

Malawi Violence Against Women and Girls Prevention and Response Programme

Lessons from Embedding a Technical Legal Adviser
in the Judiciary in Malawi

July 2021

Author: Sarai Chisala-Tempelhoff & Chisomo Kaufulu

Contributors: Grace Malera, Kate Bishop

Contents

Acronyms	iii
1. Introduction	1
1.1. The objective of this learning brief	1
1.2. Background	1
1.3. Methodology.....	1
2. Overview of the TLA’s key achievements	1
3. Measuring progress against the Terms of Reference for the TLA	3
3.1. Case handling and accountability	3
3.2. Improvements to implementing the institutional and legal framework on VAWG	3
3.3. Capacity development for judicial officers and other court personnel	3
3.4. Fast-tracking sexual violence cases through the justice system, including criminal prosecution	4
3.5. Assessing feedback on the handling of VAWG and sexual violence cases from survivors and other stakeholders	5
3.6. Expediting and concluding civil VAWG cases.....	5
4. Key Lessons and Recommendations	5

Acknowledgements

Tithetse Nkhanza wishes to acknowledge the invaluable contributions of the following representatives of the Judiciary, without whom this reflection piece would not have been possible. Justice Mvula, Justice Patemba, Ms Edith Chikagwa, Ms Anne Chipeta, Ms Nellie Mchenga, Mr Albert Phikani. Thank you for your time and perspectives.

TN also acknowledges the helpful inputs of Grace Malera, Team Leader, who provided clarifications and important considerations. And lastly, and most importantly, TN acknowledges the vital work carried out by Chisomo Kaufulu, TN Technical Legal Advisor to the Judiciary, without whom these critical systemic improvements within the Judiciary would not have been achieved. This learning piece has benefitted from Chisomo’s critical thinking, and personal reflections. Thank you.

Acronyms

CRM	Chief Resident Magistrate
FCDO	Foreign, Commonwealth and Development Office
GBV	Gender Based Violence
GRLs	Gender Related Laws
GWAN	Government wireless access network
MJDP	Malawi Judiciary Development Programme
SGBV	Sexual and Gender Based Violence
TLA	Technical Legal Adviser
TN	Tithetse Nkhanza
UK	United Kingdom
VAWG	Violence Against Women and Girls
WLA	Women Lawyers Association
WOJAM	Women Judges Association of Malawi

1. Introduction

1.1. The objective of this learning brief

The Malawi Violence Against Women and Girls (VAWG) Prevention and Response Programme, also known as Tithetse Nkhanza (TN) (Let's End Violence), was a UK Aid funded programme with the overall objective to reduce the prevalence of VAWG and improve the justice system for women and girls experiencing violence. Tetra Tech International Development in a consortium with Social Development Direct (SDDirect) and Plan International implemented this programme. TN's work delivered context-specific interventions on prevention and response and built-in adaptation through continuous learning at national, district and community levels. The programme ensured that interventions were guided by the operating environment. TN adapted as the context changed or learning produced evidence to guide more effective response. In addition, and across all outputs, the programme adhered to the principles of gender transformative and survivor-centred approaches.

The Malawi VAWG programme wound down prematurely due to an unexpected scale back in funding experienced by the UK Foreign, Commonwealth and Development Office (FCDO) in Malawi. Thus, this report sets out the lessons learned from embedding a Technical Legal Adviser (TLA) in the Judiciary in Malawi through the Tithetse Nkhanza programme.

1.2. Background

The programme placed a Technical Legal Adviser (TLA) in the Judiciary whose role was to support the Judiciary on a broad range of issues relating to violence against women and girls and access to justice. The TLA role was core to the TN programme design, which worked on community-level prevention and response while working towards systemic improvements in the justice system. The TLA was embedded in the Malawi Judiciary from July 2019 to July 2021, with an office on the premises and was available to the judicial officers and court-users, including victims/survivors of VAWG. The TLA reported on a day-to-day basis within the Judiciary and had a direct reporting line to the TN Team Leader.

"Sitting within the institution gave [the TLA] more acceptability and enabled the TLA to be taken seriously."

Personal communication from one of the judges that worked closely with the TLA.

1.3. Methodology

Research for this work involved a document review and conducting a small number of interviews with selected team members and selected members of the Judiciary. They were directly involved in the engagement and functions of the TLA.

2. Overview of the TLA's key achievements

"The TLA had an office within the institution, and [previously] there was not an office that handles clients [victims/survivors]. So those people that needed legal assistance or advice or following up on a case would go to the TLA. Even those that would come to the reception would then be sent to the TLA office – we called it the TN office, and the TLA would take up the issue with the office of the CRM. Even following up on cases in higher levels of the high court and even engaging the office of the Registrar. A lot of women benefited from the TLA presence at the court."

Personal communication from one of the court administrators that worked closely with the TLA.

LESSONS FROM EMBEDDING A TECHNICAL LEGAL ADVISER IN THE JUDICIARY IN MALAWI

Below are some of the critical achievements of the TLA role; some of these were curtailed by the abrupt end of the project. However, these are already being rolled out and can sustainably be maintained and built upon by the Judiciary.



- **Amending the Case Statistics Form for comprehensive and quality data collection:** The TLA led efforts to consolidate and review the Judiciary's case return form to add vital VAWG categories. The revised case return form is expected to enhance proper recording and tracking of cases.
- **Public display of complaints handling procedures for court users:** Banners were displayed to assist court users in navigating the courts – specifically survivors of VAWG.
- **Electronic case management in the pilot districts:** The district case management system was developed in the pilot districts: Karonga, Lilongwe and Mangochi.
- **Introducing a toll-free line to systematically document feedback and complaints from court users:** The TLA revived and enhanced existing complaints intake mechanisms to ensure accessibility.
- **Survivor rights charter:** The TLA developed a survivor rights charter within the Judicial service charter to elaborate on the quality and standards of GBV services that the Judiciary must offer to survivors and where survivors can issue complaints should such services be found to be lacking.
- **GBV Service Directory:** Developed to aid the Judiciary (particularly court clerks who are the first point of contact for GBV survivors) to link survivors to appropriate support services to ensure holistic and timely intervention across multiple response services.
- **Gender and Sexual Harassment Policy for the Judiciary:** The TLA championed the constitution of a committee to develop a Gender/ Workplace policy to deter sexual harassment.
- **Orientation package for Judicial Officers:** The orientation manual incorporates critical lessons on implementing various gender-related laws (GRLs) and includes guidelines on dealing with sexual and gender-based violence (SGBV) cases.
- **Handbook on VAWG case handling and management for judicial officers:** To ensure gender-sensitive and survivor-centred approaches when interacting with and guiding VAWG survivors through the judicial process.
- **Guidelines for managing SGBV/VAWG cases:** The TLA led the development of guidelines for management and response to GBV during COVID-19 so that VAWG survivors continue to receive support services during the pandemic.

3. Measuring progress against the Terms of Reference for the TLA

The TLA role was intended to conduct the following: Identify activities within the Judiciary, in line with the programme's Outputs 1 and 2 (Output 1: Formal and informal justice services handle VAWG cases in line with protocols and laws; Output 2: Men and women duty bearers have the knowledge, skills and attitudes to prevent and respond to VAWG). Key members of the Judiciary who were involved in enabling and empowering the TLA to perform project activities were asked to share their reflections on the work the TLA undertook during the project implementation period. Respondents were also asked to think forward and consider how the TLA role, if replicated, could be expanded to best serve the Judiciary in the programme's focus areas: namely responding to VAWG. Finally, respondents were asked about the work of the TLA as measured against the detailed terms of reference initially envisioned for the role, their responses informed the findings below.

3.1. Case handling and accountability

The TLA undertook a rapid assessment of the specific problems hindering the effective handling and response to VAWG cases in the Judiciary to identify opportunities and pragmatic strategies for addressing gaps. Informed by the assessment, the programme strengthened the case management system. It supported internal accountability mechanisms as crucial priority focus areas within the Judiciary to ensure effective and timely management of VAWG cases. Follow-up sessions were held with judicial officers. As a result, the Judiciary agreed to a change management process by adopting strategies to strengthen internal accountability mechanisms on the handling of VAWG cases. This was to ensure the Judiciary is responsive and accountable in the manner in which it handles VAWG cases.

An implementation plan was developed to cover 12 months, and some key steps towards rolling out strategies were undertaken. The implementation plan centres upon three thematic areas: judicial responsiveness, VAWG standards and procedures, and case management. A high-level judicial taskforce was tasked with monitoring the progress of the implementation plan.

3.2. Improvements to implementing the institutional and legal framework on VAWG

Following two meetings with the Judiciary convened by the TLA to review internal accountability strategies on VAWG case management; the Registrar, judges of the high court and the Supreme Court of Appeal, and the Chief Resident Magistrates have implemented the Action Plan that was adopted at the judges meeting on strengthening and improving internal accountability on VAWG.

The TLA supported the development of standards and protocols to improve adherence to gender related laws by judicial officers. For example, the Orientation Manual for judicial officers as well as the GBV Case Handling Handbook provides practical guidance on how to apply key GBV provisions found within gender related laws. The TLA has also developed a research piece on improving the enforceability of child maintenance orders by courts which has since been submitted to the Judiciary and the Ministry of Gender. A multi-stakeholder engagement will be convened by the Judiciary to assess any changes that need to be made to the legal framework in order to improve the enforceability of maintenance orders, premised on the research piece developed by the TLA.

3.3. Capacity development for judicial officers and other court personnel

The TLA spearheaded the development of a training manual for newly appointed judicial officers. Previously there was no standard gender training content for judicial officers across all levels, resulting in each group receiving relatively different content. The manual also integrates gender and social inclusion components across all topics. In addition, the TLA also spearheaded the first ever training of about 60 court clerks on survivor centred approaches and gender responsive service delivery. Court clerks tend to be overlooked with regard to such trainings, though they are the first point of contact for VAWG survivors seeking court services. The training was grounded in practical experiences and concentrated on

systemic challenges, for example negative gender perceptions. Respondents noted that everyone who participated in the activity continuously used the tools learned.

3.4. Fast-tracking sexual violence cases through the justice system, including criminal prosecution

These interventions were developed in response to the causes of attrition in VAWG cases.

Enhancing judicial responsiveness

The TLA developed a survivor rights charter within the judicial service charter to elaborate on the quality and standards of GBV services that the Judiciary must offer to survivors and where survivors can issue complaints should such services be lacking.

Display of welcome messages and directions for court users

The TLA ensured that banners were displayed to assist court users in navigating the courts – specifically survivors of VAWG. These banners were used to encourage court users to feel welcomed. They reassured and served as one means of ensuring that victims and survivors did not experience confusion in their interaction with the Judiciary. During training sessions, additional efforts were made to engage on how the institution interacts with court users – key frontline officers were trained on how to manage VAWG victims and survivors.

Handbook on the handling of VAWG cases

A handbook was developed to guide the handling of VAWG cases. In addition, there were consultative processes done with the Women Judges Association of Malawi (WOJAM), and the TLA formed part of the process. The Office of the Chief Justice signed off on this as a guideline for addressing GBV cases. The Office of the Registrar was involved in launching the handbook, highlighting their importance and incorporation into the Judiciary's daily functions.

Electronic Case Management System

The Electronic Case Management System was developed from scratch and made it possible to track GBV cases in the system. The system is being managed by the court clerks.

Through the TLA, the district case management system was developed in the pilot districts: Karonga, Lilongwe and Mangochi. The Judiciary already had a system in place which was only being used at the High Court and Supreme Court level. The lower courts did not have access to this digital platform. This is still in its infancy stage, but there are already essential details that can be extracted. The intervention is based upon and draws from locally available resources to ensure sustainability. The Judiciary used the government wireless access network (GWAN) so that internet access is not an issue. Courts close to the district commissioners' offices can tap into the GWAN network so that the system can be extended across the other districts.

Improvement to the Case Statistics Form

The TLA advocated for uniformity across the Judiciary, thereby coming up with consistent gender-related data from across the Judiciary (widespread use across all registries). However, this was at an advanced stage, and clerks were invited to input into the form. In addition, gender and VAWG elements were included to ensure that data is captured in a disaggregated manner.

Provision of laptops and skills enhancement for judicial staff

The acquisition of laptops and providing computer skills to clerks in the impact districts enhanced the proper tracking of violence cases in the system.

3.5. Assessing feedback on the handling of VAWG and sexual violence cases from survivors and other stakeholders

The TLA was tasked to set up a court users feedback mechanism (i.e. toll-free line and court user feedback form). The office of the TLA engaged with the Judiciary Integrity Committee, which is responsible for getting client feedback. Existing complaint mechanisms were enhanced and publicised; for example, complaints boxes were placed in strategic positions.¹ The TLA's office also did some work on rejuvenating the telephone line as a complaint handling intervention.

3.6. Expediting and concluding civil VAWG cases

The TLA took the lead in developing and introducing specific attrition-responsive interventions that, if sustained, will strengthen the Judiciary in the expedition and conclusion of civil VAWG cases. These mechanisms include:

- If rolled out to more districts, the introduction of the case management system will help in case tracking and thus track delays more effectively.
- The toll-free line and a feedback form for court users.
- The survivor rights charter outlines the need for expeditious delivery of justice and elaborates the quality and standards of GBV services that the Judiciary must offer to survivors, and where survivors can issue complaints should such services be found to be lacking.
- The posters were rolled out in several districts, telling court users how and where to complain.
- The orientation manual for judicial staff incorporates critical lessons on how to implement various GRLs.
- The guidelines on the management and response to court users and clients during the COVID-19 pandemic. The guidelines have an addendum on using the Prevention of Domestic Violence Act to provide emergency relief to VAWG survivors as courts slowed down due to the pandemic.

Through being embedded within the Judiciary, the TLA was in a unique position to observe and respond to systemic challenges, these observations then informed the overall programme direction and targeted objectives for systems strengthening.

4. Key Lessons and Recommendations

This section highlights some of the key learnings from the TLA role. These are drawn from the engagement with key stakeholders in the Judiciary and reports on the activity as prepared under TN.

1. **Communication and high-level buy-in**

High-level communication, dedication, and buy-in are critical for embedding an advisory role such as the TLA within the Judiciary. On project commencement, the Chief Justice invited TN to a convening of judges where TN introduced the programme and the TLA and her role. During the programme, most judges worked with the TLA in one way or another. The TLA also participated in judiciary management meetings. This level of engagement and commitment to the project and the role ensured that the TLA could be effective in the role.

2. **Building trust**

The fact that the TLA was based in the Judiciary fostered a good working relationship based on trust. Compared to other donor programmes providing support to the Judiciary, the TLA had good access to members of staff, even at the highest

¹ The complaints box that was currently in use in the Judiciary focused on corruption related issues, the TLA role expanded use to cover issues relating to sexual violence.

level. The Judiciary was open to having constructive engagement with the TLA. This is also one of the key reasons the Judiciary's work on development of the GBV case handling handbook and the pilot digital case management system, funded by the programme under the Strategic Opportunities Fund, was completed on time and efficiently. However, this arrangement also requires that such in-house support is provided through a 'lead from behind' approach. In-house support should avoid a scenario where projects are simply dictating rigid programmatic interventions.

3. *The critical impact of the skill set of the TLA*

A significant contributing factor to the role's success is the specific skill set that the TLA brought – the core competencies in gender and SGBV, alongside a strong legal background premised upon human rights law. The TLA's personal commitment to women's rights also ensured sustained momentum on the success of the work. The TLA's ability to leverage networks in the legal profession and women's rights sector facilitated a smooth collaborative working environment. In addition, one cannot also overlook the power of having soft skills in capacity development and collaborative working which enabled the TLA to seamlessly spearhead orientation sessions and influence change respectively. These skills made the TLA invaluable and opened doors to broader collaboration in the Judiciary. For example, the TLA provided guidance to the office of the Registrar, who handles judicial administration and how the institution is forging ahead in responding to crucial matters like gender-related issues.

4. *Empowering judicial staff to lead initiatives*

Where a programme has a particular strategic intervention, it is often more effective to engage a senior government official who has expertise and interest in the relevant area to drive that agenda in reaching other government officers. This approach leads to better acceptability. This is the same approach the TLA adopted in spearheading several initiatives (i.e. service directory, survivor rights charter, GBV handbook, orientation manual, etc.); the TLA supported a senior judicial officer who would lead the engagement processes with other judicial staff.

5. *Balancing judicial officers' time on programmatic work vis-à-vis their daily judicial functions*

The overall benefit of utilising the expertise of judicial officers in producing key documents is that the resulting documentation is well-received (acceptability), more trusted (thus encouraging usability), practical and thus enhancing ownership and sustainability. This was the added value of producing the GBV handbook working with internal judicial expertise. On the other hand, utilising the judicial officers' expertise to draft documents results in them being drawn away from their core day-to-day duties. The TLA made attempts to ensure that minimal harm is done regarding the dispensation of justice by scheduling such working sessions with ample notice to the judicial officers to ensure they have the opportunity to manage their caseload in advance of the meeting. The TLA also avoided holding regular meetings with similar judicial officers. This latter approach meant that a delicate balance had to be struck between meeting tight milestones and respecting the limited time that judicial officers can spare for programmatic work.

6. *Appropriate targeting of interventions to include frontline judicial staff*

It was noted that most judicial training interventions focus on judicial officers, however the first point of contact for victims and survivors are clerks, who are also key determinants on whether a survivor will be comfortable with the service and return. It is therefore critical to include all those in contact with survivors. The TLA facilitated pieces of training for clerks and marshals in VAWG matters.

7. *Being open to learning and adaptation*

Providing technical advisory support to the Judiciary requires one be open to adaptation to emerging needs of the institution. Being proximate to the Judiciary meant that the TLA was able to note these needs more promptly and assess the prominence more easily. For example, the TLA was able to adapt quickly to the emerging challenges that COVID-19 brought upon the functionality of the courts, thus leading to the TLA developing the guidelines for managing GBV cases during the COVID-19 pandemic so that survivors are not adversely affected by the slowdown of court operations. In addition, the TLA was able to adjust some plans under the change management process as informed through a practical understanding of the Judiciary's concerns and needs. For instance, the decision to change the rolling out of the court users feedback form to a toll-free line. This however requires active listening and regular systemic needs assessment, which are facilitated by being embedded in the institution.

8. Infrastructure support

Whilst the programme has been advancing a survivor-centred approach to justice delivery, it is evident that a comprehensive and effective approach would necessitate investment in infrastructure. For example, the need for testimony of sexual violence survivors to be heard in private requires the availability of a private room which many courts simply do not have. The requirement that clerks must record details of complainants in a private setting necessitates the availability of private booths or rooms. To minimise a resource intensive approach, lessons can be drawn from the TLA's observation of the EU Chilungamo Programme approach, in which courts were simply rehabilitated to be more gender inclusive and disability accessible, as opposed to building a completely new infrastructure.

9. Mainstreaming GBV standards into key operational documents

Strategically mainstreaming gender and GBV related norms/standards into key operational documents is fundamental in ensuring sustainability and utilisation of such norms/standards. In the Judiciary, there are multitudes of documents on various thematic areas that partner organisations and development partners have produced to support the Judiciary's operations in those specific areas. Production of stand-alone documentation must be weighed carefully. This includes undertaking an assessment of judicial documentation already available and similar documentation that would be relatable or linked to the issues that one would want the Judiciary to document. A stand-alone document must be accompanied by mechanisms to enable monitoring of use. As a best practice, the TLA mainstreamed the survivor rights charter into the service charter instead of creating a stand-alone document and thus overwhelming the Judiciary with multiple charters.

10. Sustainability

The achievements from the TLA role can be sustained because of the approach of building on existing Judiciary resources. When donor support is provided, there is a need to think strategically on how the partner can manage and roll an intervention out once funding is curtailed or a programme ends. The case management system piloted showcases the lesson of using local available resources - including in designing the system etc. - an approach that builds ownership and enhances sustainability.

11. Legal aid support and bringing courts closer to survivors

The TLA continued to note an overwhelming request for legal aid support by GBV survivors. Though attempts were made to collaborate with institutions such as Women Lawyers Association (WLA) to provide such legal aid support, it was evident that the gap for legal aid was overwhelming. Future programmatic support needs to be geared towards supporting institutions that provide legal aid services (like WLA) with technical and financial support to strengthen their legal aid efforts for survivors. Many women come to court who do not have the financial resources to endure the justice system. The TLA would also rely on the good will of other lawyers to take up cases. There is need for funds to support these women who need the finances for the legal assistance to help them through their cases.

In addition, the state-run criminal justice system faces resource constraints which derails the prompt handling and conclusion of GBV cases. One such incident occurred in Karonga in which a 3-year-old girl was defiled. The perpetrator was arrested and awaiting court proceedings. Unfortunately, there was no magistrate in the area who had the jurisdiction to hear defilement cases which meant that the court had to rely on the magistrate from the neighbouring area to hear the defilement case. However, the magistrate from the neighbouring area had no vehicle or fuel to travel for the hearing. The court had to request for resources from civil society actors within the district to support logistical costs of attending to the case.

Mobile court initiatives to address GBV case backlog will need to be spearheaded as the TLA continues to note overwhelming case backlog and lengthy adjournments on GBV cases. This can be emotionally and financially burdensome to the survivor. Mobile courts enable judicial officers to dedicate the allocated time to finalise selected GBV cases, minimise adjournments and curtail costs of the survivor travelling for trial. Lessons on best practices can be drawn from the Spotlight Initiative and the EngenderHealth model on mobile courts.