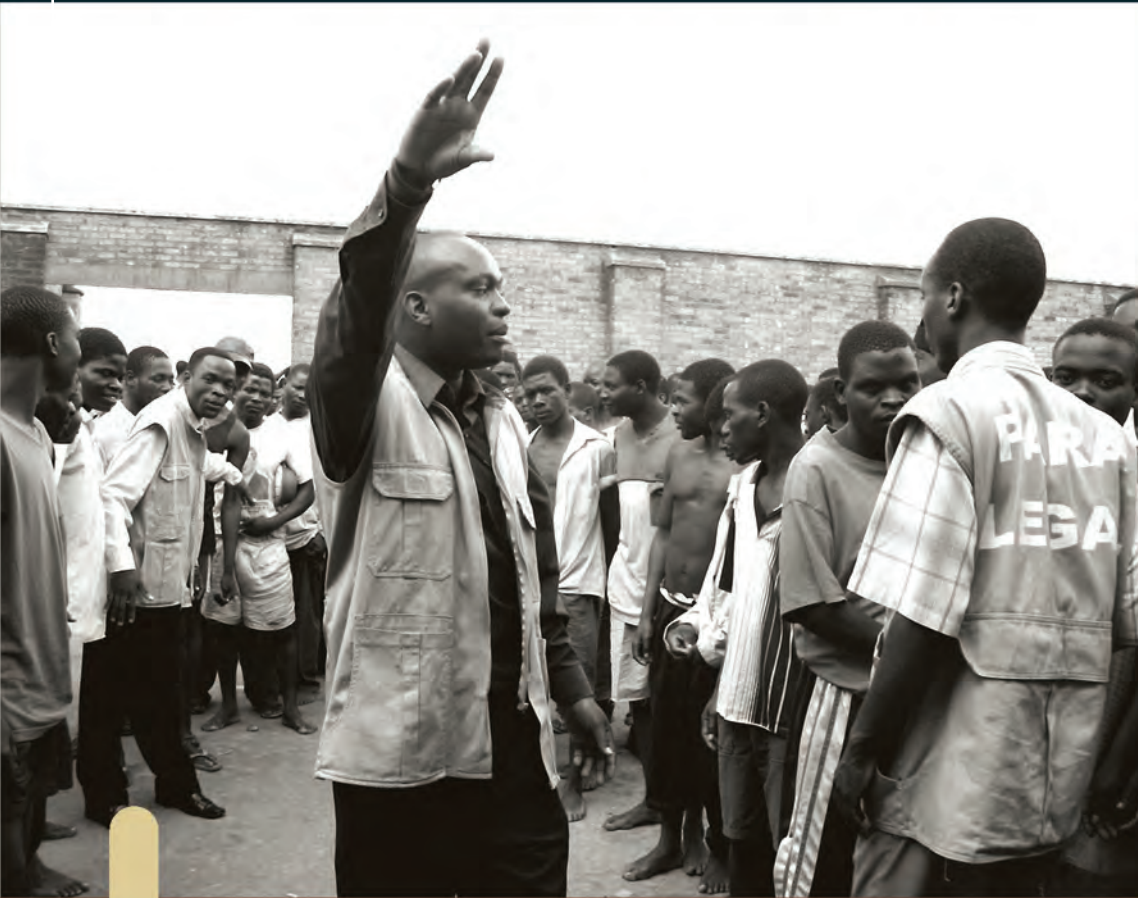


Where there is no lawyer



THE PARALEGAL ADVISORY
SERVICE INSTITUTE (PASI)

Bringing Justice to the Poorest of the Poor

What is a paralegal?

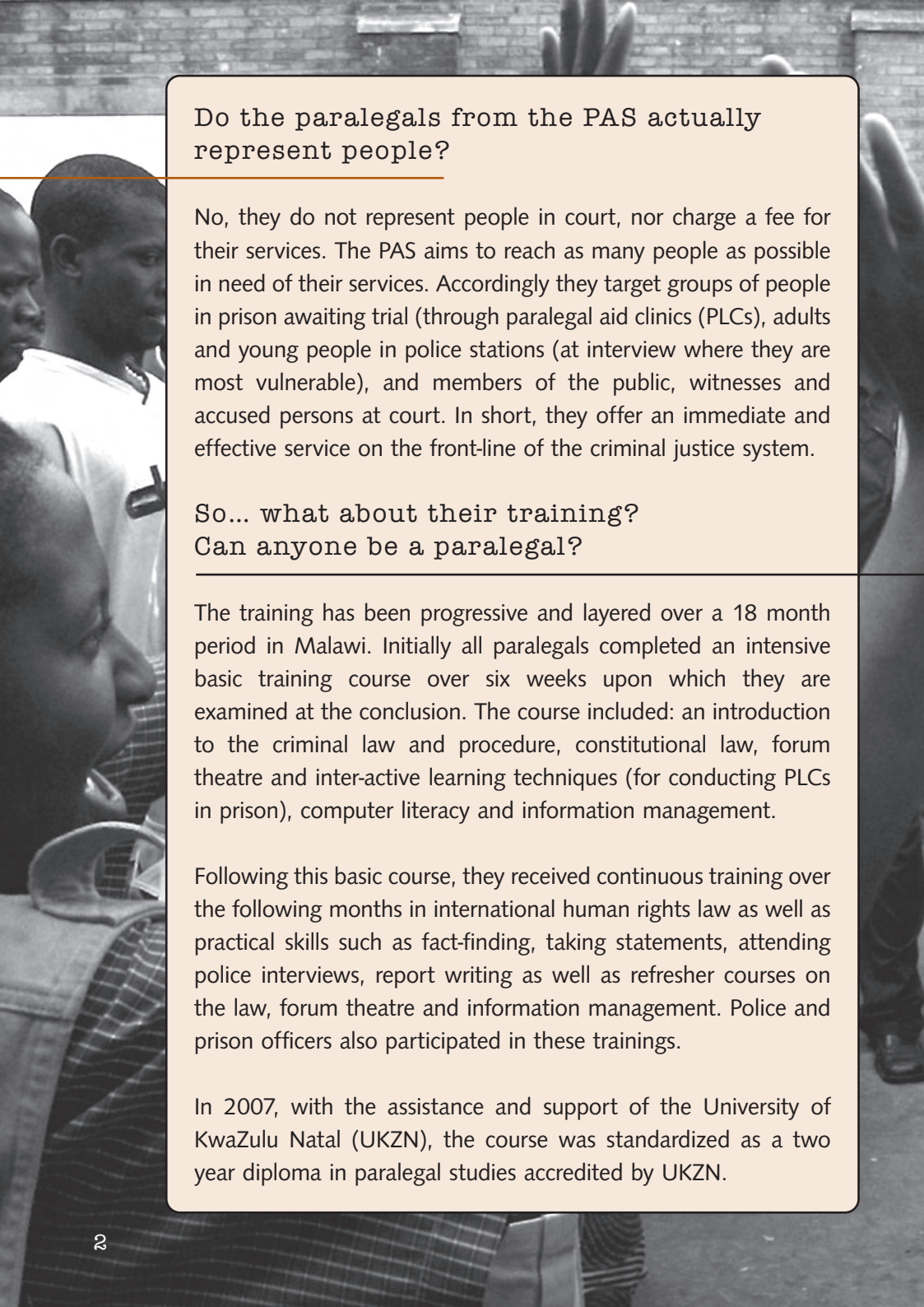
Paralegals, like paramedics or bare foot doctors, provide 'first' legal aid to ordinary people. This can be anything from informing them about the law and court procedures to advice and assistance with legal problems.

Why not use a lawyer?

Lawyers are city-based. Most poor people live in rural areas and 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 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 serious and complex matters can be referred to the legal profession, some of whom offer their services for free.

Is 'paralegalism' something new?

No. Paralegals have been around for a long time though perhaps called by other names. Traditionally, they have been respected and trusted members of the community offering advice and assistance on a range of issues including: inheritance, land and matrimonial matters. Paralegals, based on the PAS (Malawi), have established themselves in Benin, Kenya, Uganda and Niger as a trusted, professional, cadre providing appropriate services to those in conflict with the criminal law.



Do the paralegals from the PAS actually represent people?

No, they do not represent people in court, nor charge a fee for their services. The PAS aims to reach as many people as possible in need of their services. Accordingly they target groups of people in prison awaiting trial (through paralegal aid clinics (PLCs), adults and young people in police stations (at interview where they are most vulnerable), and members of the public, witnesses and accused persons at court. In short, they offer an immediate and effective service on the front-line of the criminal justice system.

So... what about their training? Can anyone be a paralegal?

The training has been progressive and layered over a 18 month period in Malawi. Initially all paralegals completed an intensive basic training course over six weeks upon which they are examined at the conclusion. The course included: an introduction to the criminal law and procedure, constitutional law, forum theatre and inter-active learning techniques (for conducting PLCs in prison), computer literacy and information management.

Following this basic course, they received continuous training over the following months in international human rights law as well as practical skills such as fact-finding, taking statements, attending police interviews, report writing as well as refresher courses on the law, forum theatre and information management. Police and prison officers also participated in these trainings.

In 2007, with the assistance and support of the University of KwaZulu Natal (UKZN), the course was standardized as a two year diploma in paralegal studies accredited by UKZN.

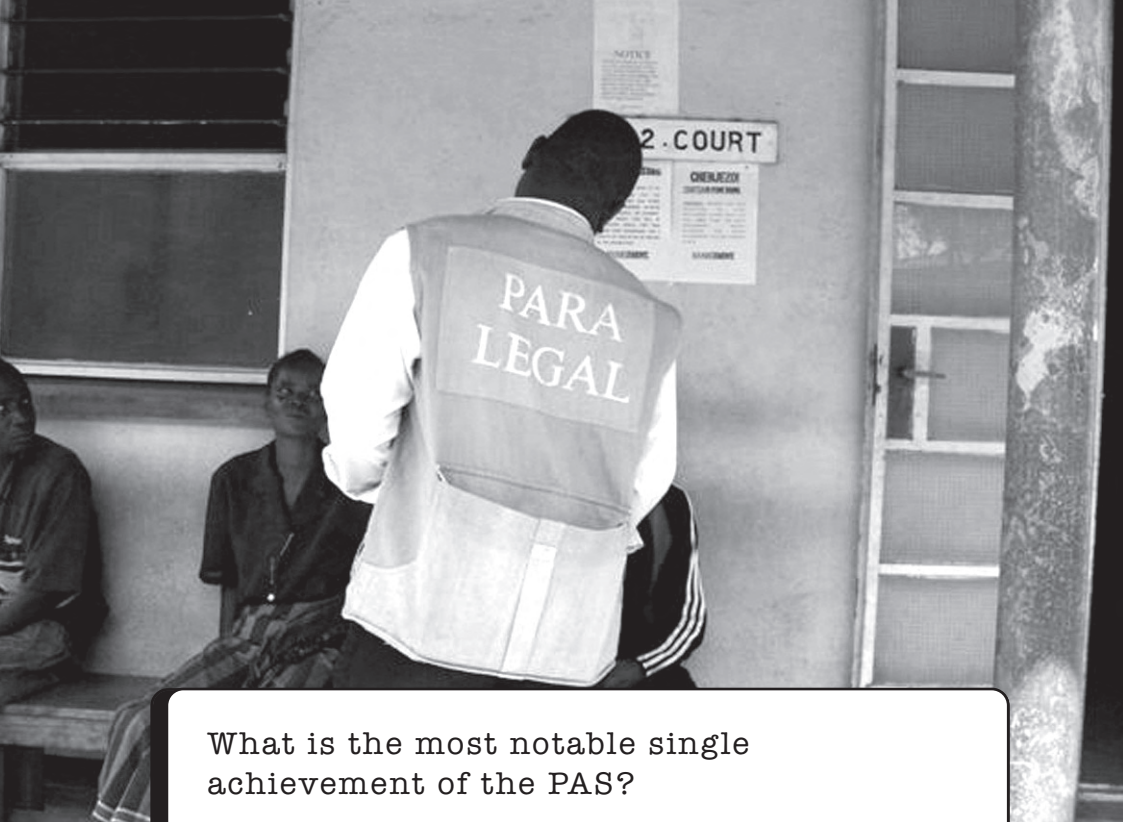
Sounds good, so ... how do they gain access to the police, prisons and courts – are they recognized?

The founding principle of the PAS is to work with all the criminal justice agencies. Rather than criticize these agencies, which are themselves often under enormous pressure due to inadequate training and lack of resources, paralegals operate under a strict Code of Conduct and work with them in a spirit of co-operation. In this way, following a step by step process, they have achieved the trust and respect of all justice agencies.

As for recognition of 'paralegals' – this is coming. Resolutions of the African Commission on Human and Peoples' Rights has long recognized the role of paralegals (Dakar Declaration 1999 and Lilongwe Declaration 2004). The legal establishment in many countries is beginning to appreciate the role of trained paralegals – as the medical establishment recognizes the role of paramedics. In Malawi, the prison and legal aid laws are being amended to recognize the role of paralegals as accredited legal advisers.

Aren't lawyers sceptical?

Paralegals, properly trained, are competent to undertake much of the work needed to prepare a case for trial or litigation, such as interviewing litigants/the accused, tracing and interviewing witnesses, drafting statements and affidavits – so relieving pressure on the lawyer and freeing his/her time to concentrate on the substance of the case. In this way, they complement the work of lawyers. Their access to police, courts and prisons also means they can refer serious and complex matters to lawyers with whom they are in contact and so act as a bridge between the legal profession and the court/police/prison. Once the lawyers realize paralegals cannot compete and do complement, any initial scepticism is replaced by positive encouragement and support.



What is the most notable single achievement of the PAS?

The stabilization and reduction of remand figures in the prisons in which the PAS is working. In Malawi, the PAS has brought the global remand population down to a mean average of under 25% from an average before it started of 45-50%. In Uganda and Kenya, the prison services have noted the impact on remand figures of paralegals in these countries.

All this reads well, but how is it funded?

The PAS was funded by development partners.

Are paralegals volunteers or are they paid?

The paralegals under the PAS are paid in line with salary scales of similar organizations.

Aha ... so how is it 'sustainable' if the services they offer are free? What happens when the donors stop funding?

Legal aid is a cost to the government and legal establishment of every country. Usually it is a 'non-recoverable' cost – like health care. In less fortunate countries with a whole list of priorities to attend to (such as health, education, food security, infrastructure etc), legal aid comes far down the list of these priorities. By demonstrating a service which is relevant, efficient, effective and has a high impact, good governance suggests the service should be sustained.

In Malawi, the PAS has actively promoted a national legal aid plan. It has developed a 'co-operation agreement' (service agreement) with the Legal Aid Fund to cover the costs of its operations against a series of targets. However, it remains reliant on outside support to develop its programme and furnish capital expenditure. But, nothing attracts funding like success and in the justice sector, there are not that many successes to point to...

So why is it not operating in every country?

We think it should be. It is provenly cost-effective and has had a high measurable impact in every country where it has started up. Its work programme is needs-driven and its approach combines a rights and evidence-based approach – read on...



THE PARALEGAL ADVISORY SERVICE (PAS)

A short history...

The Paralegal Advisory Service started in Malawi in May 2000 as an initiative of Penal Reform International (PRI) who sought to create a public/private partnership linking four national NGOs with the Malawi Prison Service. It began with eight paralegals working in the four main prisons in the country. This remarkable event arose out of the Malawi Prison Service's 'open door' policy and willingness to pilot a radical reform measure.

The PAS began by drafting a restrictive Code of Conduct with the MPS which placed ownership and authority to monitor the movements of the paralegals inside prisons firmly under prison officers' control.

Step by step, the paralegals then developed a work plan in consultation with the prison authorities and prisoners and gradually expanded their outreach to more prisons, recruiting more paralegals, as the programme took shape and demand for their services (from the prison authorities) grew.

Each team was equipped with computers, printers, a copier, cellphone for urgent communications and motor-cycles. Emphasis is placed on keeping costs to a minimum as it is the cost of providing legal aid services that inhibits so many governments from being able to afford and deliver meaningful legal aid services.

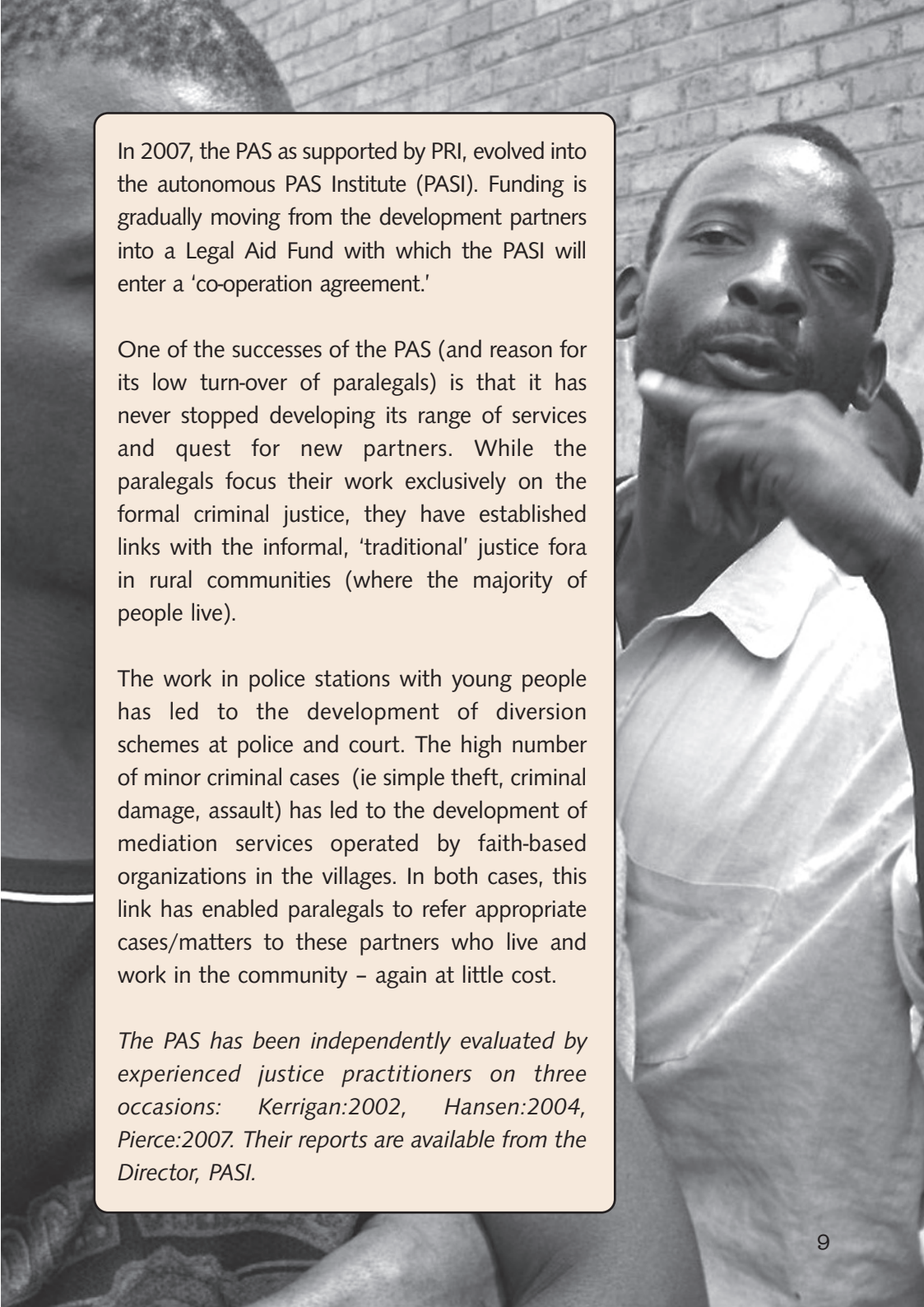
By 2003, the PAS had 26 paralegals and reached 84% of the prison population. Responding to demand, the PAS next sought to develop services to assist persons in the courts and, initially, young persons at police stations. The ambition of the PAS had grown to provide not just advice and assistance to those in prison but to develop a national legal aid service available to all persons in conflict with the criminal law.

The PAS aims at reaching as many people as possible, with a ratio of 1:100 (paralegal:prisoner) per day being common. Accordingly, emphasis was placed on linking up with other interest groups and organizations to work with and to whom to refer cases. Innovative measures were introduced borrowing from good practices developed elsewhere (such as 'Camp Courts' from India, a mediation model developed in Bangladesh and Legal Aid Days in prison organized in Kenya) – and old practices that had fallen into disuse were revived, such as the Court User Committees that bring criminal justice agencies around a table each month in the districts to discuss local problems and find local solutions at low cost.

By 2004, the number of paralegals in Malawi had risen to 38 and by 2005, the paralegals were operating in 21/26 prisons, 18 police stations (including attending at adult interviews), 11 courts and were already exploring outreach into rural communities by linking up with faith-based organizations.

PAS statistics show the following:

- Between Nov 2002 - June 2007, the PLCs empowered over 149,000 prisoners to represent themselves in court and access the justice system
- In the same period, the PAS facilitated the release of over 3,200 prisoners
- In a nine month period, the PAS caused the reduction of the homicide remand population in one prison by 50% (by facilitating bail or pleas), thereby saving the judiciary substantial costs
- Since 2004, when work in police with juveniles began, PAS screening resulted in an average of 77% of young persons being diverted from prison each year
- At court since 2004, paralegals have assisted over 22,300 accused persons and over 3,900 witnesses

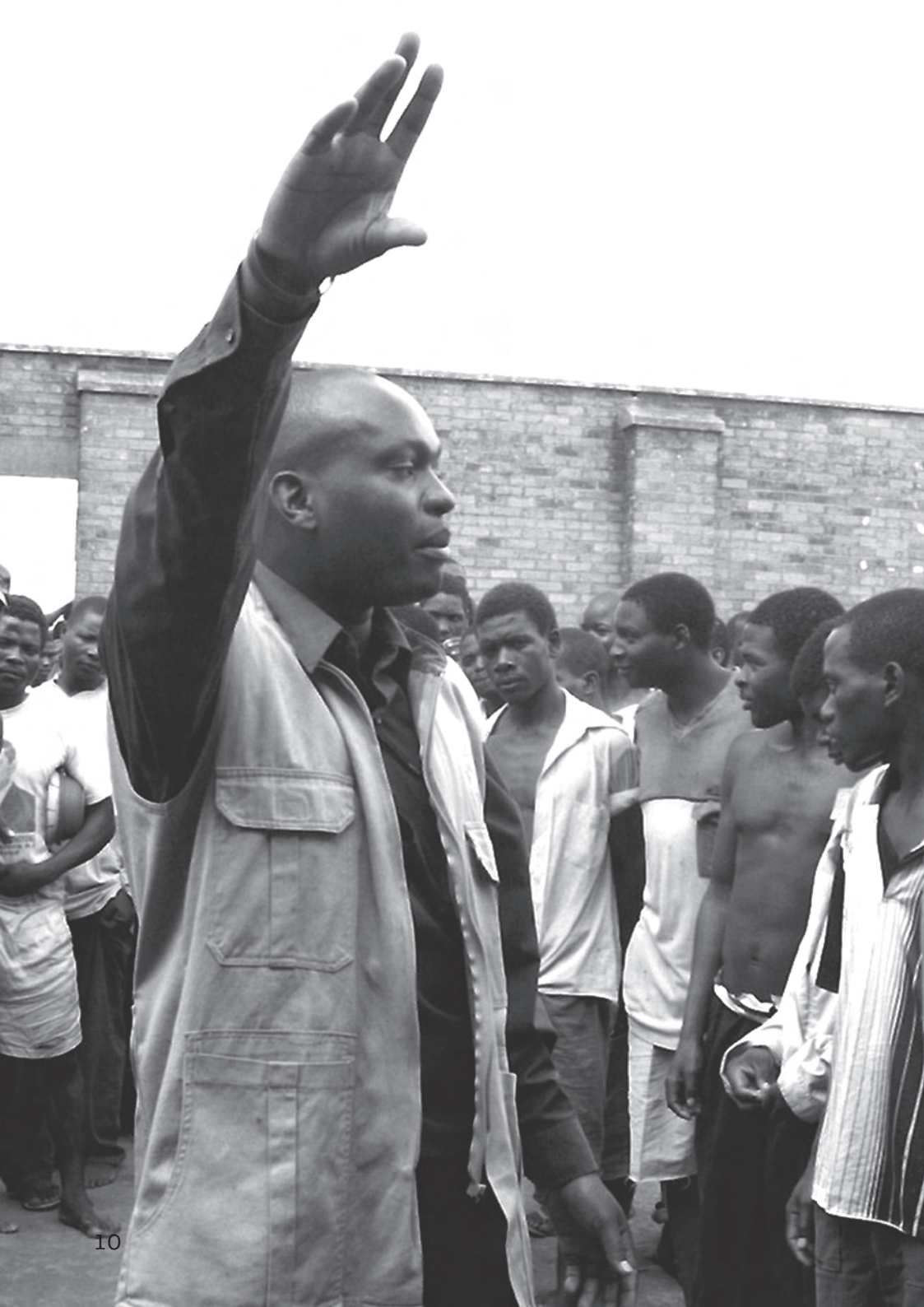


In 2007, the PAS as supported by PRI, evolved into the autonomous PAS Institute (PASI). Funding is gradually moving from the development partners into a Legal Aid Fund with which the PASI will enter a 'co-operation agreement.'

One of the successes of the PAS (and reason for its low turn-over of paralegals) is that it has never stopped developing its range of services and quest for new partners. While the paralegals focus their work exclusively on the formal criminal justice, they have established links with the informal, 'traditional' justice fora in rural communities (where the majority of people live).

The work in police stations with young people has led to the development of diversion schemes at police and court. The high number of minor criminal cases (ie simple theft, criminal damage, assault) has led to the development of mediation services operated by faith-based organizations in the villages. In both cases, this link has enabled paralegals to refer appropriate cases/matters to these partners who live and work in the community – again at little cost.

The PAS has been independently evaluated by experienced justice practitioners on three occasions: Kerrigan:2002, Hansen:2004, Pierce:2007. Their reports are available from the Director, PASI.



THE PAS FOUR PILLARS

The PAS aims to make justice accessible to everyone – especially the poor and vulnerable. To this end, it aims at achieving four things:

- **Linking the criminal justice system:** improving communication, co-operation and co-ordination between the prisons, courts, police and communities they are there to serve
- **Legal literacy:** empowering prisoners and persons in conflict with the law to understand the criminal law and procedure and apply it to their own case; and informing people in rural areas on the law and introducing measures to enable communities to settle appropriate matters between themselves without having recourse to the formal justice system
- **Legal advice and assistance:** offering appropriate legal advice and assistance to those in conflict with the law on the front-line of the criminal justice system (eg: at the police station at interview; at court on first appearance; in prison to remand prisoners through PLCs) – as well as to the community (by tracing witnesses, sureties and parents of young offenders, or referring matters back to the community for mediated settlement)
- **Policy development:** collating and analyzing data gathered from prisons, police, courts and community fora; and ensuring an accurate flow of information to the decision and policy makers to inform justice and penal reform.

THE PAS INSTITUTE...

The growth of the PAS into a fully-fledged Institute both signaled the successful completion of a 'project' and provided the logical next step in its development. In 2007, the PAS Institute was incorporated as a Trust to continue the work of the paralegals and provide an international centre for training paralegals working in the criminal justice system.

...and the University of KwaZulu Natal (UKZN)

UKZN is famous for the 'street law' programme it developed in the 1980s in South Africa which enabled thousands of South Africans to understand and access the laws of South Africa.

In 2006, following a series of visits to Malawi at the invitation of PRI, the UKZN agreed to assist the PAS standardize its training and developed a two year paralegal diploma course to establish paralegals under the PAS as a professional legal cadre in Malawi and the region; and to provide paralegals with a career structure (as many intend to become lawyers later on). The diploma is accredited by UKZN and South African Qualifications Authority (SAQA).



THE PARALEGAL ADVISORY SERVICES ON OFFER

Paralegal aid clinics (PLCs)

Paralegals under the PAS conduct PLCs on a daily basis in the main prisons. The clinics are aimed primarily at those prisoners awaiting trial. They aim to empower prisoners to apply the law in their own case. The paralegals use a range of participatory learning and forum theatre techniques, including role plays, games and songs, that enable prisoners to, for instance, apply for bail, make a plea in mitigation, cross-examine witnesses and police officers, conduct their own defence and make an appeal. The paralegals are supported by an updated training manual which incorporates all these techniques and runs to 20 clinics from arrest through to detention.

Screening cases

Paralegals work with prison officers to screen and filter prisoners whose cases require attention. In the majority of cases referrals are made because legal time-limits have been exceeded or bail is appropriate. From time to time, paralegals target certain groups such as homicide remand prisoners, where their cases are dragging and assist the authorities to push these cases along quicker. In police stations juveniles are screened using forms agreed with the police and social services. The paralegals recommend a course of action to the prosecuting authorities – from bail to diversion from prosecution.

Legal advice and assistance

Paralegals are trained to advise on, and assist with, the rights of prisoners and the processes they will encounter as they move through the criminal justice system. They are careful not to advise on the merits of individual cases. Paralegals aim at reaching as many people as possible, addressing groups rather than individuals. PLCs therefore regularly accommodate 100-200 prisoners in one clinic.

At court, paralegals make contact with the accused, their family members, witnesses and members of the public to reassure and assist. At police, they link with the community paralegals to trace parents of young offenders and sureties and operate a 24/7 call-out service at major police stations. Paralegals also work with lawyers to facilitate bail applications and appeals. They are easily recognised by the vests or jackets that they wear in public.

Communication link between justice institutions

The provision of accurate and timely information is one of the most widely appreciated services provided by paralegals, particularly in relation to: juveniles held in custody; remand prisoners whose warrants have expired; those charged with homicide; those who required particular attention on grounds of health; and prison conditions generally.

Contacting families, witnesses and sureties

Paralegals contribute to reducing delays in courts by tracing family members and guardians, witnesses and sureties in appropriate cases. Through building up links with community based organisations further networks are being developed to support this work.

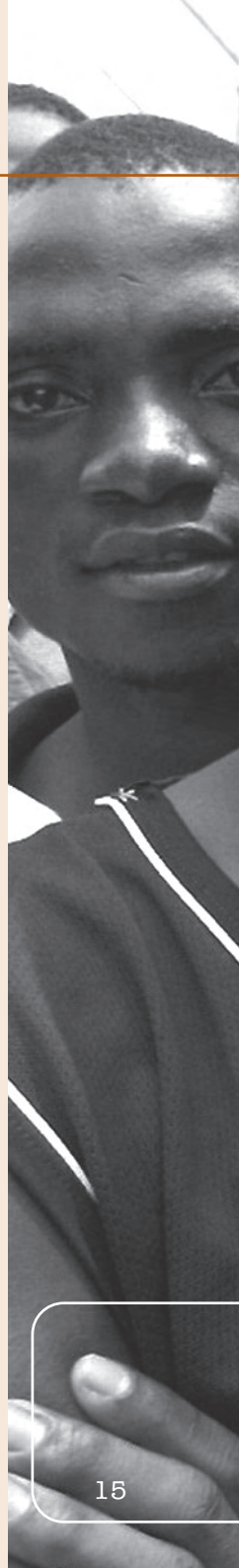
Community partnerships

The PAS links with rural communities and community based organisations to spread information about the criminal justice system and reduce pressure on the formal justice system by encouraging greater community participation in resolving local/private disputes through a mediated settlement.

The PAS train community-based paralegals on the law and establish a communication link from the police, court and prison to the paralegals in the village who can trace family members, sureties and witnesses. Borrowing from a mediation model developed in Bangladesh, the PAS has developed effective referral mechanisms between communities and the justice institutions, with a view to promoting diversionary and reintegration mechanisms in the community.

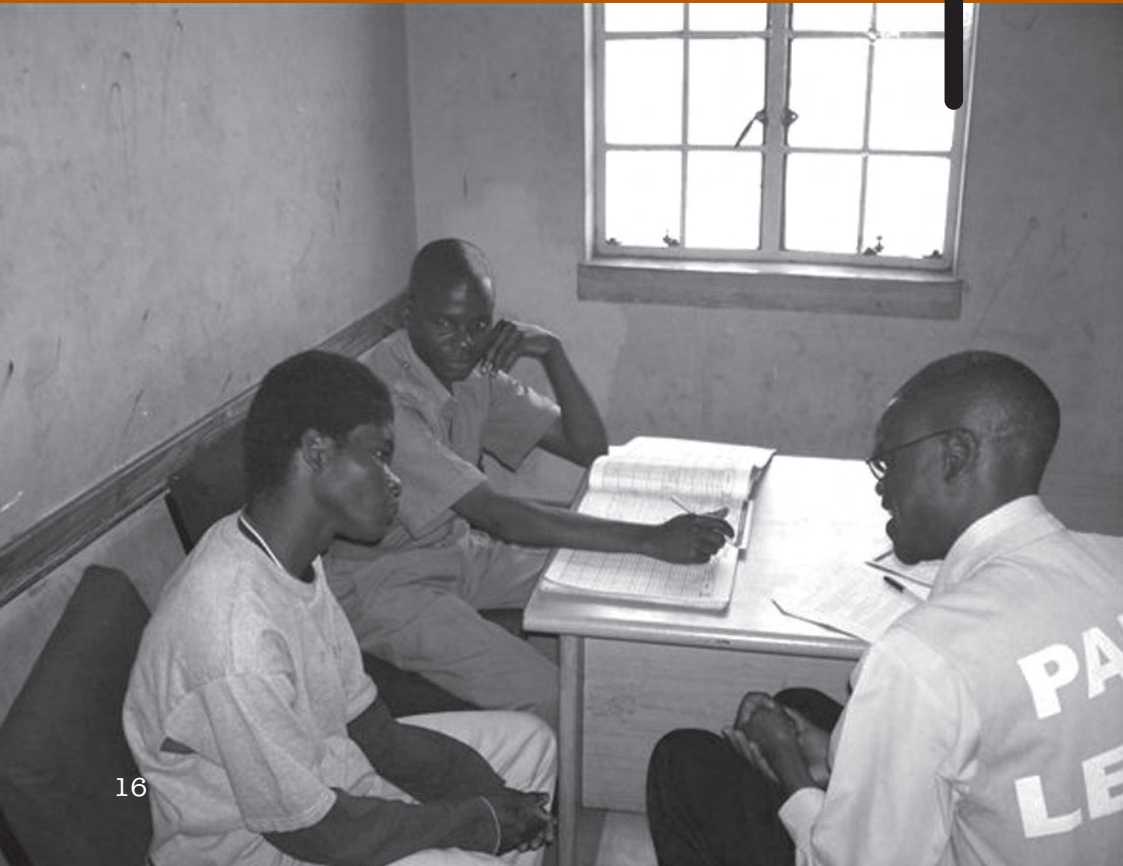
Support for Camp Courts and Court Users' Committees

The 'Camp Court' was introduced to Malawi borrowing from a practice developed in Bihar province, India. Magistrates visit prisons to screen the remand caseload. They are **not** courts for trial. PAS paralegals draw up a list of cases deserving attention and forward them to the police and magistrates for appropriate action to be taken when they visit prison for the camp court. Court Users Committees, consisting of representatives from justice institutions providing services in the courts, as well as from civil society organisations, meet regularly to improve coordination in the justice system and to make arrangements for the Camp Courts. The PAS facilitate these meetings and act as the secretariat.



Policy development

In collaboration with PRI, PAS has had some influence on justice and penal reform. It has raised health conditions in prisons up the political and donor agenda. It has introduced the holding of Camp Courts and revived Court User Committees at the local level. It has informed legal aid legislation and national planning. It has successfully lobbied for the adoption of the Lilongwe Declaration on Accessing Legal Aid (2004) by regional and UN bodies.



THE IMPACT THE WORK OF THE PAS HAD ON THE CRIMINAL JUSTICE SYSTEM IN MALAWI

'The impact PAS has had extends beyond the changes it has made to the lives of prisoners and the workings of the criminal justice system. It has been reflected also in:

- the universal recognition of the extent of the contribution that can be made by a professionalised 'paralegal' service in Malawi
- the success of PAS in demonstrating how effectively public/private partnerships can operate in the justice system between the not-for-profit sector and government
- the impetus given by PAS and PRI to the development of an expanded, national legal aid scheme
- the collaborative partnerships that have enhanced Malawi's reputation for bringing about changes in the criminal justice, particularly as they affect the treatment of juveniles and remand prisoners.¹¹

What independent and critical observers have had to say...

In Malawi, the PAS has been described as

- 'Energingising the criminal justice system...'¹² and
- 'indispensable, bridge building, voices of the voiceless...'¹³ and
- 'PAS has taken a leading role, in Africa and beyond, in demonstrating the value that paralegals can bring to criminal justice systems, even where there is no shortage of lawyers. It has succeeded, with its Malawian justice partners, in visibly changing the legal landscape for both accused persons and prisoners...PAS has registered itself as an unusually effective project.'¹⁴

1 Third independent evaluation, Pierce:2007

2 First independent evaluation, Kerrigan:2002

3 Second independent evaluation, Hansen:2004

4 Pierce:2007



The Kenya Prisons Paralegal Project (KPPP) has

'significantly helped decongest the prisons...by speeding up the determination of long-pending cases in courts...helped remove bottlenecks curtailing access to justice for the poor through facilitation of meetings between key criminal justice agencies...improve prison conditions. The project has successfully worked in close liaison and collaboration with the Paralegal Advisory Service in Malawi.¹⁵

In Uganda

'[t]he position occupied by most stakeholders is that PAS was donor-driven. It was conceptualised outside the CJ sector, then legitimised through stakeholder consultations. The perception of this 'origination' notwithstanding, the team is persuaded that in the case of PAS, the 'end justifies the means' as one respondent told us. The view here is that the LABF [legal aid basket fund], acting as a partner in the CJ sector, simply replicated a good practice from Malawi *and it worked*. It is critical to mention here that with time, the PAS initiative has gained local ownership. Although levels of buy-in are varied, its acceptance as a critical plank in the CJ system is obvious.⁶

In 2004, the PAS won a UN Habitat Best Practices Award.

The 'pioneering'⁷ work of the PAS has been cited with approval in a number of academic and professional journals and periodicals – to take two examples

'The Malawi programme is an outstanding example worth promoting in other countries.'⁸

5 KPPP first evaluation, Msiska/Nyongesa:2005

6 PAS (Uganda) first evaluation, Ngunyi/Namakula:2006

7 New York Times, 6 November 2005, 'The Forgotten of Africa, Wasting Away in Jails Without Trial.' Michael Wines

8 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide.' Vivek Maru. Yale Journal of Law Vol 31:427 at p473

'The [PAS] project assumes greater salience, given that inadequacies in many criminal justice systems cause innocent individuals to be imprisoned or guilty persons to be jailed longer than is legally warranted. The paralegal services become all the more valuable in view of these realities.'⁹

And it has been highlighted in the most recent statement of UK government international development policy.¹⁰

Crucially, the PAS has developed a niche for itself in the criminal justice systems in which it operates:

'Perhaps the biggest key to the remarkable success of PAS has been the mutual trust and respect that has been engendered with partners...Unqualified and consistent praise from justice sector partners emphasises the helpfulness and usefulness of PAS.'¹¹

It is appreciated by the judiciary...

'I write...to express my gratitude and appreciation for the information you have provided to the judiciary relating to accused persons on remand who are willing...to plead guilty to manslaughter if brought before the court...You have come to our aid...the High Court has started hearing the cases of these accused persons.'¹²

the prosecution...

'Without them, the whole process would go back to sleep.'¹³

9 Beyond Rule of Law Orthodoxy: the legal empowerment alternative.' Steve Golub. Rule of Law Series no 41, October 2003 at p38. Democracy and Rule of Law Project. Carnegie Endowment for International Peace. 2003. Other papers include: Corrections Today, February 2002; Insights 43, Sep 2002, Institute of Development Studies, Univ of Sussex, UK www.id21.org

10 'Eliminating world poverty: making governance work for the poor.' DFID White Paper on International Development. July 2006 at p48

11 Pierce:2007 supra

12 Leonard Unyolo, Chief Justice of Malawi, October 2003

13 Mr Kamwembe, Chief State Advocate, Blantyre, in, 'Energising the Criminal Justice System in Malawi', Fergus Kerrigan, 2002



the prisons...

'If somebody intervenes and one person is out of jail because of this intervention: that is good work. And I'm sure paralegals have now had hundreds of people who have been released from their intervention.'¹⁴

'The Paralegal Advisory Service acts as a triangular assistance in that it approaches the prisons to see where weaknesses arise, and it approaches also police and courts at the same time. So the element of having expired remand warrants has been reduced. The problem of having prisoners forgotten in the system has also been reduced.'¹⁵

the police...

'We are one institution in the broad CJS and an institution that is undergoing the reform process. One critical area of this reform process is with regard to the safeguarding of the rights of persons especially with regards to the rights of persons that we have detained in our custody. This is why we need a partner in the nature of paralegals to ensure that at every stage of this criminal process they safeguard the rights of the people that we have actually detained. So, our partnership with them fits in very well with the reform process in as far as matters of safeguarding human rights are concerned.'¹⁶

14 Prison Officer, Nairobi Remand Prison, Kenya, October 2005 cited in 'Freedom Inside the Walls', 2005.

15 Commissioner of Prisons Operations Tobias Nowa, Malawi Prisons Service, cited in 'Freedom Inside the Walls', 2005.

16 Assistant Commissioner of Police ACP Tumulisyse Ndovi, Officer in charge of Prosecutions, Malawi Police Service, cited in 'Freedom Inside the Walls', 2005.

development partners...

'Malawi is a leader internationally in adopting this very successful partnership approach between government and civil society in the area of legal aid.'¹⁷

and by Government...

'The use of paralegals through the Paralegal Advisory Service over the past five years has led to the reduction of a previously high prison remand population. This has been achieved through government recognition of the reality that in order to achieve the protection of human rights, civil society groups have to be taken on board. Such groups provide social services which fill the gaps where the government is lacking.'¹⁸

'What excites me more about what is happening in the Malawi's justice sector, is that, we are trying to find our own solutions to our problems and at a cost we can sustain in the long term. Local Court User Committees and Paralegal Advisory Service provide startling results.'¹⁹



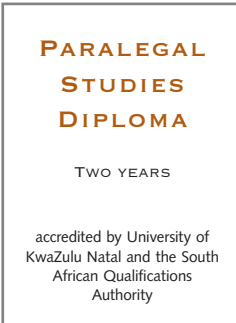
17 UN Resident Co-ordinator, Mr Michael Keating, opening the national meeting to start a national legal aid scheme in Malawi, February 2007

18 Henry Phoya, MP, Minister of Justice, Malawi opening the Lilongwe Conference on Legal Aid in the Criminal Justice System in Africa, November 2004

19 Bazuka Mhango, MP, Minister of Justice, Malawi, opening the national meeting to start a national legal aid scheme in Malawi, February 2007.

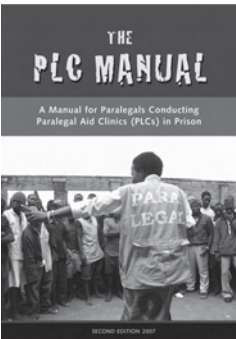
PUBLICATIONS AND RESOURCES

The PAS has produced a series of publications describing its work and how others can introduce the programme.



Training

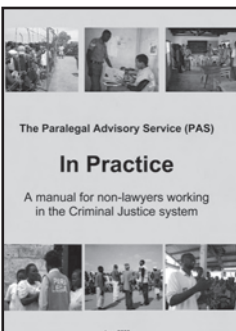
The University of KwaZulu Natal with the PASI has developed a two year diploma course for paralegals. The diploma will enable those paralegals who so wish, to pursue further studies in the law. Those who complete the first year only will receive appropriate certification.



Working in prison

Second edition PLC Manual

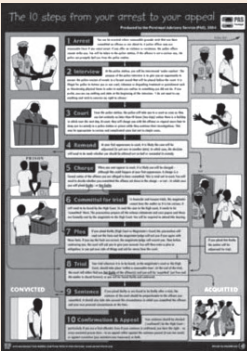
The second edition has been entirely re-written. It runs to 20 clinics. It has been extensively field tested over 18 months and incorporates interactive learning techniques and forum theatre methodology and tips. It is also accompanied by trainer's notes.



The PAS In Practice

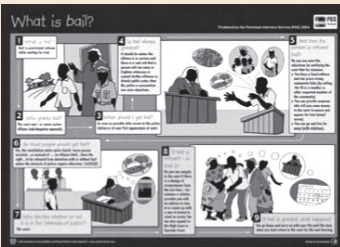
The PAS In Practice is a compilation of the working documents of the PAS. It is constantly being updated as partner organizations contribute their documents and PAS refines and develops its own. It is currently in draft form.

PRI has also developed a manual for establishing the PAS in post-conflict countries. This is currently in draft form.

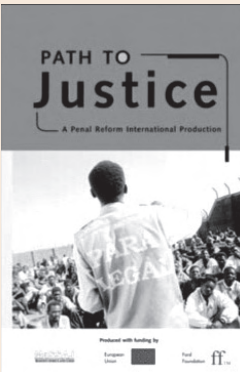


The PAS has produced visual aids in consultation with the police, judiciary, prisons and prisoners which are visible to the public in police stations, courts and prisons. They are distributed in Malawi, Kenya and Uganda and are available in English, Chichewa and KiSwahili languages

The 10 steps from your arrest to your appeal



What is Bail?

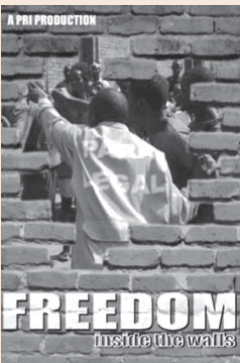


The PAS has produced two films illustrating the work of the paralegals in Malawi, Benin and Kenya

‘Path to Justice’

PRI, 13 min film,

available in English, French and Chichewa



‘Freedom Inside the Walls’

PRI, 53 min film,

available in English and French

PASI PARTNERS:

Penal Reform International (PRI)
University of KwaZulu Natal (UKZN)
The Bluhm Legal Clinic, Northwestern University, Chicago
Danish Institute for Human Rights
Open Society Justice Initiative (OSJI)

Malawi: Centre for Human Rights, Education, Advice and Assistance (CHREAA)

Centre for Legal Assistance (CELA)

Malawi CARER

Youth Watch Society (YOWSO)

Nanzikambe

Benin: Programme d'Assistance Judiciaire aux D efendus (PAJUDE)

Kenya: Kenya Prisons Paralegal Project (KPPP)

Dispute Resolution Centre (DRC)

Uganda: Paralegal Advisory Service (PAS-Uganda)

Tanzania: National Office for Legal Aid (NOLA)

Liberia: Foundation for Human Rights and Democracy (FOHRD)

Foundation for Individual Dignity (FIND)

Justice and Peace Commission (JPC)

Prison Fellowship

Sudan: Peoples' Legal Aid Centre (PLACE)

Niger: Association Nigerienne pour la Defense des Droits de l'Homme (ANDDH) Ministry of Justice.

Zambia: Legal Resources Foundation (LRF)

Bangladesh: Madaripur Legal Aid Association (MLAA)

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Legal aid is a cost to governments everywhere. England and Wales spend USD60 per capita per year, the USA USD50, Canada USD30. The reason is an over-reliance on formal justice structures and highly qualified lawyers. Most countries in sub-Saharan Africa spend less than 50 cents and so cannot afford such an approach. Trained paralegals can provide appropriate legal aid services at a fraction of the cost. They can route cases away from the formal system for settlement back in the community. They can assist accused persons who will never have access to a lawyer to represent themselves. They can appear in police stations, courts and prisons to help move the system along and provide some oversight mechanism. This is what is happening in Malawi under the Paralegal Advisory Service Institute.

Creda



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