

Village Mediation Programme



What is mediation?

Mediation is a voluntary process of resolving disputes whereby a mediator helps disputants find a settlement which is acceptable and workable. Mediation allows people to decide how they would like to settle their problem and tries to help them reconcile. Village Mediators (VM) will not make any judgement or take a decision. The mediation process and the outcome belong to the disputants.

It is important to understand three things about mediation:

- 1 **It is voluntary.** This means that disputants cannot be forced to agree to anything;
- 2 **It is confidential.** No one will talk about what anyone says or does in the mediation. A VM cannot be called as a witness in any other proceedings;
- 3 **It is neutral.** The VMs will not take a decision or make a judgement. Their interest is only that disputants reach a settlement which is acceptable and workable and achieves reconciliation.

In addition, mediation is:

- informal
- participatory
- local
- free of charge.

What is the Village Mediation Programme?

The Village Mediation Programme (VMP) is a model of mediation established first in Africa by the Paralegal Advisory Services Institute (PASI) in Malawi. The VMP introduces a village-based diversion and mediation scheme that can assist poor and vulnerable people to access justice in civil and some minor criminal cases. The Programme is inspired by the Madaripur Mediation Model in Bangladesh and other village-based mediation programmes around the world.

The VMP provides mediation services to the community, by the community. PASI teachers train village-based mediators in their local language how to manage disputes in their communities. As in many other countries, the legal system of Malawi is formal, complex, urban-based, time consuming and expensive. Therefore poor people, particularly the illiterate and the disadvantaged living in rural areas, cannot enforce their own rights and suffer injustice in silence.

The purpose of the programme is to support existing dispute resolution mechanisms and to provide means for diverting suitable cases away from the formal justice system. In this way, the VMP will help to reduce case backlogs in the courts, divert offenders away from detention where appropriate and thus reduce overcrowding in prisons, provide quick settlement of matters so that they do not escalate, enhance access to justice for the poor and vulnerable, and contribute to better harmony in Malawi's communities. The Village Mediators are supported and given supplementary training on an ongoing basis by their teachers, supervisors and PASI paralegals.

Sensitisation is a key part of VMP activity: villagers will be assisted in understanding that the VMP is available to them in their villages and how to access it; traditional leaders and the formal justice system will come to understand and appreciate how the VMP works to support them.

The VMP is being implemented by Village Mediators who live within the communities they are assisting. VMs have all been carefully selected and trained and have attributes that win the confidence and trust of the people in their villages.



Why are people denied access to justice?

Access to formal state justice through the courts is guaranteed in the Constitution of Malawi. Access to justice is one of our most basic human rights so why is it that so many people do not access the formal system? Some of the reasons are:

- they live a long distance from the nearest court
- the costs of taking a case to court are high
- people do not know how to get adequate legal representation
- if they do, they cannot afford it, particularly if they live in rural areas where there are no lawyers so they have to pay a lot of money for the lawyers transport and travelling time
- the huge backlog of cases in the court system which leads to long delays and adjournments. This means time away from home and work
- lack of information about the law
- lack of understanding of court procedures
- language barriers
- social taboos and stigma surrounding certain crimes
- the publicity of their case
- fear of a complex criminal justice system
- discrimination against women, minorities and the poor.



What are the benefits of mediation over other dispute resolution processes?

Mediation benefits villagers who cannot access the formal justice system or who want to avoid a difficult formal process:

- Mediation through the Village Mediation Programme is available locally, immediately and free of charge
- The VMs are known to the villagers, speak the same language, understand their needs and will work with the disputants in a familiar, informal environment
- Mediation respects local principles, cultural norms and values
- Mediation works to support the existing local dispute resolution mechanisms
- Mediation is participatory and empowering. The Mediator does not impose a decision on the disputants. Disputants will agree their own terms of settlement which will be written down and signed by them as well as by the Mediators and anyone else present. The signed Mediation Settlement is a legally binding contract
- Mediation is non-confrontational and non-judgemental
- Mediation is confidential. Nothing said or done in the mediation will be repeated. The Mediators cannot be called as witnesses by the court
- Mediation seeks to restore, improve and protect community relationships



PASI hosted Timap for Justice from Sierra Leone to showcase the VMP. The team is standing outside Kanengo Police station where cases are diverted to the VMP



Village Mediators in Chitukula Traditional Authority

Does mediation undermine or replace the formal justice system?

No. The VMP works closely with formal institutions to ensure that the formal and informal work together and complement each other. For example, if a dispute cannot be resolved through mediation, the parties can still take the matter to the traditional leaders or the court. Current court procedure in Malawi encourages disputants to resolve their disputes outside the court through mediation so cases are often referred by the Magistrates Court to the VMP. The Police also refer cases to the VMP. The VMP will report to the court or to the police if the matter is settled or not. In this way, there is no risk of impunity.

How do Village Mediators have the competence to deal with disputes at this level?

Village Mediators carry official identity cards. They are closely supervised by the PASI VMP programme to ensure that basic human rights principles are respected and a high level of professionalism is maintained in mediating disputes.

The VMs initial training is followed by refresher trainings and regular interaction with their trainers and supervisors who will provide support wherever needed.

Can all disputes be resolved through mediation?

No. Firstly, all parties involved in a dispute have to agree to go to mediation. If one of them refuses, then it is not possible to mediate. Secondly, some disputes need to be handled in other ways. The Village Mediators will advise parties if their dispute is suitable for resolution through mediation or if they should go elsewhere. Some minor offences can be handled through mediation if both the victim and the offender agree, such as minor theft or common assault. Major criminal offences are not suitable for mediation, such as serious human rights violations, rape and murder.

Are human rights protected in mediation?

The Village Mediators are trained in human rights. If necessary, they will suggest a third mediator who has more experience of legal and human rights matters.

Do women access mediation with the VMP?

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

Is the Programme monitored and evaluated?

To ensure adequate support to the Village Mediators, the VMP has designed a system of supervision, monitoring, mentoring and evaluation.

In addition, the Village Mediators are supported by 'Village Mediation Groups', who help the VMs complete Case Records of every matter brought to them.

PASI VMP trainers and paralegals ensure monitoring and maintenance of standards, as well as adherence to human rights principles and the law. They will also act as the principle link between the local community and the formal justice system.

The outcome of all matters referred from the Police is also reported to the Police so as to avoid impunity on the part of anyone seeking to avoid the process.



MEDIATION through the VMP ...

Mediation empowers a community to deal with its own problems in a culturally appropriate manner

Economic losses, such as court costs and loss of earnings while away from work to attend court are a thing of the past, because mediation under the VMP is free of charge

Disputants participate actively in the process. Ultimately, they must agree on a solution or there is no settlement and they must take the matter elsewhere.

Interaction in the mediation process raises community awareness of and interest in human rights, and leads to people questioning discriminatory practices and traditions

Adversaries can take their case to court if they are not satisfied with the mediation procedure or are unable to agree to a Mediation Settlement

Testimonies of disputants will not be judged but are respected.

Impartial mediators abide by a strict VMP Code of Conduct. They will ensure that disputants reach a settlement of their own accord, that they are not influenced either by any outside party or by the mediators.

Outcomes reached through mediation seek true reconciliation of the disputing parties, which means a Realistic, Effective, Acceptable and Lasting (REAL) solution

Non-discriminatory procedures apply the principle of equality, and promote the involvement of women in securing their own rights and participating actively in community matters

Where does the VMP operate?

The VMP started as a Pilot Project of the Malawi Paralegal Advisory Services Institute (PASI) in 150 villages across 6 Traditional Authorities in Lilongwe, Mchinji and Salima Districts. During 2008, a total of 450 Village Mediators were trained by PASI. Other countries are expressing keen interest in replicating the VMP. In 2009, PASI partnered with Timap for Justice in Sierra Leone to replicate it for the first time in West Africa.



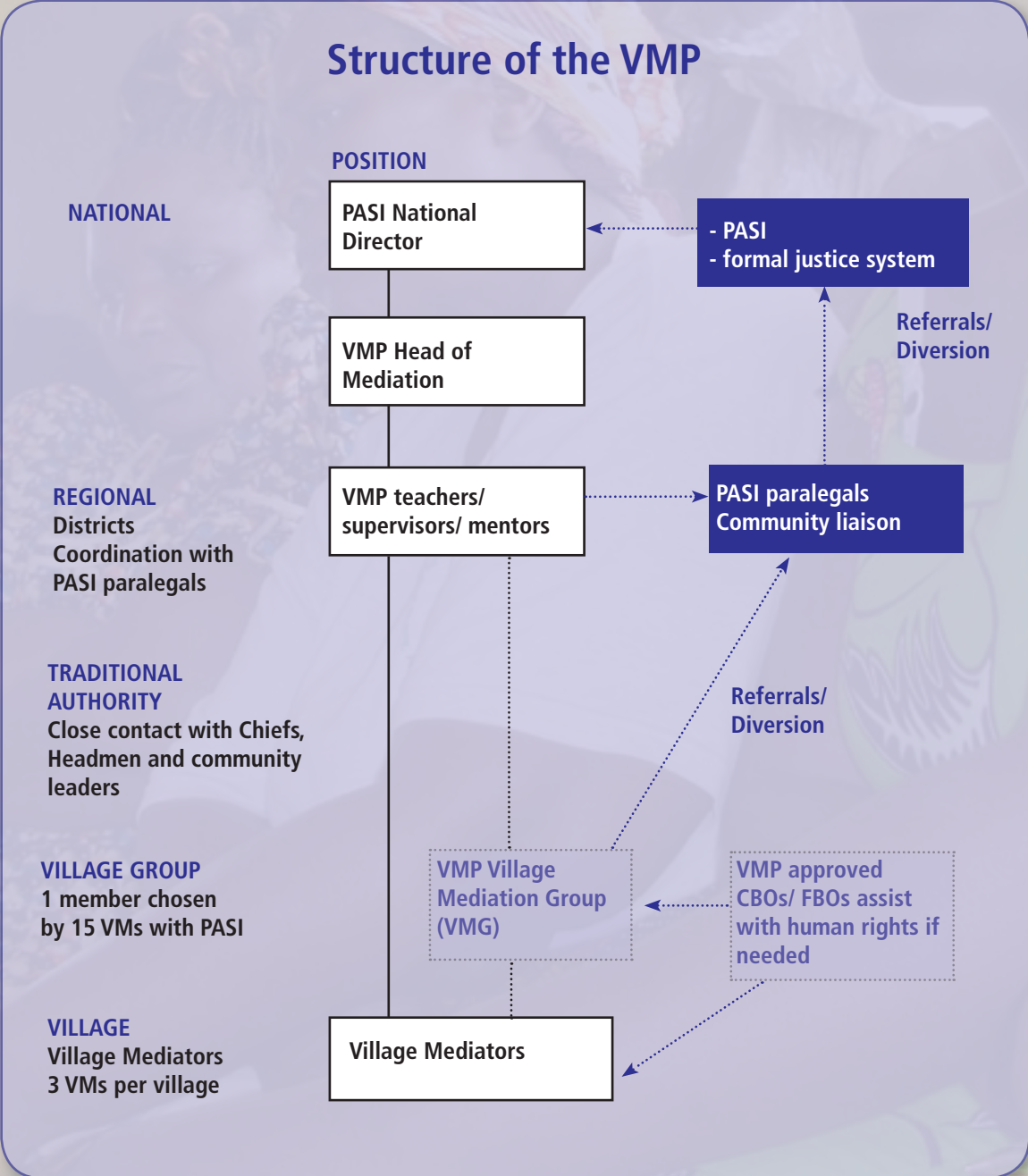
The first group of VMP teachers trained in Malawi, October 2008

Partners

The VMP is implemented by PASI in Malawi where it was piloted in cooperation with the Danish Institute of Human Rights (DIHR). The model is inspired by the Madaripur Mediation Model from Bangladesh and other village-based mediation programmes around the world. The VMP pilot programme was funded by Irish Aid.

The VMP seeks close coordination and collaboration with other agencies working with access to justice, such as the Traditional Authorities, community leaders, the Judiciary, government and civil society organisations.

VMP also benefits from an International Advisory Group with members from Bangladesh, Nepal, Albania, UK and Denmark.





Photos were taken during VMP training and sensitisation in pilot communities in Malawi

How do people access the Village Mediation Programme?

Any villager living in an area where the VMP is active can contact a VMP Village Mediator to discuss a problem.

Further enquiries:

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