to “obtain accurate and reliable information in order to discover the truth about matters under investigation, not to obtain a confession from someone already presumed, in the eyes of the interviewing officers, to be guilty.”

The interview should come after preliminary investigation at the scene of the crime and interview of other witnesses when police officers have some understanding of the circumstances surrounding the offence.

Status of the interview

Statements by accused persons are an important source of evidence. Police should not over-rely on this source however. Why?

Because:
   a) the suspect has the right to remain silent and
   b) cannot be compelled to testify against him/herself or to confess guilt.

In many situations, material evidence (the knife, the money found on the suspect) and witness statements will be more valuable than information obtained through interrogation. However, where the resources are lacking (vehicles, police officers) police may rely on ‘confession based’ evidence as the primary evidence in a case as this avoids the time and trouble of gathering the necessary evidence (by interviewing witnesses, visiting the scene of the crime etc).

Safeguards

It is generally accepted that the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, access to a lawyer/paralegal during this period is a fundamental safeguard against ill-treatment.

There are a number of other safeguards in place to protect the detainee in this situation. The Malawi Constitution contains many of those set down in the International Covenant on Civil and Political Rights (ICCPR, ratified by Malawi) and Convention against Torture (CAT – not signed by Malawi).

Firstly, the presumption of innocence means that even police officers must assume innocence and seek through questioning to establish the facts and order of events rather than the innocence or guilt of the suspect.

Secondly, the suspect has the right to remain silent and the right not to be compelled to testify against him/herself or to confess guilt.

Thirdly, the suspect shall be allowed to consult confidentially with a legal practitioner of his/her choice and to be informed of this right promptly and where the interests of justice so require to be provided with the services of a legal practitioner by the State.

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3 Committee for the Prevention of Torture (CPT) General Recommendation 12 #34
4 Universal Declaration of Human Rights (UDHR) Article 11(1); Article 14(2) ICCPR; s42(2)(f)(iii) Malawi Constitution
5 MC s42(2)(a)
6 ICCPR 14(3)(g); MC s42(2)(c)
7 MC s42(1)(c)
Note: ‘where the interests of justice so require’ is a legal term and a rule of thumb as guidance for interpretation is where the offence charged is serious. Normally, legal aid is not granted at the police station, but at first appearance at court and particularly at trial.

Torture, cruel, inhuman or degrading treatment or punishment is proscribed under the MC, ICCPR and CAT.

The UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (BP) goes into much more detail. The BP prohibits the police from taking undue advantage of the situation of a detained person for the purpose of compelling him/her to confess, incriminate him/herself, or to testify against any other person.8

The BP also prohibit methods of interrogation, violence or threats which could impair the detainee’s capacity of judgment.9

Conducting the interview

The interview usually takes place in a room occupied by one or two police officers and the accused. Interviews should not take place at odd hours (ie during the night when the suspect is tired/sleepy) or when the accused is in drink or under the influence of drugs.

The BP require that the duration of an interview, the intervals between interviews as well as the identity of the officials who conducted the interview and others present during the interview shall be recorded.10 This information must be made available to the detainee or their legal counsel.11

Note: failure to comply with the BP or the safeguards mentioned must be taken into account in determining the admissibility of the evidence against an accused person in court.

The interview is a formal record. The note of the interview should start by noting the date and time of the interview and the persons present in the room. Everything said should be written down. Everything that happens (ie someone entering the room) should be recorded.

At the end of the interview, the account should be read over to the accused who should initial each page and sign at the end. Any corrections or amendments to the document should be initialed by the accused.

The police officer should start the interview by formally cautioning the accused:

- Anything you say will be taken down and may be used in evidence against you; however you have the right to remain silent if you so wish

If the accused indicates s/he wishes to remain silent, the police officer can still put his/her questions. The accused can either remain silent or say no comment to each and every question.

The police officer may adopt a firm tone and to consistent replies of no comment or silence ask

- well, the complainant says x, y and z, don’t you have any comment to make?

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8 Principle 21.1
9 Principle 21.2
10 Principle 23.1
11 Principle 23.2
However consistent badgering by the police officer is not likely to be productive. In which case, the police officer may move on to another line of questioning or abandon the interview altogether.

Role of the paralegal

The purpose of the paralegal’s presence at interview is to safeguard the constitutional rights of the suspect and protect the police against unfounded allegations of mistreatment during interview.

The paralegal is not a ‘legal adviser’ within the meaning of the MC or international human rights standards mentioned. S/he is present with the permission of the investigating officer - not as a matter of right. Therefore the officer can withdraw his/her permission at any time. Nonetheless this should be seen as a serious step and taken up with the OC afterwards.

The paralegal cannot describe the accused as ‘my client’ or take on an advisory role (eg by requesting time to talk in confidence with the accused or granting a request of the accused to have a confidential conference with him/her). This status needs to be clearly spelled out to the interviewing police officer and accused at the outset. The paralegal is there as a witness to the fact that the interview was conducted in conformity with the laws of Malawi.

Having said this, the paralegal is not just a passive observer. The paralegal can intervene when in his/her view the interviewing officer crosses the line from firm and even aggressive questioning to intimidatory/abusive or threatening questioning ie
- *If you do not confess we shall…*
- *You had better start telling the truth or we shall…*
- *Do you want us to bring in your wife…?*
- *Look you little shit we know you did it so talk…*

and warning the police officer directly but politely:
- **Excuse me for interrupting, officer, but do you think your tone/question is appropriate?**

The mere fact of interruption (even a cough) could dispel the atmosphere that is building up and remind the officer that there is an outsider present and that the officer is accountable for his/her action as well as reassure the accused that s/he is not alone.

Impartiality

As an independent ‘referee’, the paralegal should avoid being over-friendly with either the police or the suspect. The posture to strike is one of courteous formality as this lends a professional air to the proceedings.

The fact that the paralegal is not defending the interests of his/her client but ‘refereeing’ puts him/her on a different level - neither for the one nor against the other, but a dispassionate observer overseeing proceedings according to the rules.

Do’s and Don’t’s

The paralegal should:

- Explain his/her role to the police and suspect and request the permission of both to attend
- Ensure his/her presence is recorded on the interview record
- Keep his/her own note of the interview
- Stay in the room at all times until the end of the interview or when requested to leave and then obtain reasons for being so asked
The paralegal should **not:**

- Engage in confidential discussions with the suspect nor the police
- Interfere or speak during the interview unless absolutely necessary and then with courtesy
- Argue with the police at any time
- Leave the room unless instructed to
- Sign the interview record
Document 14. **Terms of reference for paralegals at court**

**Terms of reference for Court Paralegals (CPLs) working in court**

The CPLs cover three areas:

**Advice and assistance**
CPLs offer general advice and assistance to the accused, relatives and sureties for the accused, defence witnesses and members of the public to orient them at court on where to go, what to do, what is going to happen.

The CPL does not advise anyone individually on the merits or not of their case.

**Screening juveniles**
CPLs assist juveniles in completing screening forms for the purposes of a possible diversion programme (SF1: Young persons at court)

**Bail forms**
CPLs ensure bail forms from prison are submitted promptly to the registry and followed up

**Arrival at court**

**Plan the morning/day**
Check the Daily Court Record and plan your morning/day and time with your colleague. If there are several young persons to interview with SF1, then you will need to prioritise these. Divide time between the CPL to cover remand prisoners (and bail forms) and the CPL to cover more general advice and assistance in the court precincts.

**Introductions**
Meet with the court clerk, magistrates, prosecutors and any other criminal justice agencies (for instance check if there is a representative from Social Services). Seek the necessary permission to meet with people in custody.

**Follow up**
Follow up any matters from the previous day or week – especially bail forms (check that a file has been opened for each form), release orders, old caselists.

**Advice and assistance**

**Orientating members of the public**
- direct them where to go
- explain lay-out of the court + introduce them to the court clerk
- explain procedure (first hearing, bail, G/NG pleas, adjournment for trial)
- follow up at the end of the case with advice on what to do if the case is not ready for hearing; they are in the wrong court; if the name of the accused person has not been traced in the court clerk’s registry

**Assisting (defence) witnesses**
- check the summons s/he brings along to court (containing his/her particulars, the signature of the prosecutor handling the case)
- check the court and case
- explain lay-out of the court + introduce them to the court clerk
- explain the role of a witness (to testify to what s/he saw)
- explain the meaning of the oath and consequences of telling lies under oath or otherwise perverting the course of justice
• explain a witness cannot refuse to give evidence, if s/he refuses then can be in contempt of court
• explain procedure (first hearing, bail, G/NG pleas, adjournment for trial)
• follow up at the end of the case and advise what to do if the matter has failed to take place or has been adjourned

Assisting the accused
- in custody
  • check daily court record: identify numbers of remand prisoners and status of their case
  • seek permission to visit the accused. Identify yourself. Ask if they are expecting a lawyer or witnesses to attend or persons to stand surety for them.
  • follow up outside with these witnesses and establish if they are present
  • check the accused are familiar with the process and offer any last minute advice as per PLCs (bail, meaning of plea, plea in mitigation)
  • observe court hearing if possible
  • follow up at the end of the session with a courtesy call. If any messages to communicate from witnesses/relatives or from accused, check with police if they agree to communicating them or any supplies (eg food, tobacco)

- on bail
  • check daily court record
  • identify the accused and check whether it is his/her first appearance and whether s/he is familiar with the court lay-out and procedure

Screening of juveniles

Having checked the daily court record to see if there are any young persons suitable to be interviewed using SF1, seek the necessary permission to conduct the interview

• meet with the prosecuting officer and explain the purpose of SF1. Obtain his/her agreement to conduct the interview. Find out if the complainant is present.
• introduce yourself to the young person and establish if s/he has any parents or other relatives or guardians present.
• explain the purpose of the interview – go over the form first without writing anything and answer any questions
• introduce yourself to the complainant, explain the purpose of SF1 as with the accused
• locate a suitable place to conduct the interview with the accused and parents – advise the prosecutor and complainant
• conduct interview with a) the accused; b) parent or guardian;
• meet with police to review contents and c) invite comments from the police and enter on the form
• meet and interview d) the complainant. Note: do not share information with the complainant other than to indicate (if the case) that the accused has expressed remorse and admits to the offence.
• consider your recommendations.
• make 4 copies of the document (NJJF, Police, Court, yourself) and submit to relevant agencies

Bail Forms

Collect the bail forms from PLs (Prison paralegals) and lodge them with the registry clerk or CRM (depending on the local arrangement). Ensure each form has been logged in the PAS database (for follow up purposes) and a copy made and left in the PAS file.

• enter each form into the database: name of the case, serial no of the form, name of the court, name of the prosecutor, comment
• review the forms and identify those which stand a good chance of bail and those which will require argument
• meet with prosecutor and go over the forms and focus on those which the police may not object to
• identify those where police ask for a surety and inform the accused accordingly and facilitate contact (through telephone).
• where the police object, draw up a list and refer cases to legal aid department and agree with the court for a date when a block application can be made by a lawyer from the legal aid department; or with a private lawyer on a pro bono (ie free) basis.
• Indicate on form whether the case is current or finished and write on the form the decision of the court. Update the database at the end of the day.
• Follow up: where a person has been granted bail. Communicate to PLs so that they can follow up for prompt release. Where a person has been refused bail ie due to absence of a surety, inform the PLs so that the accused can be advised to contact his family to organize a surety.

General follow up

The CPL plays a key linking role both with prisons (PLs) and police (PPLs). The CPL will need to liaise closely with colleagues.
• lists of old cases and especially old cases pending committal need to be followed up with the CRM and registry
• lists of expired remand warrants will also need to be followed up with prosecutors
• every month, or more if possible, the CPL will need to liaise with the PLs, CRM and police (through the CUC) to organize a Camp court in prison
• CPLs need to be in and out of court to observe how remanded prisoners represent themselves.
• Release orders need to be communicated to the PLs to ensure the prisoner is duly released.
Document 15. **Screening form for use at court**

**SCREENING FORM 1: YOUNG PERSONS AT COURT**

Interviewing paralegal: Date of interview:

*Preliminary information*

File number:

PD No. Court case No.

Police Station: DoA:

Prison: DoD:

Other:

Charge:

*Child's details*

Surname: Other names:

DoB: Age:

Estimated Age (if date of birth is not known): Sex:

Language of choice:

Home of origin Address:

Current residential address:

Education level:

Employment status:

Previous contact with social workers:

If so, give details, including dates:

*Background*

Previous offence(s):

Type of offence(s):

Year of commission:

Type of sanction:

*Alleged Offence*

Current offence (describe):

Indicate if bail was considered:

If so state conditions:

If refused on what grounds:
Access to legal advice:
Willing to admit or deny the offence:

Child's feeling regarding the alleged offence:

Police comments:

Home circumstances
Do you have parents/guardians looking after you:
If not, who looks after you:
If parents/guardians are available, explain the home situation (in terms of food, finances, housing, alcohol and drug abuse, other)

Complainant's information
Name(s):
Residential address:

Monetary loss/value of property (approx.):
Property/money recovered or their value:
Type of injury sustained:

Complainant’s feeling about the offence

Community feelings about the child (if known)

Recommendation
1 Release to parent
2 Refer to approved school
3 Remand in prison
4 Bail not recommended
5 Bail recommended
6 Normal trial
7 Normal trial with court social report and pre-sentence report
8 Normal trial with legal representation
9 Diversion options (caution, apology, compensation/restitution, victim offender mediation, other)
10 Further investigation
   Comments on recommendation chosen:

Parent/guardian information
Parent/guardian present:
Name of parent/guardian:
Contact address:
Occupation:

*Personal information of screener*

Surname: Other names:
Profession:
Organisation:
Contact address:
Telephone(s):
The purpose of this form is to assess the impact of the PLCs in court. It is not scientific but can be used in support of claims that PLCs have facilitated proceedings and especially success in bail applications.

1. Name of court: Date:

2. Presiding magistrate:

3. Name of accused

4. Nature of the proceedings: Summary trial Plea in mitigation Bail hearing

5. Result: Conviction Acquittal Bail granted refused

6. Rating: very good good fair poor
- Appearance:
- Voice:
- Style
- Impact

7. Comments of the magistrate

8. Comments of the paralegal

Paralegal:
Document 17. **Trial observations**

In 2000-2001, paralegals conducted trial observations of 91 capital cases in Malawi. The findings were significant and raised questions over the quality of justice delivered in capital cases under the jury system.

The findings included the following - as concerns police:

- they lack resources to gather evidence and complete their investigation;
- they over-rely on confession evidence;
- they adduce hearsay evidence which leads to the case being dismissed at trial (often years later);
- officers are transferred and files are lost or forgotten;
- prosecutors routinely charge 'murder' even though the facts disclose manslaughter which prejudices the defendant’s chance of being released on bail;
- the passing of the file up the chain of command for perusal causes delay and files being mislaid (especially as concerns communications between police and the DPP);
- in turn encourages a blame culture with each part of the prosecuting process accusing each other of delays or loss of files

The findings criticized the procedure and case management:

- Committal proceedings are protracted and cases are not ‘pushed’ through the system by administrative or judicial oversight;
- there is no procedure of ‘Pleas and Directions’ in place to allow the judge to establish the status of the case and push it along or dispose of it there and then by way of a plea;
- Case management lacks system: new cases are set down for trial, while old cases are put to the bottom of the pile

As well as the judiciary and lawyers, finding there was:

- Inadequate preparation time:
  - advance disclosure is not served on the defence;
  - the Legal Aid department lacks the resources to prepare cases (visit the defendant in prison and take a proof of evidence; or locate potential witnesses and take statements);
- trial judges lack familiarity with the jury trial system (introduced suddenly by the former Chief Justice in 1995);
- the jury system is a source of confusion for accused and exasperation for some judges and lawyers;
- lawyers both prosecution and defence lack advocacy and court craft skills;
- there are no sentencing guidelines for judges in common or garden ‘domestic’ or ‘bottle store’ type homicides where there are no aggravating factors which would encourage those so charged to enter early pleas.

These findings are helpful when considering reform measures. They also inform the debate on sentencing, especially the death penalty (it may be argued for instance that where the ‘system’ is so flawed, it is unreasonable to assume the guilt of a person is going to be on the basis of ‘clear and convincing evidence leaving no room for an alternative explanation of the facts’\(^{12}\)).

Amnesty International has produced a helpful ‘Fair Trials Manual’ (1998) which should be in every paralegal library.

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\(^{12}\) UN Safeguards guaranteeing protection of the rights of those facing the death penalty
The PAS developed a 20 point report for the trial observations. Following basic training, paralegals were introduced to the principles of trial observation and relevant laws in one day. Emphasis was placed less on legal knowledge, though some was necessary, so much as accurate observation and good listening.

**The Observer’s report framework:**

1. Court  
2. Judge  
3. State advocate  
4. Legal aid advocate

5. In the Case of State v XXX + case number

6. Age of the defendant  
7. Age at the time of arrest  
8. Date of arrest  
9. Time spent in custody pre-trial

10. Indictment (state the charge read out in court)

11. Summary of the prosecution case and the evidence relied on  
12. Summary of the defence relied on by the defendant  
13. State the challenges made to the prosecution case and how far they were successful (eg: alibi, wrong identification, admission made under pressure, no intent to cause serious harm, etc)

14. Evidence called/relied on by the defence

15. Verdict of the jury (G/NG; unanimous or majority) and sentence of the court

16. Conduct of the trial (fair/unfair – state reasons)

17. Comments (supported by reasons)

18. Interviews
   
   Prosecution:  
   - date of call  
   - previous trial experience  
   - satisfied with the conduct of the case?  
   - Problems encountered and how they were overcome  
   - Recommendations by State advocate

   Defence  
   - Date of call  
   - Previous trial experience  
   - Satisfied with the conduct of the case?  
   - Problems encountered (eg: when did lawyer first meet the defendant? Was there sufficient time to prepare the case? Witness statements?)  
   - How were they overcome?  
   - Recommendations by Legal Aid advocate

19. Appeal ie: state whether the defence intend appealing or not; state grounds/nature of the appeal

20. Attachments: newspaper cuttings

Individual reports should be filed and then synthesized in one report and published.
Document 18. Linking up

Introduction

In the French language the criminal justice system translates as ‘la chaine penale’ – the penal chain. This is a helpful image: everything in the justice chain links up. We have discussed before how in reforming one part, you need to reform the whole. Looked at as a ‘chain’, you can strengthen weak links so that the chain itself is stronger.

The criminal justice agencies, particularly police and prisons, suffer from a lack of training, resources, personnel to name three basic requirements for any service. The paralegal aims to help these agencies because they lack resources, rather than criticize them for not performing as they ought to because of deficiencies in service delivery outside their control.

The partnership with criminal justice agencies is a natural one because these agencies are or should be mechanisms of social protection and not oppression.

The spirit of the relationship is thus based on collaboration, mutual respect and trust. The paralegal seeks to work with and through other criminal justice agencies and by so doing strengthen the individual links in the criminal chain.

Developing trust

This starts at the outset of the paralegal’s training. The introduction to criminal law involves spending time in a police station, court and prison observing the steps from arrest through to appeal. The paralegal sees at first hand the conditions and environment in which the various agencies must work. Later s/he will be introduced to the theory of criminal law and see how the law ought to be applied.

This initial period is important: the police or prison officer, the court official is the paralegal’s teacher.

The code of conduct sets out the framework within which the paralegal works in the police station and prison. S/he is there with the consent of the police and prison officers. The professionalism with which the paralegal conducts him/herself will dictate the speed at which trust develops. An attention to carrying out the work the paralegal is engaged in to the highest standard, to follow-up and to open communication with other actors – will impress those with whom the paralegal interacts.

Meetings are important and regular contact. Even where there is no work to be done (concerning young offenders or accused persons in police stations) time can be usefully spent in discussing general matters and the role of the paralegals for those officers who are skeptical or hostile to your presence.

Court User Committees: linking up with local actors

The Caseflow Management Committee in the Chain Linked project (Uganda) is also known by that name in Tanzania; as a ‘Court Users Committee’ (Malawi) and ‘Access to Justice Committee’ (Kenya). These committees operate at the local, regional/provincial and national levels to identify problems and come up with solutions. They meet regularly at the local level (monthly), quarterly at the regional/provincial level and annually at the national level which, in theory, reviews the information passed up the chain and formulates policy. At the local level, at least, they have proved effective in improving communication, co-ordination and communication between criminal justice agencies and settling local crises.

In Malawi, the meetings are minuted and action points agreed. This has enabled the committees to identify local blockages and solve them. For instance, the overcrowding in one prison became so bad that prisoners were taking it in turns to sleep. Paralegals,
supported by prison officers raised the matter at the CUC, the Chief magistrate visited at night and the next day, he returned with three magistrates, police prosecutors and court clerks and released a number of prisoners to ease the congestion.

The Committees require little in the way of funding: $10 per meeting is budgeted for in Malawi which covers the cost of local transport and some refreshments. The CUC provides practitioners with a forum to address temporary crises as in the example above and also to discuss on a continuing basis ways of reducing the caseload by referring appropriate cases to the Community Service officers (who also attend these meetings); or back to traditional authorities for local settlement – as well as encouraging the police to speed up investigations and gather the evidence before the person is remanded in custody rather than afterwards.

Paralegals should encourage the Chief Magistrate to call and chair these meetings at regular intervals and offer secretariat support (ie in recording the minutes). They should also prepare the agenda for such meetings so that continuity is maintained and agenda items fixed for systematic review at each meeting so that progress can be recorded.

**Constitutional watchdogs: linking up at the national level**

Beyond the criminal justice agencies, there are the constitutional watchdogs such as the Inspectorate of Prisons, Human Rights Commission and Office of the Ombudsman.

Representatives of these bodies should be invited to visit the paralegal in his/her place of work on a regular basis. Mechanisms for reporting (informally or formally) need to be worked out.

For instance where food is short in the prisons, or there has been a sudden deterioration in conditions affecting health, the paralegal will communicate to the national co-ordinator but should at the same time notify the constitutional bodies so that they are informed immediately of the situation and can use their own channels to communicate the urgency of the situation up the political chain.

There is no special way of doing this: a phone call, a short letter or note, will suffice. What is needed locally is the contact point to communicate with. This point should be identified and regularly updated on the situation.

**The Advisory Council**

As an organization, the PAS is advised by the Advisory Council. This organ comprises senior members of the criminal justice system and meets quarterly. It is at these meetings that the national co-ordinator can ask for guidance on a matter and raise issues of concern or policy with senior judges and magistrates, police and prison officers, as well as chief law officers (such as the Chief Legal Aid advocate and Director of Public Prosecutions). In other countries, the AC is known as a Steering Committee.

**Informing policy**

The fourth limb of the PAS comes into play here. Policy questions can be tabled at the AC meetings. Paralegals have a real contribution to make to a paper exploring the issues concerned.

Take ‘jury trials’ for instance: the system of ‘jury trials’ in capital cases is a relatively new phenomenon in Malawi criminal law (it was introduced by the then Chief Justice, RA Banda) and appears to be little understood by the accused and subject to criticism by lawyers (both state advocate and legal aid) and some members of the judiciary.
Clearly there is a need for a review of this procedure. A paper exploring the arguments for and against the jury system (and capturing the views of as wide an audience as possible) is needed to inform the debate. Paralegals are in a position to interview prisoners, witnesses, victims of crime, police officers and feed their views into the paper.

On occasions when the paralegal witnesses or comes across criminal conduct by a criminal justice agent, then s/he should inform the team leader and national co-ordinator and write a short report on the matter.
Document 19. **How to take a statement**\(^\text{13}\)

The aim of a statement is to set out in writing what a witness to an incident observed. There is much skill involved in taking down a witness’ statement. The paralegal must

- be sensitive to the witness’ feelings;
- take as much time as the witness needs;
- let the witness tell his/her own account without suggesting answers; and
- ensure that the statement is sufficiently detailed.

It is important that the witness understands the implications of giving his/her testimony and the basis upon which s/he shares his/her information.

It must be established beforehand whether the witness is

- prepared to give information only as background for the purposes of a report in which the witness is not named; or
- prepared to give the information in the form of a signed statement; and, possibly, to give evidence at a later trial.

This information should be noted in the report.

**LISTEN**
Let the witness tell the whole story in his/her own way and time.

**NOTE**
Make a contemporaneous note of what the witness says.

**ENCOURAGE**
Do not interrupt this account (except for purposes of taking the note).

**CLARIFY**
When the witness has finished his/her account, go back over it and clarify points such as dates, times, places, identities, numbers, positions, ages, colours, shapes.
The monitor has the responsibility of ensuring that the report is accurate, objective and factual.

**How to listen**
- Start with open-ended questions, eg: *Tell me what happened*.
- Use door-opening questions, eg: *Tell me more* and *I hear you*.
- Avoid door-closing statements, eg: *You are wrong* or *that was stupid*.

**Ways to listen**
- Maintain eye contact.
- Nod the head.
- Put yourself on equal terms. For example, do not stand over someone, or talk from behind a desk.
- Focus on the speaker.
- Avoid judgement or evaluation.
- Make comforting/encouraging sounds.

**A good listener** This is a person who
- creates a supportive environment;
- establishes trust; and
- creates a sense of impartiality.

\(^{13}\) excerpt from the Human Rights Handbook, English and Stapleton, Juta and Co. 1997
More than usually sensitive cases  Some categories of abuse, such as rape and torture require the interviewer to be especially sensitive. For example, in the case of rape

- the victim should preferably be interviewed by a woman; or
- at least have a woman present at the interview; and
- the victim should be examined at once by a doctor, preferably female. If this is not possible, a woman should be present at the examination.
- There should be absolute privacy and confidentiality both at the examination and when the statement is made.
- Respect should be shown for the religious and personal concerns of the victim.

2. How to record a statement
A statement is a formal document. It sets out the particulars of the person making it at the beginning, ie

- name,
- address, and
- occupation,

before going on to state what the person wants to say.

It is signed at the end of each page by the person making the statement. A statement is not evidence by itself. What the person saw or witnessed becomes evidence when that person appears, in person, and testifies in a court of law. The person accused can then question, or cross-examine, the witness as to the accuracy or good faith of the statement.

Step 1 Preliminaries
(a) Heading: STATEMENT
(b) Name of witness: Livingstone Phiri
(c) Age: 35
(d) Occupation: Farmer
(e) Address: not disclosed
(f) Date of statement: 10 April 2004
(g) Page(s): 1

Step 2 Beginning the statement  The person has already told his/her story. The paralegal has made a brief note.

Start at the beginning  When and how did the person become involved? If the context requires going back a number of years to explain relationships and background, do so. Include the date, place, and time:

On Friday, 5 April 2004, at about 8 am I was at home when the police arrived and started beating me and asking me all sorts of questions. The next thing I knew I was in a cell in XYZ police station…

Try and control the steps in the narrative and clarify each one  The person may be emotional. It is important to remain sympathetic and gentle while focusing on the need for clarity and accuracy. Guide the person through the events as they occurred and try and break them down into steps rather than roll them up into one rush of narrative.

This is what happened to the person, but it lacks important details. By asking questions the paralegal can guide the person to deal with each part of the narrative as it occurred. For example:
- how many police officers?
- Did you recognize any of them?
- What did they actually ask you?
• Where did they strike you?
• Who else was with you at the time?
• Did they see what happened as you have described?
• How did you get from home to the police station?

In this way the statement gives the type of detail necessary to build a case:
There were four police officers. I did not know any of them personally. They punched me to the face and body (especially the kidneys and back). One had a stick and was waving it around. I have a deep cut to my head. My brother, MNO, was with me at the time and asking them what they were doing. I think my neighbour was watching from next door but cannot be sure. I do not remember how I got to the police station: I just woke up there.

Step 3 Ending the statement
(a) When the statement is completed ask the person to read it over to him/herself, or if s/he cannot read, read it out loud.
If the person disagrees with anything or wants to change something, do so and then ask him/her to initial the corrections.

(b) Check that all pages are numbered and that the person has signed his/her name at the bottom of each one.

Important: A statement can take a long time to record. Do not rush it. Stop for breaks as necessary. An incomplete statement may mean revisiting the witness and submitting him/her to reliving the ordeal.

Step 4 Making ‘further statements’ After a few days, it may be that important matters have been left out of the statement, or need further clarification. Do not alter the statement but ask the witness to make another one. It will carry the same heading:

STATEMENT and the same preliminaries as the original.

It will start: Further to my statement of . . . (date of first statement):
Further to my statement of 4 April 2004, I recall one of the police officers who assaulted me at my home referred to as ABC by the other police officers. I could recognize all of them again.

Other statements — Producer and Expert Statements are required for each aspect of the evidence that is used to prove a case.

(a) Producer statements:

A film, tape recording, sketch cannot speak for themselves when it comes to when, where, how they were made. They too require a statement if they are to be used as evidence. So that, if necessary, the person who created them: the photographer, person recording, or artist, can be called before the court and asked questions.

These statements usually are formalities. They are short and to the point. They are called ‘Producer statements’ because the person makes the statement in order to ‘produce’ the evidence as an exhibit in court.

The person who, for example, took the photographs
• identifies himself;
• where and when he took the film; and
• the date and the place.

He then ‘exhibits’ the film and produces it as evidence.

For example:
I am a photographer. On 11 April 2004, I visited PQR prison and met with Mr Phiri. I took six photographs of his head, back and front and produce them as exhibits VB/1—6.'

The exhibit number for simplicity’s sake is the initials of the person followed by a number who finds or makes the real evidence and exhibits, or shows, it to the court.

(b) Expert statements:

An expert’s statement is sometimes necessary to prove a specialized piece of evidence. For example, a scientist giving evidence about fingerprints, or bullets (ballistics) or chemical contamination; a forensic anthropologist or doctor. The statement will be the same in format as the others. For example:

• (a)—(g) as above; then
• the expert’s statement will begin with details of his/her qualifications and relevant experience:

‘My qualifications are . . . . . . I have been a specialist in the field of forensic science for ten years.’

Or:

‘I have been a medical practitioner for 25 years. My qualifications are. . . .’

‘On 12 April 2004, I examined Mr Phiri. He came to me complaining of pain to his stomach and head ache. On examination, I noticed a deep cut (2”) on the top of his skull and severe bruising to the right side of his chest. X-rays revealed 3 cracked ribs. I noticed weals on the right side of his back. I stitched up the cut in his head and gave him pain relievers. I expect him to make a full recovery.’

An expert’s evidence should also include
• the date of the examination or analysis;
• the place;
• the names of any other people present;
• from whom the sample/item of evidence was received;
• to whom the sample/item of evidence was given after the examination.

In the same way as any other witness, the document is read over and signed by the maker.

Step 6 Exhibits  The actual knife that wounded or killed the victim; the photograph of the scene; these, and other items of real evidence, are produced to a court or commission to prove the allegations. They are called exhibits.

It is important to record carefully what happens to this evidence from the moment of discovery.

If the piece of evidence is handed over to an expert, there must be a statement to say so. Similarly, the expert must say to whom s/he returned it. In this way, the continuity of the exhibit is maintained and the risk of fabrication is reduced.
Document 20. **How to write a report**

A report is a formal account of some event(s), written after some kind of enquiry or investigation has taken place. There are reports to summarize the events of the past week, month, quarter or year. Reports come in all shapes and sizes.

A paralegal report aims among other things to

- present a summary of the available evidence; and
- shed light on what actually happened, based on that evidence, and suggest courses of action.

While there is no one single way of writing a report, there are certain elements it should contain.

**How to write the report**

A report must contain an accurate account of the facts. The more serious the allegation, the greater the need for accuracy in describing it. Objectivity helps to achieve accuracy; exaggeration undermines accuracy and causes loss of credibility.

A good report should

- be based on fact not rumour or supposition;
- indicate where the evidence is corroborated;
- provide an impartial account;
- use objective language;
- avoid comment;
- standardize the presentation of the information;
- contain conclusions and the reasons for them; and
- set out recommendations for action.

**i) Be based on fact, not rumour or supposition** The facts emerge from the evidence that has been gathered

- from the statements of the victims and the witnesses;
- from the statements of doctors and any other experts at the scene;
- from photographs; and
- from real evidence and exhibits collected at the scene.

The facts should speak for themselves without comment.

**ii) Indicate where the evidence is corroborated** If it is not possible to find any corroboration, or support, for an allegation, the report should say so. For example:

*I was unable to confirm the account given by X.*

or

*Everyone whom I approached in the village was, in my view, too frightened to speak to me. One man who began to speak, stopped as soon as he realized that he was being watched.*

**iii) Provide an impartial account** The report should give a balanced picture of what happened. It should look at all the evidence and include evidence which does not support the allegations being made. For example:

*One witness said that the assault was carried out by Young Democrats and not police officers*

**iv) Use objective language** The report should avoid using emotive language.

WRONG: *At this stage he was devastated to see loads of police brutally attacking the*
terrified defenceless woman. . . .

BETTER: At this stage he saw between 10 and 15 uniformed police officers approach a woman who was alone and unarmed. The men surrounded her. ‘They were striking her with the clubs and rifle butts. I counted at least fifty blows’ said Y.

(v) Avoid comment  The report should contain quotations from the statements that have been taken and extracts from the notes made by the author at the time. For example:

One woman (who asked not to be named) said that . . .

and

I counted 12 bodies. Two appeared to bear marks of torture (see the photographs in Annexure A at page 5). All had been shot with a single bullet to the head.

Any comment should be left until the conclusions at the end of the report. (See (vii) below)

(vi) Standardize the presentation of the information  The report should be divided clearly into paragraphs and sections. Each paragraph should be numbered. Each section should carry a heading.

All quotations or references should state the source they come from, unless a witness has requested that his/her name be withheld — in which case, the quotation can be from ‘A witness at the scene’. Where appropriate, the statements should be contained in an Annexe to the report. Each allegation or series of allegations covered in one section of the report should correspond to an Annexe that contains the evidence from which the report is compiled.

(vii) Contain conclusions and the reasons for them  At the end of the report there should be a separate section headed Conclusions. It may be that the evidence points overwhelmingly in one direction. The report should avoid judgement, however, and use phrases such as:

In the circumstances, it appears that. . . .

or

The facts set out above suggest that. . . .

Sometimes the circumstances are so serious and the evidence is so strong that a clear and unequivocal conclusion is required.

Comment should also be reserved to this section of the report. For example:

It was my view that . . . While the situation seemed . . . I/we/the team thought/agreed that. . . .

A ‘comment’ should be an informed view. Usually comments are made verbally when giving impressions of people, atmosphere, situation and so on. A comment in a report should be carefully considered before it is included. One bad comment can undermine the impartiality and objectivity of an otherwise accurate and clear report.

(viii) Set out recommendations for action  Recommendations suggest the next steps that should be taken. Some reports speak for themselves and do not require recommendations. The paralegal is in the best position to assess the situation and identify immediate needs.

A report should not only be accurate in the account of the facts but throw light on the causes of those facts. Propaganda and disinformation confuse and distort facts. The date, time and place; the numbers and identities of the victims may all be accurately stated but each side uses the incident to point the finger of responsibility at the other.

An impartial report with reasoned conclusions clarifies the picture and sensible recommendations point the way ahead.
Introduction

There is a growing evidence base that well managed information enhances the overall management of organizations. Information management is therefore viewed as a strong supportive component of the management leading to an increased need to create good information systems and recruit trained information officers.

Sometimes this evidence is misconstrued as the need to have more electronic devices and therefore the assumption that the more computers an organization has the better managed their information will be. Computers seem to be the magic word in solving information-related problems.

All these are indeed good initiatives but it is important to appreciate that the management of information requires much more and goes much deeper. Before one can come up with a good information system, a lot of preparation work is required and a certain order of priority is crucial to sustain the information system. The effectiveness of the information system is interfered with when this order of priority is not respected.

There is a fundamental logical order that precedes the information system and acts as the foundation for a good information system.

Why information management?

Information management has an impact on the overall work of an organization and can adversely affect decision making process in a negative or positive manner. Most organizations are information dependent. Organizations are as good as the information available to them, it is therefore logical to assume that an appreciation of information management principles becomes an important prerequisite from the onset in any organization.

This appreciation helps the organization to cope with the challenge of achieving the main objectives as well as supporting the initiatives therein. In most organizations and indeed within the criminal justice agencies, the details count.

Lack of useful detail means that cases are stalled as the courts wait for vital information from the prosecution which enable them to proceed with the hearing. The result is that decisions to commit for trial, sentence or release are delayed. This only serves to increase the remand population in prisons which in turn over-burdens the prison service to a point where it provides a poor service. The poor service is consequently unable to effectively provide the rehabilitation function but instead may end up graduating hard-core criminals.

Information management and paralegal work

Paralegals are involved in different types of activities that range from informing prisoners about the law and court procedures to giving advice and assistance with legal problems. They work in the prisons, police stations and court centres. They also observe the extent to which constitutional and human rights standards are applied within the justice system.

Being the one single group that actively interacts with all the departments of criminal justice puts the paralegals in a privileged position to encounter a lot of information in the course of their day to day work. A lot of the data that they come across is vital but

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often unavailable for policy decisions as well as for improvements in the efficiency of service delivery within the justice system.

Productive communication depends on delivery of the right information to the right audience in the right way at the right time. Given that there are gaps in information flow within and between institutions, the paralegals can play a vital role in disseminating the information gathered from the three institutions (police, courts and prisons) by developing effective ways of data gathering and processing, recording, storage and retrieval.

Earlier initiatives in addressing problems of information flow have identified inconsistencies and gaps and this problem has partly been blamed on untrained personnel among other problems. While the mammoth task of training sufficient staff in information management across the justice system will need to be addressed, it was proposed to start with the paralegals to ensure that relevant information is collected, processed and channelled to the right people in a systematic format and without delay.

The success of paralegal work as the ‘link in the criminal justice chain’ depends on the precept of the value of information as a key resource on which to base decisions and actions and from which vital lessons can be learned. Without information it is impossible to assess the present potential, the achievements made and how to map the way forward.

Useful information is: complete, accurate, reliable, timely, organized, analyzed (i.e. reports), relevant and valid.

Information perspectives

The 21st century has brought about many changes in our lives in a world in which people are increasingly conscious of living in an environment that is profoundly and fundamentally different from that into which many were born. The last decade has witnessed lots of technological, economical and cultural changes on a scale that justifies the description of the changes as revolutionary. One of the areas in which we have witnessed significant change lies in the management of information:

- the speed at which information travels
- the rate at which it gets outdated
- the cost of not having it,
- the various electronic options that are available for storing information and
- the various methods available for sharing information

All these factors combined require organizations to address the issue of information management in a new light and a new perspective.

Why the pressure to manage information?

We are in the information explosion age where the problem is not so much unavailability of information but the presence of too much of it.

This is a common scenario with the paralegals within the environment that they work in. It happens every day as they walk into the prison gates with a specific objective to conduct Paralegal Clinics, only to find that they cannot ignore everything else around them (the physical conditions of the buildings, the poor state of hygiene and sanitation, the poor standard of health care, the sight of prisoners 'just sitting' with nothing to do, the poor terms and conditions of the prison officers). The information around them hits them like a heat wave and can be overwhelming.

The major challenge in information gathering is to come up with a systematic method that is consistent and that creates uniformity as it allows for completeness of information.
Because information is an economic commodity the manner in which we process it should indicate not just its quantifiable nature but also its qualitative nature which would allow us to measure its effect. This complicates the information flow as it requires of us to be able to justify what we do with information. As we process the information, we need to break it down into consumable units that form the cornerstone in decision making at various levels.

While acknowledging the many PAS achievements since its establishment in Malawi, certain information related obstacles have interfered with efficiency and therefore with the overall performance.

Information is the basis on which every decision is taken in any organization. Limited skills in information management can affect the manner in which information is interpreted, gathered, processed, stored and shared. The cornerstone of any organization is its goals and objectives. Steps taken towards fulfilling each objective pose specific challenges.

The challenges prompt us to develop techniques that can be used to overcome the challenges.

Information can be dressed in different ways to convey the same message to different audiences who will interpret it differently. It is therefore crucial that paralegals develop an appreciation of information packaging. Access to information management skills results in better methods of handling this key resource on which crucial decisions are made.

Information flow

The information flow will be affected if the objectives are not well understood and well interpreted.

- Information gathered may not be useful (irrelevant data)
- Data may not be systematically collected – this leads to a distorted picture
- Improper processing and classification of data – this leads to loss of data
- Gaps will be introduced within the information body
- Value is lost while data is being processed
- Processed information will not be communicated on time - delayed information is as good as dead information
- Information may not be communicated at all to the rightful users
- Information that cannot be retrieved

Accuracy of information

It is not enough to come up with a management system and then feed the system with inaccurate information as that will affect everything that comes out at the end of the pipeline. The data derived from such a system will give misleading information that will result in bad decisions.

The accuracy of records within the justice sector suffers if there is lack of appreciation of information as an important commodity. Case file management is the cornerstone of the criminal justice system (CJS) i.e. during investigation, prosecution, court proceedings, committal to prison, bail, appeal etc. The accuracy and completeness of the case file has remained a major challenge that has led to severe delays in the carrying out of justice and thereby miscarrying of justice by the very instruments that uphold justice.

Timeliness of information

In any organization, a failure to produce information at the right time will reduce the effectiveness of management because decisions cannot be made in the absence of
information. In the case of the justice system, lack of timeliness affects the lives of individuals when unnecessary delays affect the trial of a case – 'justice delayed is justice denied'.

**Gaps in information**

Information gaps leave grey areas in which the system is unable to tell who is to blame for what mistakes. These gaps may arise due to:

- insufficient information
- negligence
- information loss (especially from loose manual files)
- misfiling of documents that may produce unrelated information in one dossier.

The problem with information gaps is that they seriously affect the whole system and make accountability very hard. The blame is collective and it runs across the board making it difficult for one department to do its work efficiently as it waits for certain pieces of information from another department. It becomes difficult to tell what is going wrong and it also overshadows good practice within the system. If there is no appreciation of overall objectives of the justice system as a whole, the system will have gaps and thus an omission or delay of step X is not related to decision Y or Z.

**Characteristics of data/information**

While data and information may sometimes be used interchangeably (depending on the circumstances), they have in this document been distinguished and defined in order to clarify the process of information management especially as far as the work of paralegals is concerned.

**Data** is a collection of facts (about a situation or events) that have not been processed. Data can be termed as raw facts concerning occurrences or happenings in an organization, a business, a country, a situation etc.

Data is what the paralegals come across in their day to day activities i.e. in prisons or police stations. Most of this data is presented in the form of records or case files.

**Information** is data that has been organized for a purpose. Characteristics of information:

- It is attainable and it is usable - thus it is a valuable resource
- Its value is not readily quantifiable as its value depends on its users who will assess its content. Example; Information as it rests in an electronic database has no inherent value.
- When it is consumed, none of its contents are lost
- It is not sacrificed when shared with others
- Information is a dynamic force for change in the systems within which it operates. It is a formatted-organizational entity not an accumulation of a stockpile of facts
- Information should influence decisions.

**Information as a commodity**

Information when viewed as a commodity has a greater value than a resource. The very notion that it is a commodity indicates that it is closely tied to the concept of value as it progresses through the various steps of creation, processing, storage and use.
Information as a constitutive force in society

Information is an important agent in the creation of a social structure. Information policy decisions are inevitably colored by the viewpoint of society and are inextricably linked with culture and values.

Information is a resource – without it:
- Decisions by management would be based on intuition.
- It would be hard to judge the effect of what is done at any given time.
- Redundancies would be hard to avoid.
- Emphasis would be in the wrong activities.
- Accountability would be impossible.

Organised information collectively over time builds a comprehensive picture of an organization and provides:
- evidence of what has been done
- Why it has been done
- What has been achieved
- The impact of the activities carried out.

Planning

Time management

The major problem in the world today is that people don’t have enough time to deal with the many things that they have to do. So we go through a full course on what to do to become better negotiators, better information managers but often when we go back to our stations, we find that we do not have time to do half what we learnt.

Time management requires planning and organization.

The beginning point is identifying what the problems in managing your time are and that can only be done through identifying how you are currently spending your time.

Time logging

It is important to keep a time log of everything that one is engaged in every day for a period of time. Anything that takes more than 5 minutes is worth recording. If the activities are fairly routine, a time log of 2-3 days can give an indication of what we spend our time doing. If we do jobs that have variations then we may do a time log of up to a week or more.

Socializing is a major detractor and so are meetings whose agendas are not tied to time. Time log allows us to see what it is that we want to change.

Do you spend enough time planning?

What are your major blocks and obstacles? Note that things like interruptions will always be there and the important thing is having a mind set that alters the distractions and controls the blocks.

Be in charge of your time, do not be the victim.

Example:
Whenever you touch a paper, do something about it. Do not look at a paper and put it back where it was on a desk. Read it, file it, pass it on, put it in the bin but do not leave it where it was. Deal with it then. Do not pend things. When dealing with projects that seem hard, like
report writing, use the SALAMI technique. Break the task into different smaller tasks and do them one at a time until you come to the end.

If meetings are your major weakness, plan the agenda in terms of priority and allocate time for each agenda item. Take control, do not be scared to take a lead or to interrupt.

Planning is crucial in data gathering activities. This involves setting out targets and clearly indicating what activities will take place within a certain period. Planning is closely tied to the aspect of timing and ensures that things are done within a reasonable time frame. One of the crucial roles in planning is to entrench accountability and responsibility. Duties are divided among the members of staff and specific individuals take responsibility for doing specific tasks.

Planning involves producing a work plan which is best done through meetings where everyone is involved so that each member feels that they are part of the decision-making process and commits to achieving the outcomes agreed. This also promotes teamwork.

Work plans can be for the whole project cycle (e.g. the project logical framework) or to set down the activities for the next month (and reviewed each week and adjusted accordingly by means of a weekly work plan) – see table below.
<table>
<thead>
<tr>
<th>Date</th>
<th>Place</th>
<th>Responsible person(s)</th>
<th>Activity</th>
<th>Data collection Tools</th>
<th>Comments Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/05/05</td>
<td>Lilongwe Police Station</td>
<td>CK &amp; AN</td>
<td>Screen Juveniles</td>
<td>Use standard form (NJJF SCR Form 2)</td>
<td>10 Juveniles screened 3 recommended Bail 4 Normal trial 3 further investigation</td>
</tr>
<tr>
<td>04/05/04</td>
<td>Maula Prison</td>
<td>GN &amp; BC</td>
<td>Conduct PLC on Bails and Appeals</td>
<td>PLC manual + Dramatized Session</td>
<td>124 attendants Old- 100 New- 24</td>
</tr>
<tr>
<td>05/05/04</td>
<td>High court Lilongwe</td>
<td>KM &amp; EM</td>
<td>Observe Appeals</td>
<td>Note books Standard form if available</td>
<td>Prisoner #….. Name Sentence reduced from 5 years to 2 years</td>
</tr>
<tr>
<td>06/05/04</td>
<td>Dedza Prison</td>
<td>AM &amp; BN</td>
<td>PLC on summary trial</td>
<td>PLC manual</td>
<td>Attendance was double that of last week Reason:………………</td>
</tr>
<tr>
<td>07/05/04</td>
<td>Magistrate Court</td>
<td>NK &amp; CN</td>
<td>Lodge Bail forms</td>
<td>Filled up bail forms Standard forms</td>
<td>2 bail forms lodged with Name of Magistrate Names of Prisoners</td>
</tr>
<tr>
<td>07/05/04</td>
<td>Capital hotel</td>
<td>All CELA paralegals</td>
<td>CUC meeting</td>
<td>Clarification sort on JJ issues Police alerted of poor cell conditions Maula requested to improve diet for prisoners CELA paralegals requested to research on cases that have not been confirmed in the last 1 year</td>
<td></td>
</tr>
</tbody>
</table>

Information recorded by: ___________________________ Date: __________________

Information processed by: ___________________________ Date: __________________
Data gathering

Data gathering is an exercise that attempts to explain existing conditions using facts and figures, highlighting prevailing practices and processes as well as exposing the effects of certain conditions. The aim is to improve the existing conditions and therefore the tendency to highlight negative things is more pronounced. Data gathering falls into two categories:

1. Actual recording of information based on
   - Factual statements
   - Observation
2. Investigative data gathering based on
   - Monitoring
   - Interviews
   - Questions

Whatever method is applied, it is important to ensure that data collected is accurate and authentic and if possible verifiable. Impressions should not be confused for authentic data and the wording of such incidents should be well recorded as subjective comments.

The type of data to gather is governed by the objectives of the organization and the purpose for which it is to be used. It is no use collecting data that will never be used by anyone. All data gathered therefore must respond to a need. Data so collected should be within a specific period of time as timing is very crucial in what becomes useful information. Details should not be taken for granted especially in matters of justice as they might be the missing link to making a decision.

Data gathering tools

The tools that have been developed (and are replicated in the appendix) ensure that the data gathered is standard and can be uniformly processed. The major advantage in using standard data gathering tools is to ensure that irrespective of who collects data, it is useful and conforms to the objectives of the organization and that no redundant data is introduced into the system. Data gathering tools are like horse bits they control what type of information finds its way into the organization’s information system.

The data gathering tools in use in Malawi are set out below and replicated in Document 26

1. PLC data form
2. Bail data form
3. Appeal data form
4. Confirmation of Sentence data form
5. Chronic Illnesses in prison data form
6. Deaths in Prison data form
7. Follow up data form
8. Homicide List data form
9. Expired Remand Warrants Form
10. Juveniles data Form
11. Screening sessions & Camp courts data form
12. Sentence confirmation Review form

Data grouping

Once gathered by use of data tools, data needs to be grouped into related categories. For example all cases dealing with BAIL should be in one journal/file/document/table etc. This classification should be kept simple especially if a manual system will be used. The key factor here is to be able to find information quickly when required and in a related manner. Thus information dealing with PLCs is unlikely to be in the same handbook as juvenile cases.
Information management system

*Information management is the process through which data is gathered and processed into useful information. This process involves the storage of information in an organized manner that allows for ease of quick retrieval and dissemination. To transform data into information, a system is required.*

Once gathered, data must be arranged or organized based on the objectives of the organization before it is shared or stored. This organization of data into useful related information is what becomes and information system within an organization.

Several things must be taken into account while organizing information. The arrangement must:

- Ensure that the details can be found quickly and easily.
- Be in a logical way
- Be easy to grasp and understood by all

Paralegals should ensure that things are done in a uniform way, irrespective of who does it. Attention to detail is crucial when dealing with information in the justice system, since:

- Many files and records exist within the justice system
- Documents are not in a stationary mode
- Departmental operations require that documents move from one section to another within and across departments.
- It is important to trace the movement of each record as it circulates from office to office

The organization of manual records requires effort and ingenuity and cannot be achieved if no standardized procedure is in place.

**Techniques of Collecting Data**

Information can be gathered from a wide range of sources including:

- Informal Networks
- Formal networks
- Friends
- Colleagues
- Professional acquaintances

The above sources can be divided into Primary and Secondary sources. The primary sources often contain data that is authentic but unorganized. Once information is gathered, it is time to structure that information based on the situation and need.

**Phases of information flow**

Information management is a process that involves various activities. It starts when we collect data and includes several other aspects including:

- Classification
- Storage
- Retrieval
- Analysis
- Protection
- Communication
- Dissemination.
Information comes in many ways and FEEDBACK is one area that is key to information. How do we capture this positive feedback cumulatively and what do we do with it?

After data capturing, the next logical step is to process it and classify it. The information is then indexed and sorted for storage and for distribution. Once information is processed and classified it is ready to be used in various ways. It can be used:

(a) as an **input** for decision making purposes  
(b) as **supporting facts** for execution of established procedures or rules.  
(c) as a **lead** for further investigation  
(d) for future **reference**  
(e) as part of a **body of knowledge**

**Information control**

Once information has been gathered, analyzed and classified, it is important to introduce certain controls to ensure that only useful information is held and that information held is accurate. The more information we gather the more tight should our controls be. Controls are meant to minimize errors so that information held can be termed reliable and authentic.

It is important to assess controls that would prevent or detect errors. While general controls are useful, it there should be clear agreement over responsibilities and reporting lines. Without adequate and effective supervision, controls are hard to maintain.

To ensure uniformity and continuity, it is necessary to document all **procedures** that must be followed regarding information from the time that it is received to the time it leaves the office. *(manual information system).*

**Useful suggestions**

- Use of registers that control what is received  
- Use of handbooks-journals to compile information of related nature e.g. Bail issues, Appeals, Juvenile etc.  
- Designate one person who handles all in coming data and information including opening of mail. That person should be responsible in terms of introducing information in the information channel as well as making follow ups where necessary.  
- If information is put in temporary files, allocate numbers on folios for control purpose and develop a circulation list that gives everyone a chance to see common information – eg: an e-mail has come from the national co-ordinator giving general information. It is unnecessary to print out more than one copy especially if the information does not require action.  
- Train everyone on use of the Index  
- Allocate special files for subject information

*If using codes, make sure that everyone knows the meaning of the codes.*
Information classification and organisation

Data classification is based on the end user requirements.

It can be termed as the science of allocating names, codes, numbers etc to structured information in order to hold it together as one class for ease of retrieval and dissemination. Whatever system that one adopts for classification the key is that it should be easy to locate. This could involve detailed cataloguing to simple allocation of numbers or letters to a group of information.

With only a small quantity of information it would take little time to scan through the files/records one by one to find the details we are looking for but as the number grows, such a task would be irksome and prone to error affecting the value of information. Data classification is therefore something we do out of need not out of choice.

CLASSIFICATION DEFINED

Classification of information deals with grouping information into compartments that hold things that are alike and serve the same purpose.

The following are some basic principles that are used as guidelines to the process of classification of information: Sorting – Filing - Shelving sequence - Indexing - Dissemination methods.

Sorting

This is the initial stage of selecting information and grouping it in broad categories to fit the objectives of the organization. These categories have to be pre-determined using a set guidelines. It is at this stage that irrelevant data is identified and done away with. All relevant information thereafter enters into the pipeline of information processing and may be handled by several persons depending on the size of the organization and the work structure.

The use of registers to record information that has been received in hard copies is useful. From this point the information must be channeled to the person responsible for classification. He/she will classify the information and pass it on for filing or circulation to other members of staff. If the information needs tbe sent out of the organization this too must be recorded.

Filing

Filing is a simple process that holds similar information together in a certain order with the help of codes, numbers, letters, colors etc. If we choose to use codes, they must be meaningful and easy to remember. The most commonly used filing system is the three part reference system. In the court for example, the filing system must contain:

- An element that would indicate the year in which the case was opened say, 1997 or 97
- A special code that indicates the type of case the file contains. Example BAC = bail case; APC = Appeal case, JUC = Juvenile case
- A sequential number that would normally start at one each year for a particular code e.g. 02/BAC/27
- If desired and necessary, a prefix could be added that consists of a code identifying the prison where the person is held, or court where the case is being heard. This can be of great assistance in retrieval, especially if files of people in different prisons are held together.
Indexing

Indexing of information happens after the information has been classified. The index acts as a pointer or a map that directs one to specific information. The index also serves as a control measure that ensures that certain things are described in a common manner for ease of retrieval.

An index is the one thing that tells us where to go to get what information and therefore acts like our road map to a collection of information.

Types of index

Nominal Index = name index
Subject Index = case index
Numerical Index = sequential number index

A computer index is ideal for indexes as it is very easy to retrieve, however, in cases where computerized indexes are not possible a card index is ideal and is the most commonly used especially for large amounts of information. This type of Index ensures that documents can be added on to the index in future in a systematic manner and the names can be kept in alphabetical order for ease of retrieval.

Nominal indexes

In nominal indexes, names are sorted by the initial letter of the surname alphabetically. All names beginning with A are therefore together and in cases where resources do not permit use of card index, a book or a register can be used. In this case, the A names will be on one page while the B names will be on another.

When one is using a book however, it can be tricky because one needs to estimate the proportions of names and leave enough space (number of pages) to accommodate all names in the future.

Indexes are useful in locating information and helps one to group information. For example it is possible to locate information on APPEALS or BAIL.

An appeals Index would hold all information of prisoners who have applied for bail. Through this index, it would be possible to find out how certain cases were handled in the past or to identify a case when only the offense is known. This type of information provides great statistics and can be used for data analysis.

Organisation of records

Most of the information paralegals come across in their activities will be in the form of records and it is imperative to have a clear appreciation of the types of records that exist. It is from these records that we are required to gather most of the information that is required in fulfilling PAS objectives. The information we derive is as good as the records that exist. Records management is therefore an important aspect of our work so is case flow management.

Types of Records

Throughout the criminal justice sector (police, prison and courts) most of the information is held in either case files that are undergoing investigation, are being used in court proceeding or in criminal files.
Note: Protecting Personal Information

Many legal records contain a great deal of personal information. The protection of personal information is important and it is becoming an issue internationally and people are becoming more aware of it. The right to privacy in relation to personal information principally involves controlling information that is held about identifiable individuals.

It is therefore very important that access to personal data is controlled and restricted to certain individuals. Any system, whether manual or computerized, must have a way of limiting access of such information to authorized staff only. The security of this information and rules governing access to such information are important.
The PAS database was conceived as a tool of information management and not as an end in itself.

The PAS Database System was designed with the view of assisting the paralegals organise accurate information in one place and access the information for reporting and sharing with relative ease. Corresponding manual data forms have been developed with the view of standardising the information that is collected and subsequently entered in the PAS Database system.

**DATA CAPTURING TOOLS**

*Description of the Data Tools*

The PAS Data capturing tools are designed to be used by the paralegals each time they go to the field. Each data capturing form has a corresponding data entry screen in the PAS Database System for example for each Bail Application there is a screen to enter the bail application information and once the results of the bail are out, the information should be updated into the PAS Database system so that the number of outstanding applications on the database is reduced and corresponds to physical number of applications outstanding.

The PAS Data capturing tools will have to be a companion of the paralegals in their day to day operations which will ensure that all information collected by the paralegals is complete and standard.

The major data tools have been described below.

*PLC Data Form*

The PLC Data form is used to capture PLC Information. Other PAS Teams are currently conducting PLC at Prison and at Court so the form has been modified to allow for participants statistics for both the Court and the Prison Statistics.

*Prison Statistics*

Prison Statistics should be collected each time a PLC is conducted to help monitor the overall prison population in a month. The general principle for the collection of prison population was to take the statistics as on the last day of the month. There are sometimes surges within the month depending on how many people have been remanded hence the prison population collected only once in the month give a very rough indication and does not provide any clues as to the total prison turnover hence the need to collect the prison statistics daily.

*Bail Data Form*

A bail data form should be filled for each bail application made. The bail data form will help to monitor that there is a result for each bail applied whether bail is granted or denied. The paralegal facilitating the bail should complete the bail data from and make comments on the outcome of the bail when the results are out.

There is a corresponding data entry screen in the PAS Database System for capturing the Bail Applications and once the results of the bail are out, the information should be updated

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into the PAS Database system so that the number of outstanding applications on the database is reduced and corresponds to physical number of applications outstanding.

**Appeals Data Form**
An Appeal data form should be filled for each appeal facilitated by PAS. The appeals data form will help to monitor that there is a result for each appeal facilitated whether bail is granted or denied. The paralegal facilitating the appeal should complete the appeals data form and make comments on the outcome of the appeal when the results are out.

**Applications of Sentence Confirmation Data Form**
Applications of Sentence Confirmation Data Form should be filled for each sentence confirmation to the High Court facilitated by PAS. The appeals data form will help to monitor that there is a result for each sentence confirmation facilitated. The paralegal who is facilitating the confirmation should make comments on the outcome of the confirmation when the results are known.

**Deaths in Prison Data Form**
The Deaths in Prison Data Form is used to collect information about people who have died in custody. In the past the information collected on death was sometimes not exhaustive hence the development of this form. Information collected should include the name, offence, duration of sentence, prisoner status whether a remandee or a convicted prisoner and the nature of illness.

**Chronic Illnesses Data Form**
The chronic illness data form is going to facilitate the collection of information of chronically ill patients in prison. This will help PAS to inform all the stakeholders and facilitate assistance to be rendered to the patient.

**Follow Up Data Form**
The Follow up data form is a general case management form that assist in ensuring that all the assistance that is requested by clients of PAS has been rendered or a reason given for such a service not being rendered. The form will also facilitate smooth handover of all the outstanding assignments at the end of the week.

The paralegals have been advised to compile a list of all the outstanding followup and use it as a basis for planning the activities of the week. The Follow Up form has a corresponding database form for capturing information on the assistance requested and the system also produces a list of outstanding follow-up as of that particular day. It is imperative that the followup should be updated in the database system by Friday of each week to ensure that when the paralegals hold their Monday morning meeting can discuss and allocate personnel to carry out the outstanding assignments.

**Homicide List**
The Homicide list is used to update the homicide backlog list that is required by stakeholders from time to time. Like the other forms described above the homicide data form has been standardised to contain all the required information by the various consumers of this information. The homicide list should be updated at least once a month.

**Expired Remand Warrants**
It has been observed that some remandees are being kept in prison without valid remand warrants. This form is used to collect information on all the expired remand warrants. This list of expired should be updated every fortnight.

**Juveniles Data Form**
The Juveniles data form is used for analysing all the Juveniles encountered in the day to day activities of PAS. Every juvenile who has been screened should have a corresponding Juveniles Data entry that is going to assist PAS in keeping track of the results of the
screening, the location of the juvenile and facilitate the analysis of the outcome in order to serve the victims better.
Paralegal Advisory Service – Data capturing Tools

PLC DATA FORM

STATION/PRISON: .................................................. DATE: .........................

PRISON SECTION: ........................................................................................................

FACILITATORS: ................................................................................................................

.................................................................................................................................

.................................................................................................................................

MODULES: ......................................................................................................................

.................................................................................................................................

ACTIVITIES: ....................................................................................................................

.................................................................................................................................

PLC ATTENDANCE

<table>
<thead>
<tr>
<th>PLC AT PRISON</th>
<th>PLC AT COURT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) NEW PARTICIPANTS</td>
<td>ACCUSED</td>
</tr>
<tr>
<td>2) OLD PARTICIPANTS</td>
<td>RELATIVES</td>
</tr>
<tr>
<td>3) REMANDED</td>
<td>SURETIES</td>
</tr>
<tr>
<td>4) CONVICTED</td>
<td>WITNESSES</td>
</tr>
<tr>
<td>5) OFFICERS</td>
<td>OFFICERS</td>
</tr>
<tr>
<td>6) OTHERS</td>
<td>PUBLIC</td>
</tr>
</tbody>
</table>

SUSPECTS/PRISONER QUESTIONS

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FACILITATORS COMMENTS

.................................................................................................................................

.................................................................................................................................

PRISON STATISTICS

<table>
<thead>
<tr>
<th>MALE</th>
<th>FEMALE</th>
<th>SPECIAL CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Homicide Remand</td>
<td>Convicted</td>
</tr>
<tr>
<td>Remand</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

JUVENILES

<table>
<thead>
<tr>
<th>Remand</th>
<th>Serving Order</th>
<th>Homicide</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Remand</td>
</tr>
<tr>
<td></td>
<td>On Order</td>
<td></td>
</tr>
</tbody>
</table>
**BAIL DATA FORM**

Date: ........................................ Station/Court: ........................................ Form #: ........................................

Name ................................................................. Police CR No: ........................................

<table>
<thead>
<tr>
<th>Offence</th>
<th>Date of Arrest</th>
<th>Lodging Date</th>
<th>Result</th>
<th>Result Date</th>
<th>Police Officer/Magistrate</th>
</tr>
</thead>
</table>

Remarks

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Name Paralegal: ........................................................................................................................................................................................................................................................................................................
Paralegal Advisory Service – Data capturing Tools

**APPEALS DATA FORM**

Date: ..........................................................  Court/Grade: ..........................................................

Name: ..........................................................  Magistrate: ..........................................................

Offence: .......................................................... Sentence: ..........................................................

Court Case No ..........................................................

<table>
<thead>
<tr>
<th>Date of Appeal</th>
<th>Date of Conviction</th>
<th>Result</th>
<th>Result Date</th>
<th>Type of Appeal</th>
</tr>
</thead>
</table>

Sentence Upheld / Reduced/Community Service  Appeal against conviction / sentence

**Comments**

..................................................................................................................................................

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Name Paralegal: ..........................................................
Paralegal Advisory Service – Data capturing Tools

CONFIRMATION OF SENTENCE DATA FORM

Date: ........................................................ Form No: ........................................................................

Name: ................................................................ Magistrate: .................................................................

Offence: ........................................  Sentence: ................ Court & Grade: ..............................................

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Age</th>
<th>Gender</th>
<th>Date of Conviction</th>
<th>Date of Referral</th>
<th>Result</th>
<th>Result Date</th>
</tr>
</thead>
</table>

Comments

.........................................................................................................................................................
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Name Paralegal: .................................................................................................................................
## DEATHS IN PRISON DATA FORM

<table>
<thead>
<tr>
<th>Police CR # /Prisoner #</th>
<th>Name</th>
<th>Age</th>
<th>Gender</th>
<th>Offence</th>
<th>Prisoner Status</th>
<th>Sentence</th>
<th>Date of Conviction / Remand</th>
<th>Nature of Illness</th>
<th>Duration of Illness</th>
<th>Cause of Death</th>
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</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

**Prison:**

**Date:**

**Paralegal:**
### REMARKS
i.e. Post Mortem, Action, Health on coming to Prison, treated or not treated

<p>| | | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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Paralegal Advisory Service – Data capturing Tools

**CHRONIC ILLNESSES IN PRISON**

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**Remarks**

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**FOLLOW UP FORM**

**Paralegal:** ..........................................................  **Station:** ..........................................................  **Date:** ..........................................................

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**Follow Up Actions**

1. Tracing of sureties
2. Reference letters to CJA
3. Over stayers
4. Unlawfully Detained
5. Appeal form logged
6. Confirmation form logged
7. Terminal illness - Police escort to hospital
8. Police Abuse
9. Other


**HOMICIDE LIST**

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**REMARKS**

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Paralegal Advisory Service – Data capturing Tools

EXPIRED REMAND WARRANTS FORM

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