

IRLI 12 MONTH REPORT

Project Period: 1 July 2014– 30 June 2015 (Y1 of 3 Year Funding Period)

Reporting Period: 1 July 2014- 30 June 2015

Submission Date: 17th August 2015

| Organisation Information | |
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| Charity No.: CHY 18941/ No. 20073541 Date of Receipt of Charity No.: July 2010 | Total No. of Staff: 1 No. of staff in Head office: 1 No. of staff at field level: 0 No. of staff in Ireland: 1 No. of volunteers at field level: 4 |

IRLI's "Access To Justice" Project In Malawi:

The overall aim/objective of Irish Rule of Law International's (IRLI) programme in Malawi is:

"Improved Access to Justice for Unrepresented Vulnerable Persons in the Criminal Justice System in the Central Region of Malawi"

IRLI has been working in Malawi since 2011, in a spirit of partnership with key stakeholders in the Malawi criminal justice system, with a view to promoting the rule of law and delivering greater access to justice for the most vulnerable. IRLI works always with a view to promoting communication, cooperation and coordination throughout the system itself.

IRLI has developed a collaborative, needs-driven programme with a priority on human rights, access to justice for unrepresented accused/convicted persons, reform of the courts and Judiciary and capacity building within the Malawi Police Service (MPS).

IRLI seeks to implement mechanisms in partnership with local actors to remove obstacles to free legal aid in the short-term (such as capacity constraints and shortage of lawyers) in order to bring about direct change at beneficiary level, while developing systemic, sustainable interventions aimed at providing long-term benefits to the wider criminal justice sector.

IRLI Team in Malawi

IRLI currently has a team of four on the ground in Malawi made up of:

- Programme Manager Emma Weld-Moore who commenced her 12 month contract in June 2015 (who took over from former programme manager Jane O'Connell);
- Programme Officer Mark Johnson who commenced his 12 month contract in November 2014 (and is discussing options of extending his contract) (the first to hold this position);
- Programme Lawyer Orla Crowe seconded to the Office of Director of Public Prosecutions who commenced her 12 month contract in December 2014 (and who is considering extending her 12 month contract for a period of 6 months) (who replaced Sarah Houlihan); and
- Programme Lawyer Sarah McGuckin who is seconded into the Legal Aid Bureau and commenced her 12 month contract in March 2015 (who replaced Morgan Crowe on the completion of his placement).

A fifth Programme Lawyer is due to commence a 12 month contract at the end of September 2015. This additional programme lawyer will be responsible for IRLI's work with the Malawi Police Service, with a particular focus on child protection and the treatment of child suspects, and will be based directly at the regional headquarters for MPS in Lilongwe, reporting into the programme manager.

Internal Country Context

The following is a summary of the main political and economic developments in Malawi since July 2014, which have had an impact on the rule of law and the criminal justice system.

The Political and Economic Context

President Peter Mutharika has been in power since the May 2014 tripartite elections (which saw elections at presidential, parliamentary and local government levels). The beginning of Professor Mutharika's presidency was cloaked in controversy due to allegations of election fraud made by the previous president, Joyce Banda. Ms Banda's tenure as president commencing in 2012 following the death of Bingu wa Mutharika saw the eruption of the 'cashgate' scandal, which undoubtedly influenced voters on election date.

The cashgate scandal continues to influence the political system. Malawi's main donors who withheld \$150 million following the scandal, continue to observe the political process, and thus there remains continued pressure on the government to ensure arrests and convictions of those involved in cashgate are made.

Commentators have expressed dissatisfaction with President Mutharika. Malawitoday.com, in an online publication on 20 July 2015, stated that President Mutharika "*is reported to be under performing in running the government*".¹ The Malawian Times-online report that a survey carried out in three districts of Malawi shows a distrust with the President, with the majority of those surveyed expressing concerns with the country's economy.²

The severe flooding in January 2015, the worst flooding in years, destroyed hundreds of acres of crops. This destruction placed additional burden on the economy, thus placing the government under further pressure. The government has recently purchased 100,000

¹ Full article: <http://www.malawitoday.com/news/133355-malawi-president-peter-mutharika-clueless-shortage-drugs-hospitals>

² <http://www.times.mw/peter-mutharika-not-trusted-in-thyolo/>

tonnes of Maize from neighbouring Tanzania, and will no doubt have to continue with providing food assistance and other relief to those affected by the devastating flooding.

In April 2015, the World Bank estimated the expected impact of the flooding on GDP at 0.6 percent, which they describe as “muted”.³ They report that economic growth is expected at a moderate pace, however the rate of inflation which remains high, will likely adversely affect economic outcomes, business confidence and incomes, particularly for the poor. In addressing developing challenges, the World Bank notes that Malawi’s economy, which is heavily based in agriculture and export of tobacco, needs to diversify within agriculture and more broadly across sectors. An obstacle to this is road infrastructure, which must be approved in order to achieve such growth.

President Mutharika has stated that he is keen to diversify Malawi’s economy and in particular to develop the mining industry within the country, which may be necessary given the World Health Organisation’s Framework Convention on Tobacco Control⁴. It is reported⁵ that country-wide airborne geophysical surveys were conducted in 2014, with support from the World Bank and the EU, to identify areas with mineral potential. Given the infrastructural challenges of the country, outside investment is vital to achieve growth in this area.

Over 50% of the population remain below the World Bank's poverty line and Malawi’s ranking on the UN’s Human Development Index has not changed in two years; it remains at 174 out of 187 countries according to the most recent survey.⁶

Rule of Law and Criminal Justice Context

Ministry of Justice

The Minister of Justice, Samuel Tembenu was appointed in June 2014, and appears to have the support of donors and stakeholders. Together with the Attorney General, Kalekeni Kaphale who was appointed in July 2014, the Ministry is certainly willing to hear proposals to address long running issues in the criminal justice sector. IRLI has received the support of, in particular the Attorney General, to address certain issues which we observe as presenting a challenge to the sector. The Ministry is however under political pressure to expeditiously deal with legal cases arising from the cashgate scandal, which will likely hinder the progression of cases in the criminal sector.

Judiciary

The judiciary is under political pressure to prosecute cashgate cases and much of the judiciary’s resources are being invested in these cases. Whilst it can take several years for a criminal case to get to trial, cashgate cases are listed for trial within months of arrest. Recently however, there has been an increase in the number of murder trials held in Malawi. The Chief Justice and President of the High Court have acknowledged the worrisome backlog of murder cases, and it is hoped that IRLI can assist in developing the momentum to conduct murder trials, with an ultimate aim of reducing the number of remandees in prisons.

³ <http://www.worldbank.org/en/country/malawi/overview>

⁴ See Full Framework Document [here](#)

⁵ <http://www.miningnewszambia.com/president-mutharika-sees-mining-as-malawis-economic-option/>

⁶ UNDP 2014 Human Development Report. See full report [here](#)

Office of the Director of Public Prosecutions ("DPP")

The DPP, Mary Kachale, has been in office since August 2014, having previously been in charge of the Legal Aid Department (now known as the Legal Aid Bureau). The DPP appears to be progressive in her approach and understands the need to reform inconsistencies within the criminal justice sector. IRLI has developed a strong working relationship with the DPP, helped largely by the secondment of an IRLI programme lawyer into the DPP's office. The DPP is however also heavily focused on cash gate cases, thus restricting the resources towards the criminal justice sector.

Legal Aid Bureau ("LAB")

In March 2015, pursuant to the Legal Aid Act, 2010, the Legal Aid Department became known as the Legal Aid Bureau. The former Legal Aid Department was controlled directly by the Ministry of Justice, and whilst the Ministry has overall control over the new established LAB, the functions are now dealt with by a director. The director in charge of the LAB in Lilongwe is now Masauko Chamkakala. There have been a number of personnel issues in the changeover, and it is expected that professional and support staff will change in the coming months. LAB remains understaffed, thus restricting the number of cases which should be dealt with. The LAB has several budgetary issues, although third party donors have expressed a willingness to fund LAB subject to budgetary matters being resolved.

IRLI has a programme lawyer seconded to Lilongwe LAB who works closely with the director, advocates and paralegals.

Malawi Police Service ("MPS") and Prison Services

MPS and the Prison Services are part of the Ministry of Internal Affairs and Public Security. Both MPS and the Prison Services have resource issues at training and operational levels. The police recording system is inadequate, resulting in some prisoners having no police file thus becoming lost in the system. Overcrowding in both police cells and prisons remains a serious issue. Large scale reductions will however only be achieved by the processing of cases at judicial level, and an increase in the resources of LAB.

A. Project Overview

IRLI has developed strong and stable relationships with key stakeholders in the Malawian criminal justice system to include the DPP, LAB, MPS, and the Judiciary. IRLI also maintains close links with other non-governmental organisations working in the sector. In maintaining these relationships, and in building close linkages with the key stakeholders in the criminal justice system, IRLI strives to promote a mutual exchange of learning and understanding while also helping to promote increased co-operation within the justice sector. In addition, IRLI is becoming a well known stakeholder in the criminal justice sector, and this puts the team in a strong position to identify issues within the system, and needs of the sector.

Expected Outcomes

There are two specific outcomes which IRLI works towards to achieve its overall objective:

Outcome 1: Prisoners and those in police custody are ensured of their due process rights and given greater access to restorative justice practices.

Outcome 2: Increased and applied knowledge of due process rights, human rights compliance and legal skills amongst criminal justice stakeholders.

In order to attain each outcome, there are a number of outputs, indicators and targets which have been identified. Annual targets are measured on a six monthly basis. This report aims to provide an assessment of the progress made from 1 July 2014 to 30 June 2015 ("Programme Year 1 of 3 Year Funding Agreement").

B. Outcome 1: Progress Thus Far

There are five different outputs which IRLI is working towards, in order to achieve Outcome 1.

1. Output 1.1: Suitable accused and those in police custody are targeted for restorative justice practices in selected Police Stations in Lilongwe District

| | |
|-------------------|--------------------------------|
| Indicator 1.1.1: | Number of Trainings Undertaken |
| Annual Target: | 8 Police Stations |
| Progress to date: | 8 Police Stations |

| | |
|-------------------|---|
| Indicator 1.1.2: | Number of Police Officers, Legal Personnel and Magistrates trained in diversion |
| Annual Target: | 160 |
| Progress to date: | 168 Police Officers 5 Social Welfare Officers 15 Community Leaders 3 Judicial Officer 4 Community Service Officer 3 PASI Paralegals (198 people trained in total) |

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|-------------------|---|
| Indicator 1.1.3: | Increase in number of people diverted from formal criminal justice system in targeted Police Stations |
| Annual Target: | 30% |
| Progress to date: | Uncertain |

A total of 8 IRLI police workshops took place during the reporting period, in the Lilongwe District. A total of 168 police officers were trained.

It became evident that there was a lack of knowledge amongst police officers on the treatment of child suspects. Only a limited number of police officers appeared to have received training on matters arising under legislation relating to children, including the Child Care, Justice and Protection Act, 2010 (the "**Child Care Act**"), which seeks to provide additional protection for children, and lays out certain procedures which must be adhered to when dealing with child suspects. IRLI determined that the workshops should be extended beyond training on concepts and practice of restorative justice and child diversion, to also include issues relating to juvenile justice and the treatment of child suspects such as arrest, detention, bail, and the workings of preliminary enquiries and child justice courts. A recent High Court decision⁷ deemed that the age of a child referred to in the Child Care Act was unconstitutional and that the age of a child is under eighteen years (sixteen years was referred to under the Child Care Act). Accordingly, the material and content of the training workshops was amended to reflect this change in the law.

Each workshop now comprises a full day's training focusing on these issues.

For the purposes of sustainability, the two police facilitators who were trained last year by IRLI in restorative justice and diversion have now, in addition to two further police officers, been fully trained on the child justice issues which form part of the training. These police officers conduct the training, with IRLI organising the logistics of the workshops including the material provided to the participants. IRLI continues to train the facilitators on the subjects for the workshops and intend to continue this 'training of trainers' model. IRLI has identified a number of additional officers who will be trained by IRLI as facilitators, with the assistance of the already trained police facilitators.

Representatives from other stakeholder groups, including the District Social Welfare Office, now attend certain of the workshops when the material is believed to be of particular relevance. There have also been representatives from community policing groups and community victim support groups. This approach has proved to be particularly beneficial for a number of reasons. First, the additional attendees benefit from the training itself (many of whom have never attended a workshop on the treatment of child suspects and child justice issues). Second, by having the representatives from the various bodies speak at the workshops about their roles, it increases the knowledge of the other participants in the workings of other bodies involved in the criminal justice sector allowing participants to become cognisant of issues within such other bodies, thus strengthening linkages between key juvenile justice stakeholders. The attendees are invited to share and discuss their opinions on the topics covered which has led to some very interesting discussions and debates between the different stakeholders.

Trainings

The format of the training workshops conducted in the various police stations and districts was similar and the content remained the same. Much work was put into the preparation of the material handed out at the training workshops to ensure accuracy. As aforementioned, the training focused on the topics of child protection and diversion as well as child justice issues including arrest, detention and bail of children suspected to having committed

⁷ *The State v Stanford Kashuga, Misc. Civil Cause No. 129 of 2012, decision by Justice Tembo on 4 February 2015*

offences. The training also dealt with the right to a fair trial and preliminary enquiries in addition to the function of the Child Justice Courts, established under the Child Care Act.

The training was conducted by the police facilitators who had been trained by IRLI on the topics covered. IRLI observed that the police facilitators interacted well with participants at the various trainings and the participants themselves, in general, appeared attentive and engaged throughout the trainings.

After each of the training workshops, the participants were asked to complete evaluation forms and make comments and suggestions on improvements and amendments to the trainings. They were also asked whether they agreed or disagreed if, post training, their knowledge had increased of:

1. age of child under the Child Care Protection Act
2. arrest bail, and detention of children;
3. procedures re preliminary enquiries and child justice courts;
4. legal basis for diversion;
5. increase in confidence to assess suitable cases for diversion;
6. if they were more likely to use diversion options in future.

The responses to the questions raised in the evaluation forms as are follows:

| | Target Station | Date | Comments |
|----|-----------------------------|-------------------------|--|
| 1. | <i>Kasiya Police Unit</i> | <i>9 October 2014</i> | 19 participants were in attendance, in addition to the police facilitators. 100% of participants either strongly agreed or agreed with all questions asked. Suggestions put forward were for additional trainings to be carried out, for the trainings to extend to two or three days, and for community chiefs and other officers to attend such training. |
| 2. | <i>Lilongwe Police Unit</i> | <i>7 November 2014</i> | 29 participants were in attendance, in addition to the police facilitators. 100% of participants strongly agreed or agreed with nos. 1, 2, 4, 5 and 6, 96.55% of participants either strongly agreed or agreed with nos. 3 and 5, with 3.45% (one person) strongly disagreeing with nos. 3 and 5. |
| 3. | <i>Lingadzi Police Unit</i> | <i>13 November 2014</i> | 22 participants were in attendance, in addition to the police facilitators, however only 19 participants completed evaluation forms. 100% of participants who completed the evaluation forms either strongly agreed or agreed with nos. 1, 3-6, 94.74% of participants strongly agreed or agreed with no. 2, 5.26% (one person) disagreed with no. 2. The feedback was for further training, and to include community members at certain of the trainings. |
| 4. | <i>Kawale Police Unit</i> | <i>20 November 2014</i> | 25 participants were in attendance, in addition to the police facilitators. 100% of participants strongly agreed or agreed with nos. 2, 4, 6, 96% of participants either strongly agreed or agreed with nos. 1, 3 and 5, with 4% (one person) |

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|----|-----------------------------|---------------------|--|
| | | | strongly disagreeing with no. 1, 4% having no opinion with no. 3, and 4% having no opinion with no. 5. The feedback was similar to feedback from previous trainings that additional training be provided, community members be included, trainings be extended to two days, and also that police officers in districts further out be trained. |
| 5. | <i>Kanengo Police Unit</i> | <i>9 June 2015</i> | 26 participants were in attendance, in addition to the police facilitators. 23 evaluation forms were completed. 100% of the 23 participants who completed the evaluation forms either strongly agreed or agreed with nos. 1-6. The suggestions put forward were that the training should be carried out in every district, and overwhelming that further trainings be carried out. |
| 6. | <i>Lumbadzi Police Unit</i> | <i>11 June 2015</i> | 28 participants were in attendance, in addition to the police facilitators. 22 evaluation forms were completed. Out of the evaluation forms completed, 100% of participants either strongly agreed or agreed with nos. 1, 2, 5, 6, 95.45% of participants either strongly agreed or agreed with nos. 3 and 4, with 4.55% (one person) having no opinion with nos. 3 and 4. The feedback included extending the training to communities, and that all police officers are provided with such training. |
| 7. | <i>Lilongwe Police Unit</i> | <i>17 June 2015</i> | 15 participants were in attendance, in addition to the police facilitators. 14 evaluation forms were completed. Out of the 14 evaluation forms completed, 100% of participants either strongly agreed or agreed with nos. 1-6. The feedback was positive, and requests were put forward to carry out further trainings. |
| 8. | <i>Lilongwe Police Unit</i> | <i>24 June 2015</i> | 36 participants were in attendance, in addition to the police facilitators. 35 evaluation forms were completed, however one of the participants responded to three questions only, nos. 1, 3, 6. Thus for questions 2, 4 and 5, only 34 responses were provided. Question 1: 88.57% strongly agreed or agreed, whereas 8.57% strongly disagreed, and 2.86% disagreed. Question 2: 88.23% strongly agreed or agreed, 8.82% strong disagreed and 2.94% had no opinion. Question 3: 88.57% strongly agreed or agreed, 8.57% strongly disagreed, and 2.86% disagreed. Question 4: 91.18% strongly agreed or agreed, 5.88% strongly disagreed, and 2.94 disagreed. Question 5: 94.12% either strongly agreed or agreed, and 5.88% strongly disagreed. Question 6: 91.43% strongly agreed |

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| | | | or agreed, and 8.57% strongly disagreed. The suggestions put forward included educating the public in general on child diversion, in addition to carrying out further trainings. |
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Diversion Figures

Due to inadequate recordings in police stations of prisoners detained and children diverted, IRLI is not in a position to give even indicative figures of increases in people diverted from the formal criminal justice system. It is hoped that the introduction of an IRLI Programme Lawyer in the Malawi Police Service will assist in having better recordings put in place, and thus enabling us to obtain data on increases in diversion. However, IRLI is reviewing the applicability of indicator 1.1.3 for the purposes of recording results.

Way Forward

The feedback from the participants following the training workshops was generally very positive, and as evidenced from the suggestions put forward, participants would like to see trainings continued, and indeed extended beyond one day. IRLI will consider extending trainings which will be subject to funding availability.

A suggestion put forward several times was to include community members at trainings, i.e. community chiefs and group village headmen. One of the challenges facing child justice lies at community level where there is often a lack of knowledge on child issues. For example, a community may not understand the concept of bail and a child released back to his/her community on bail pending trial may suffer abuse, be ostracised or sometimes even killed. Whilst IRLI carries out community sensitisation meetings, consideration is now being given to including community leaders, and perhaps school leaders, at some of the trainings so as to advance the knowledge base on child justice issues. It is also intended to invite magistrates located in particular districts to attend these trainings.

Whilst it is intended to continue the current approach to police workshops, the introduction of an IRLI Programme Lawyer who will work directly with the Malawi Police Service will greatly assist in developing the content of the training. In addition, the PL will be in a position to deal with daily queries and issues arising in the police stations and conduct short trainings on an informal basis of these issues. It is intended that such short informal trainings will be conducted of case studies arising from issues discussed during the larger workshops.

2. Output 1.2: Suitable accused persons and those in police custody are targeted for restorative justice practices within rural districts of the Central Region

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|-------------------|---|
| Indicator 1.2.1: | No. of Districts which receive Diversion Training |
| Annual Target: | 2 |
| Progress to date: | 2 (Dowa & Salima) |

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|-------------------|---|
| Indicator 1.2.2: | Number of Police Officers, Legal Personnel and Magistrates trained in diversion |
| Annual Target: | 50 |
| Progress to date: | 122 |

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|-------------------|---|
| Indicator 1.2.3: | Increase in number of people diverted from formal criminal justice system in targeted Police Stations |
| Annual Target: | 30% |
| Progress to date: | Uncertain |

The training workshops in the Central Region outside Lilongwe consisted of the same content and format as the workshops conducted within Lilongwe District, i.e. on concepts and practice of restorative justice and child diversion, and issues relating to juvenile justice and the treatment of child suspects to include arrest, detention, bail, and the workings of preliminary enquiries and child justice courts. Training was carried out in Dowa District and Salima District. Due to the numbers attending the training workshops, two days of training was provided in each District with each training following the format and content as the previous training.

Similar to the workshops in the Lilongwe District, evaluation forms were handed out following the trainings and the participants were asked to make suggestions on how to improve the trainings, and to evaluate whether or not they had increased their knowledge of:

1. age of child under the Child Care Protection Act
2. arrest bail, and detention of children;
3. procedures re preliminary enquiries and child justice courts;
4. legal basis for diversion;
5. increase in confidence to assess suitable cases for diversion;
6. if they were more likely to use diversion options in future.

The results were as follows:

| | Target District | Date | Comments |
|----|-----------------|--------------------|---|
| 1. | Dowa | 24 & 25 March 2015 | <p>Over the two days, a total of 58 participants attended the workshop, in addition to the police facilitators. Of the 58 participants, 56 completed evaluation forms, one of which is spoilt due to 'strongly agree' and 'strongly disagree' being provided for each question. Thus, based on 55 evaluation forms, the participants were of the following views:</p> <p>Question 1: 100% of participants either strongly agreed or agreed.</p> <p>Question 2: 100% of participants either strongly agreed or agreed.</p> <p>Question 3: 96.36% of participants either strongly agreed or agreed, 3.64% of participants had no opinion.</p> <p>Question 4: 96.36% of participants either strongly agreed or agreed, 3.64% of participants had no opinion.</p> <p>Question 5: 94.55% of participants either strongly agreed or agreed, 3.64% of participants strongly disagreed, and 1.82% had no opinion.</p> <p>Question 6: 92.73% of participants either strongly agreed or agreed, 1.82% disagreed, and 5.45% had no</p> |

| | | | |
|----|---------------|------------------------------------|--|
| | | | <p>opinion.</p> <p>The suggestions put forward included having judicial officers as facilitators, and to extend the training beyond one day.</p> |
| 2. | <i>Salima</i> | <i>31 March & 1 April 2015</i> | <p>Over the two days, a total of 64 participants attended the workshop, in addition to the police facilitators. Of the 64 participants, 58 completed evaluation forms and the following are the outcomes:</p> <p>Question 1: 100% of participants either strongly agreed or agreed.</p> <p>Question 2: 95.28% of participants either strongly agreed or agreed, 1.72% strongly disagreed.</p> <p>Question 3: 100% of participants either strongly agreed or agreed.</p> <p>Question 4: 100% of participants either strongly agreed or agreed.</p> <p>Question 5: 100% of participants either strongly agreed or agreed.</p> <p>Question 6: 94.83% of participants either strongly agreed or agreed, 1.72% disagreed, and 3.45% had no opinion.</p> <p>The feedback from the training was very positive, and requests were made for additional trainings to be carried out in the District.</p> |

Diversion Figures

Similar with the Lilongwe District, the records of detainees and on child diversion in the Central Region police stations does not afford us the opportunity to provide figures of those diverted from the formal criminal justice system. Whilst the MPS Programme Lawyer will be based in the Lilongwe District, time will be spent in the Central Districts and it is hoped that a revised method will be developed for better recording in police stations, which will hopefully enable us to obtain figures on diversion.

Way Forward

The current structure of the workshops is due to continue, however with the introduction of the MPS Programme Lawyer, it is anticipated that small group sessions will be conducted with police officers to determine where gaps of knowledge lie, and thus developing the content of the trainings. In addition, it is hoped that the small group structure will further develop the information imparted in the training workshops already given.

The training workshops may be extended to include community chiefs and leaders in order to attempt to combat the issues arising at community level, including mob justice, alienation and rejection of those released on bail and at the end of their sentence.

EU DGP Proposal

Together with Malawi Police Service Headquarters, a proposal was submitted for funding for an additional 2 Workshops for Police officers: one five day workshop on Child Justice Issues with Community Policing and one five day workshop on Investigative techniques and rules of evidence at court. This funding has been approved however IRLI needs to finalise plans and budgets to submit to EU before they will release the funds. Work on this will begin when the new MPS Programme Lawyer arrives in September. IRLI has until June 2016 to complete the workshops and intends to partner with another organisation as the programme is quite comprehensive.

3. Output 1.3: Suitable accused are targeted for participation in Diversion Aftercare Programme

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|-------------------|--|
| Indicator 1.3.1: | No. of Diversion Aftercare Programmes held |
| Annual Target: | 2 |
| Progress to date: | 1 completed, 2 nd completing early September 2015 |

| | |
|-------------------|---|
| Indicator 1.3.2: | Number of participants in Aftercare Programmes |
| Annual Target: | 30 (to completion of programme) |
| Progress to date: | 19 completed 1 st Programme, 2 nd completing early September 2015 |

The diversion aftercare programme "Mwai Wosinthika" was, prior to this year, conducted in conjunction with the Malawi Police Service ("MPS"). However, following review, it was concluded that the needs of the children on the programme would be better met if the facilitators were specifically trained to work with children. The diversion programme is now operated in partnership with the Ministry of Gender, Children, Disability and Social Welfare ("**Ministry**") who provide officers from the Department of Social Welfare who are trained in diversion and child justice issues to facilitate the sessions, and in partnership with Chisomo Children's Club ("**Chisomo**") who provide the venue and assist in the facilitation of the programme.

The Venue for Mwai Wosinthika has proved a welcome introduction to the programme. Chisomo have been very accommodating and their staff are trained in diversion. Some of their staff regularly visit police stations in Lilongwe District, and many of the children who have been diverted from the police cells onto the programme were assisted by Chisomo. Chisomo also provide accommodation to children who otherwise would have nowhere to go. This can be a significant factor on whether the MPS agree to diversion.

The officers from the Department of Social Welfare have also been trained in diversion, and are familiar with the weekly programme sessions. The success of Mwai Wosinthika is dependent on the facilitators and IRLI has observed an increase in the children's interaction with each session of the 12 week programme.

Due to the changeover from the MPS to the Ministry, the commencement of Mwai Wosinthika was delayed. However, one programme was completed in May 2015, and the second programme, which began in June 2015, is due to complete in early September 2015. IRLI will commence and complete the first programme of year 2 prior to the end of this calendar year.

In preparation for the first programme and to identify children suitable for inclusion on the programme, IRLI liaised with police stations who had received training by IRLI in child diversion. Challenges were met as not all of the MPS officers had been trained on child diversion issues, and others were reluctant to divert children who they perceived as having

committed a crime. To address these issues, IRLI spent time in several of the police stations advising on diversion, and sensitising and training the MPS in diversion. A notable change in the attitude of police officers has been evidenced in preparation for the second Mwai Wosinthika programme with an increased willingness by police officers to divert children away from the police cells.

There are a number of Community Victim Support Units (“**CVSU**”) operating in the Lilongwe District who attempt to deal with minor disturbances without the need for police intervention. IRLI now liaises directly with certain of the CVSU’s for the purposes of diverting children who have been involved in minor disturbances onto the programme.

All children diverted onto the programme must be assessed, and deemed eligible for inclusion onto the programme. All referring bodies, i.e. MPS and CVSUs, are provided with referral forms wherein information relating to the child must be provided including details of the alleged offence committed. The children themselves must express on the form that they are aware of their actions, admit to their wrongdoing and consent to being enrolled onto the programme. The completed forms are given to the Ministry facilitators who conduct home visits prior to the commencement of the programme, and complete eligibility assessment forms following the home visits. The forms are returned to IRLI and a decision is made whether a child is suitable for inclusion onto the programme.

Format of Programme:

Stage 1

Identify children who have been in conflict with the law, who are suitable for diversion onto the programme. To determine suitability, an eligibility assessment form must be completed and the alleged offence must be minor in nature, as prescribed by the Child Care Justice and Protection Act, 2010, which lays down the criteria for diversion.

Stage 2:

Obtain parental or guardian consent. For children resident in children’s homes, consent of the de facto guardian is obtained. Where possible, a home visit will be conducted by the facilitators to explain to the parents the intent of the programme, and to conduct a family counselling session.

Stage 3

Orientation meeting is conducted the week prior to the commencement of the programme for the children attending the programme and their parents. The aims of the programme are explained, in addition to how the programme will be conducted. The parents are given the opportunity to ask questions.

Stage 4

Weekly sessions commence as per the Mwai Wosinthika Programme Handbook for a period of 12 weeks.

Stage 5

Home visits and where possible family counselling sessions are conducted during weeks 6 to 8 by the facilitators. If necessary, individual counselling sessions are also provided.

Stage 6

A team building excursion for the children is carried out, where the children are brought off site for a day to discuss and review the programme, the content, and to set goals for the

future. Programme one involved a mountain climb, which due to its success is going to be continued for the forthcoming programmes.

Stage 7

Graduation for children who have completed the 12 week programme. Special guests are invited, and each child receives a Certificate of Completion.

Stage 8

For the purposes of monitoring the children's behaviour, IRLI arranges for the facilitators to conduct a home visit (where possible), or telephone attendance with each participants parent/guardian after one month, three months and six months of the conclusion of a programme.

First Programme

The first programme of the reporting year commenced in February 2015. 20 children started on the programme, 19 completed.

Timekeeping was an issue at the start (both facilitators and participants) however this improved notably during the programme. Week 6 of the programme was a "wildcard" week, where speakers were brought in to motivate and inspire the children to think about their future careers. The feedback from this session was very positive, and the wildcard week will be continued.

At the conclusion of the programme, a graduation ceremony was held where the children's families attended, in addition to a number of guests including a child justice magistrate, the head of the probation services and head of community policing services. The children were presented with a certificate, t-shirts and a bar of soap. The ceremony was well received, and it certainly promoted the concept of diversion in the eyes of other stakeholders in the child justice system. However, perhaps a greater emphasis could be placed on making the ceremony more interactive for the children by creating a more entertaining element for them, i.e. having a guest who they would know, having music (speakers etc). In addition, IRLI hopes to use the graduation ceremony in the future to link the children to organisations who can assist them returning to education or partaking in a vocational programme.

Of the children who completed the programme, 79% of the families have reported a significant change in the child's behaviour, and some children have returned school. 10% could not be reached after the one month follow up.

Second Programme

13 children attended the first session of the second programme of the programme year, however the number of children has now increased to 18. All parents or guardians of children who did not attend the orientation meeting were required to attend with the child on the child's first day of the programme for the purposes of signing parental consent. Having successfully completed one programme, the facilitators have further developed their skills for each session, and the second programme is very interactive, with positive feedback. The children are interacting well with each other, and with the facilitators. The mountain climb is due to take place on the week before the graduation, with the graduation on 12 September 2015.

Way Forward

IRLI intends to strengthen the working relationships with the MPS, Ministry, Chisomo, and CVSUs, in addition to linking up with partners to assist the children on the completion of the programme. The Office of Career Guidance attend a weekly session to speak with and advise the children on career options, and life path, and it is hoped that they will offer

further advice and practical assistance to the children post the completion of the programmes.

4. Output 1.4: Pre-trial detainees are legally assisted in Maula Adult Prison and Kachere Juvenile Reformatory Centre

| | |
|-------------------|--|
| Indicator 1.4.1: | No. of Legal Aid Clinics held in Maula and Kachere |
| Annual Target: | 50 |
| Progress to date: | 60 (11 additional clinics took place in Dedza Prison, Kasungu Prison, Mpemba Reformatory Centre and police stations in Lilongwe) |

| | |
|-------------------|--|
| Indicator 1.4.2: | No. of Pre-Trial Prisoners Assisted in Maula and Kachere |
| Annual Target: | 15 |
| Progress to date: | 34 new cases were taken on during the reporting period (51 live cases in total at end of reporting period) |

One of the fundamental tenets of the Programme is the provision of legal aid to detainees in prisons in the Central region of Malawi, in particular at Maula Adult Prison and Kachere Juvenile Reformatory Centre. Many detainees are unaware of their right to avail of free legal aid, and the carrying out of legal aid clinics seeks to address this issue. In addition to holding clinics in Maula and Kachere, IRLI also holds legal aid clinics in Dezda and Kasungu prisons, Mpemba Reformatory Centre and police stations in Lilongwe as the necessity arises.

One of the purposes of a legal aid clinic is to inform a detainee or detainees of their right to avail of legal aid which, as aforementioned, is often an unknown concept. A clinic also enables the relevant PL to meet with new clients and take statements, or meet with existing clients and address queries, or impart information.

In order to build capacity and ensure sustainability (as well as for practical purposes given that most of the clients only speak Chichewa), the clinics have been operating in conjunction with legal aid advocates and paralegals, and on certain occasions with PASI paralegals. However, increasingly and in line with the training workshops being carried out with legal aid paralegals (discussed further below), paralegals are conducting a greater number of clinics, and client meetings on their own. Paralegals have been trained in the proper taking of statements from detainees and the correct drafting of court applications. To build on this training, paralegals are assigned to attend at prisons and police stations to meet with identified clients, take statements, and inform of the availability of legal aid. They do so under the guidance of IRLI, and thus IRLI's role is gradually becoming more supervisory and one of mentorship.

This approach continues to evolve, and is being implemented to build sustainability, increasing the capacity of legal aid paralegals and the overall strengthening of the legal aid institution. The focus is to educate the paralegals, and in doing so they are given primary responsibility for individual case management, supervised by IRLI, which we hope will empower the paralegals, thus creating an environment of growth.

In addition to monitoring the roles of paralegals, IRLI monitors criminal cases coming through the LAB in order to ensure the cases are processed to conclusion. Monthly reports outlining the status of each case supervised by IRLI and setting out the required next steps are submitted to the director of the LAB together with training plans for the paralegals.

Since inception, the scope of IRLI's function in the LAB has developed and grown. As well as working with detainees accused of manslaughter, murder or homicide, IRLI is now also

assisting prisoners who have been 'awaiting judgment' following the hearing of their trial for unreasonable periods, in some cases 5 years. One of the challenges with these cases is that often there are no records of the trial thus creating serious issues in having a judgment issued. In an attempt to resolve these issues, IRLI has conducted meetings with the President of the High Court, other members of the judiciary and court registrars, in addition to the director of the LAB, and representatives from the DPP. Suggestions have been put forward to have these cases reheard with funding from the EU, and IRLI will be assisting in the trial process.

A welcome development in the Malawi judicial system has been the hearing of murder/homicide cases within the past number of months, with further hearings expected in the coming months. We are assisting LAB advocates in presenting their cases and writing legal submissions for these murder/homicide trials, in addition to providing assistance drafting skeleton arguments when needed.

Further, we give advice to LAB advocates on appeal options, and also on applications for discharges in circumstances where a detainee has been detained in excess of the statutory period. Such advice can be challenging due to the common inability to locate a court file. IRLI has expended much time in searching for missing files, and the absence of files significantly impacts on the ability to advance appeal cases. In addressing this issue, IRLI has met with representatives of the judiciary, including the President of the High Court to discuss how to move cases forward. Following these discussions, we are now involved in reconstituting files where extensive searches have not located the original file. This will allow the case to move forward.

At the beginning of this reporting period, IRLI investigated, and thereafter tested, the ability to develop a pro bono project whereby private lawyers would take on cases pro bono. However, this project increased the workload of IRLI without achieving results due to an appeared reluctance of private lawyers to take on pro bono work. Consequently, we have discontinued this project, directing the time towards working with LAB, and on LAB cases.

Despite the uncomplicated recording system, one of the notable challenges in the LAB is the recording of cases and case data. IRLI tries to ensure that every criminal case dealt with by the LAB is recorded in the criminal registry. IRLI has recently had printed a concise yet basic criminal register to assist the LAB in the recording of criminal files, and IRLI will monitor the recording of data on a continued basis.

During the course of the reporting period IRLI held a total of 71 legal aid clinics at the following locations: 41 clinics in Maula prison, 19 in Kachere prison, and 11 additional clinics in Dedza Prison, Kasungu Prison and police stations in Lilongwe. In furtherance of the training of paralegals as aforementioned, many more clinics were carried out by paralegals, as directed and monitored by IRLI.

IRLI continues to review the measurement of our work in LAB, and the appropriateness of the specific indicators. For the next period, we intend to broaden this output to take into account the focus beyond 'pre-trial' cases and the prisons in Lilongwe District (Maula and Kachere).

At the end of the reporting period, IRLI has 51 active cases (22 pre-trial homicide adult cases, 6 pre-trial homicide juvenile cases, 16 post-trial homicide, 5 appeals of juvenile theft convictions and 2 applications for discharge in a juvenile defilement case).

During the reporting period IRLI assisted in 83 cases, excluding cases disposed of at camp courts. Of the 83 cases, 34 of them resulted in the release of prisoners (30 homicide remandees were released on bail, 1 was transferred to Zomba Mental hospital on medical grounds and 3 cases were concluded in their entirety). Certain of these cases remained opened at the end of the last project year, and due to issues with delays in the legal

system, it is likely that a number of the current cases will continue to be dealt with in the coming years. However, we continue to encourage the expedition of cases, and will continue to take on new cases whenever possible.

5. Output 1.5: Increased access to Camp (Prison) Courts for pre-trial detainees
Pre-trial detainees

| | |
|-------------------|-----------------------------------|
| Indicator 1.5.1: | No. of Camp Courts held each year |
| Annual Target: | 12 |
| Progress to date: | 12 |

| | |
|-------------------|--|
| Indicator 1.5.2: | No. of Prisoners brought before a Camp Court each year |
| Annual Target: | 120 |
| Progress to date: | 127 |

| | |
|-------------------|--|
| Indicator 1.5.3: | No. of Persons who Completed Legal Literacy Training |
| Annual Target: | 120 |
| Progress to date: | 127 (pre camp court) and 3000+ (Human Rights Day events) |

One of the frustrations in the criminal justice sector is the delay in the processing of cases, thus resulting in remand warrants expiring, thus prisoners' rights being violated. Another frequent frustration is the insufficient resources to bring accused persons to court. There is often insufficient space to hold prisoners in cells at the courthouse, and transporting prisoners is often an issue. In an attempt to alleviate these issues, 'camp courts' are held at prisons for prisoners of less serious offences whose remand warrants have expired, heard by a magistrate. The format is that of a court where the accused stands before the magistrate with representation from legal aid, and the case is brought by the prosecution, in most cases the police prosecutors.

The aim of camp courts is to help alleviate prison congestion, while continuing to effect a change in attitude at a systemic level towards the rights of illegally held prisoners. It is hoped that by placing judicial actors inside the prisons (which is normally too rare an occurrence), they can witness the harsh conditions and do something practical to alleviate the situation.

Camp Courts Held

Since July 2014, IRLI conducted 9 camp courts in Maula Prison, with 95 prisoners completing the Legal Literacy Programme (LLP) and appearing before the court, 25 of whom were granted bail, 6 had their bail conditions varied and 3 were discharged for want of prosecution. Further cases were also identified through the screening process and, while they did not appear at the camp courts, they were followed up with the relevant arresting police officers to ensure that the cases were immediately taken before a magistrate.

One of the above camp courts was a camp court for chronically ill, through this 6 prisoners were discharged on medical grounds.

Additionally 3 camp courts took place in Kasungu and Ntchisi prisons with 32 prisoners appearing, 10 of these were granted bail and 2 were dismissed for want of prosecution.

Way Forward

There are currently a number of stakeholders conducting camp courts including, Paralegal Advisory Service Initiative (PASI), Citizens for Justice, Catholic Commission for Justice and Peace (CCJP), the EU and CELA. Whilst the intention of camp courts is purposeful, due to systemic issues in the criminal justice system as a whole, issues regularly arise thus affecting the effectiveness of camp courts. For example, a prisoner brought before a camp court for a bail hearing may have already been granted bail at a previous camp court held by another stakeholder, the release order being dependent on sureties being located. Indeed, a case may have already been granted a trial date at court, in which case the magistrate is unable to hear that case.

IRLI has found that by writing to the Chief Resident Magistrate giving details of expired remand warrants, certain cases are moved forward without the need for a camp court. Whilst this is not always effective, it has had a positive impact, and IRLI is monitoring this approach with a view to possible expansion. This may lead to a reduction in the amount of camp courts conducted by IRLI, but with an increase in the amount of people gaining access to justice.

In discussions with the President of the High Court, and other members of the judiciary, it has been suggested that cases of chronically ill prisoners might be capable of being dealt with by the execution of a pardon, sought by the judiciary. Investigations as to whether this is possible are ongoing, and IRLI's role will be in identifying suitable cases, and notifying the judiciary of these cases. In the event that this route is not tenable, IRLI intend to carry out camp courts for chronically ill prisoners.

Legal literacy Programmes

Legal literacy programmes are held prior to all camp courts wherein remandees are informed of their rights, and the court process is described to them. Given that the majority of remandees/prisoners speak Chichewa only, IRLI works closely with paralegals in the delivery of these programmes, and also in order to provide assistance at camp courts. Through this partnership, the paralegals have become very capable in their delivery and facilitation of legal literacy programmes.

As part of Human Rights Day in December 2015, legal literacy programmes were held in Maula, Kachere, Dedza and Kasungu prisons which targeted over 3,000 prisoners. The programmes were delivered through role play, narrative and a quiz. This approach worked well with good interaction and participation from the prisoners.

Way Forward

Whilst IRLI continues to monitor the approach of legal literacy programmes, the current structure appears to be working well, and it is intended to continue with this structure in the immediate future.

C. **Outcome 2: Progress Thus Far**

There are 3 different outputs which IRLI is working towards, in order to achieve Outcome 2.

1. Output 2.1: Improved Understanding of Human Rights Compliance and Due Process Rights by Police, Legal Personnel and Magistrates

| | |
|-------------------|--|
| Indicator 2.1.1: | No. of Additional Districts which receive Training |
| Annual Target: | 2 |
| Progress to date: | 2 (Dowa & Salima) |

| | |
|-------------------|--|
| Indicator 2.1.2: | Number of Police Officers, Legal Personnel and Magistrates trained in Targeted Districts |
| Annual Target: | 40 |
| Progress to date: | 122 |

| | |
|-------------------|---|
| Indicator 2.1.3: | 75% Report Increased Knowledge After Training |
| Annual Target: | 75% |
| Progress to date: | 97.9% |

This output coincides with the expanded diversion training programme under Output 1.2, in addition to the legal training envisaged under Output 2.2. As described at Output 1.1 and 1.2, we are now including a broader range of stakeholders in the diversion training workshops as well as addressing a wider selection of topics. Magistrates in the targeted districts will also be invited to attend the workshops, in addition to community leaders.

Outputs 1.1, 1.2 and 2.2 and 2.1 will therefore be referring to the same activities, but reflect a different learning outcome.

2. Output 2.2: Improved Advocacy and Legal Skills of Legal Personnel within the Legal Aid Bureau and the Chambers of the Director of Public Prosecutions

| | |
|-------------------|--------------------------------|
| Indicator 2.2.1: | No. of Training Workshops Held |
| Annual Target: | 8 |
| Progress to date: | 8 |

| | |
|-------------------|---|
| Indicator 2.2.2: | Number of Legal Personnel Trained in Advocacy and Legal Skills |
| Annual Target: | 10 per workshop |
| Progress to date: | <ol style="list-style-type: none"> 1) 9 at first workshop (8 LAB paralegals and 1 clerk) 2) 8 at second workshop (7 LAB paralegals and 1 clerk) 3) 16 at third workshop (7 LAB/ 7 PASI / 2 SOCIAL WELFARE) 4) 21 at fourth workshop (10 PASI 11 LAB) 5) 38 at fifth workshop (advocacy training with NITA – 15 police prosecutors, 7 DPP paralegals, 9 LAB paralegals, 5 DPP advocates, 2 LAB advocates) 6) 23 at sixth workshop (5 DPP, 7 LAB, 10 PASI) 7) 22 at seventh workshop(6 DPP, 7 LAB, 9 PASI) 8) 18 at eighth workshop (9 LAB, 9 PASI) |

| | |
|-------------------|---|
| Indicator 2.2.3: | 75% Report Increased Advocacy and Legal Skills After Training |
| Annual Target: | 75% |
| Progress to date: | Over 75% |

IRLI continues to work on building the capacity of our partners in the LAB and DPP in addition to PASI through facilitating workshops/training sessions on a variety of criminal law topics and practical legal skills. Eight training workshops for paralegals were held during the reporting period. In line with the aim of building capacity and strengthening all internal relationships, LAB and DPP advocates were also involved in the running of the workshops. The advocates were each asked to present on particular topics during the workshops, with an IRLI PL working with each presenter in advance of the presentation to discuss the relevant topic and to help prepare the slides/materials. Paralegals with experience in a relevant area were also invited to make presentations at the workshops based on their experience (with IRLI reviewing the content prior to the workshop).

First Workshop, 21 November 2014, Camp Courts and Legal Literacy Programmes

The purpose of the first workshop was to develop a sustainable approach to the facilitation of camp courts and legal literacy programmes. The majority of LAB paralegals had received no training in these competences, and had very limited experience in effectively administering legal literacy to detainees. The training therefore focused on the practical elements of organising a camp court from logistics pre the holding of the court, to conducting the camp court session, and in how to deliver a legal literacy programme to detainees. IRLI believes that detainees should, prior to the holding of a camp court or indeed trial, be made aware of the process of the camp court or trial, and to explain the meaning and significance of legal terminology which will be used during the camp court/trial. By having some knowledge of the court process, it is hoped that the detainees feel less vulnerable during the holding of the court session.

The training comprised mock camp court scenarios of different situations involving prisoners, with role plays carried out by the PLs and advocates. The paralegals, divided into groups, played the role of the magistrate, and were tasked with determining whether or not bail should be granted, based on the evidence before them, and the particular circumstances of the case. Also, a LAB paralegal who was experienced at running camp courts presented at the workshop, which IRLI believe is important for the purposes of building on sustainability.

The workshop was very interactive, and generated some debate about decisions made, which is a good environment to learn. This method of role playing proved to be a constructive way to approach training workshops.

Evaluation: 100% of participants found the presentation, mock court and group discussions on camp courts and legal literacy either very useful or extremely useful. 60% of participants strongly agreed that they had increased their knowledge of camp courts and legal literacy. 70% of participants indicated that, as a result of the training, they are now fully confident in their ability to carry out a legal literacy session, 30% agreed with this (100% either agreed or strongly agreed). 60% of participants indicated that, as a result of the training, they are now fully confident in their ability to facilitate a camp court in future, 40% agreed (100% either agreed or strongly agreed).

Second workshop, 27 November 2014, Court Applications

The second workshop focused on the various court applications which might be brought on behalf of remandees. The training focused on the applicable law, relevant jurisprudence and reviewing sample applications and case studies. The paralegals were also trained in how to effectively record statements and draft the various applications.

Two LAB paralegals presented case studies on bail applications that each had recently processed successfully, with the aid of IRLI. As aforementioned, this approach has proved beneficial in training, and having peers train to peers increases internal relationships which is hoped will lead to a greater working relationship between the various parties. This approach has subsequently continued throughout the remainder of the trainings facilitated by IRLI with advocates from LAB and the Office of the DPP being invited to present at workshops. The approach has received positive feedback from both advocates and paralegals.

Evaluation: 92.5% of participants found the presentation and group discussions either very useful or extremely useful, with 7.5% finding them moderately useful. 60% of participants strongly agreed that they had increased their knowledge of bail applications and, as a result of the training, are now fully confident in processing a bail application from start to finish, while 40% agreed with this (100% either agreed or strongly agreed). 65% of participants strongly agreed that they had increased their awareness and knowledge of other applications for pre-trial remandees such as habeas corpus and applications to discharge for want of prosecution, while 50% strongly agreed that they were more confident, as a result of the training, in drafting these applications. 35% and 50% respectively agreed with the statements above (so 100% of participants either agreed or strongly agreed).

Third Workshop, 4 December 2014, Child Justice

The third workshop focused on issues relating to child justice, particularly the treatment of child suspects and diversion. PASI paralegals and a number of social welfare officers were invited to the workshop for several reasons, (i) to strengthen the relationship between the LAB and PASI, (ii) strengthen the relationship between all the paralegals and the Department of Social Welfare, (iii) provide training to all in attendance on how to deal with child suspects, and (iv) more generally to give all the participants an opportunity to discuss their particular roles, the challenges they each face and ways of working together going forward.

Having all attendees together at the workshop led to a lively and topical debate on issues experienced from the different organisations. Each got an opportunity to air their concerns on particular topics, thus enabling the other institutions to better understand the workings of the other organisations, as well as the frustrations each can suffer. Discussions were had on methods of working together on child justice issues, independently of the need for donor involvement.

Due to the larger numbers, IRLI hired a room off site for the third workshop (the first two workshops were held on LAB premises). The workshop lasted the full day and was divided into three (3) modules. The first two modules focused specifically on the law as it relates to the treatment of child suspects (including the arrest, bail and detention of children as well as preliminary inquiries and child justice courts). The third module focused on the concepts of restorative justice and diversion.

Given the positive feedback, and our witnessing of advocates and paralegals delivering training in the previous workshops, the third workshop was delivered by a LAB advocate, and two police prosecutors. IRLI organised the logistics, prepared the workshop materials (in conjunction with the speakers) and provided support on the day. In addition to training the attendees, the speakers, by preparing their materials, increased their own knowledge on the topics, which IRLI views as an important function of the trainings. A guest speaker, who had served a 24 month prison sentence in Kachere, also spoke about his experiences in police custody, court and prison itself. His story was extremely powerful and engendered good interaction and discussion amongst participants.

The feedback received from the participants was very positive. Subsequently, it was determined to carry out future trainings with multiple stakeholders, and review this approach following each training.

Evaluation: 70% of participants strongly agreed that after the workshop, they had increased their knowledge of the Child Care, Protection and Justice Act, 2010 and their understanding of the sections relating to child suspects, the remaining 30% agreed with this. 42% agreed that they had increased their knowledge of the diversion process, while 58% strongly agreed with this. 100% reported that they are now more confident to provide effective legal assistance to children, as a result of the training.

Fourth workshop, 1 April 2015, Appeals

The fourth workshop focused on appeals and related legal updates to ultimately enable paralegals to better draft appeal applications. In so doing, it is hoped that more files of those convicted can be brought to appeal stage. The facilitators included the Chief Resident Magistrate, LAB Advocate, PASI paralegal, and in attendance were LAB and PASI paralegals, in addition to two legal aid advocates.

The workshop was divided into two modules, module one focusing on the theory, ground and practicalities of appeal, and module two focusing on practical examples through case studies. The feedback was positive, and requests for further trainings were made.

Evaluation: 60% of participants strongly agreed after the workshop that they had increased their knowledge of the appeals process (5% had no opinion and the remaining 35% agreed). 35% agreed that they were now fully confident in processing an appeal from start to finish, while 55% strongly agreed with this. 60% strongly agreed that they were interested in seeking out suitable cases for appeal and drafting the relevant court documents (25% agreed with this, the remaining 15% had no opinion). 90% reported that they would now like to work in reviewing the cases of child convicts with a view to submitting suitable cases to the Child Management Review Board.

Fifth workshop, 8 – 10 April 2015, NITA JAA Advocacy Training

The fifth workshop addressed advocacy skills, and the training was provided for both advocates and paralegals from the LAB and the DPP. The concept for this training was formulated after IRLI met with High and Supreme Court Judges as well as Resident Magistrates. One of the main issues raised by them was the need for capacity building of advocates and paralegals with regard to the trial process including advocacy skills, particularly in domestic violence, sexual violence and homicide cases. It was concluded that many advocates and paralegals require further knowledge on certain aspects of the trial process, particularly the examination of witnesses, plea bargaining and the hearsay evidence rule.

The aim of the training was to achieve the following outcomes:

- To improve the participants' knowledge of rules of evidence during the trial process;
- To improve the advocacy skills of participants in the courtroom;
- To improve relations between LAD, DPP and police prosecutors.

Ultimately, it was hoped that the training would lead to more efficient use of advocates and paralegals' time and reduce time wasting in the courtroom, and consequently improve access to justice for accused persons.

This training was facilitated in conjunction with the National Institute for Trial Advocacy (NITA) and their partner organisation Justice Advocacy Africa (JAA). It was a three-day workshop held in the conference centre of the Bridgeview Hotel in Lilongwe, which provided for break-out rooms which were required for role plays.

IRLI was in charge of logistics for the event, including meetings with high level officials to secure approval for the trainings, secure facilitators, arranging transport for participants, printing and organising the materials.

NITA/JAA were responsible for the content of the training and control of the actual teaching.

The format comprised short interactive lectures followed by break-out groups. Participants were given a case file at the start of the training, which was used as the basis for practical exercises over the following days where participants engaged in mock court-room exercises. In this manner participants learnt and practiced the skills of examination-in-chief, cross-examination, opening and closing speeches as well as how to handle and introduce an exhibit into evidence. In addition, throughout the training each participant was encouraged to act as different stakeholders within the mock court, taking on the role of prosecutor, defence advocate, magistrate, clerk, etc. This approach allowed participants to gain a more overall understanding and appreciation of the role of each stakeholder.

In addition to the above, a former European Court of Justice Judge, Anne Power-Forde, travelled from Ireland to present and facilitate at the training.

Evaluation: The evaluation forms used at the conclusion of the workshop were those often used by Justice Advocacy Africa (with whom IRLI had worked in partnership to facilitate this training). The format of the forms caused confusion in that participants believed that they were meant to fill in what each concept meant (eg examination in chief, cross examination), rather than how they rate the standard of lecturing in this area. Therefore, it was difficult in to rate in percentage terms how effective the training was. However, based on our observation of the training, and verbal feedback from the participants, the following conclusions were reached:

- The format of the training worked well, i.e. short lectures followed by practical training, 'learning by doing';
- Appreciation of information on how other stakeholders worked.
- External facilitators were well received, and the participants were very attentive during discussion by these facilitators.

There was a lack of advocates who attended the training. Whilst some advocates had conflicting events, many simply did not turn up. IRLI has learnt that some advocates will not attend workshops where training is also provided to paralegals, thus going forward any trainings targeted at advocates will likely only include advocates.

Sixth workshop, 12 June 2015, Mental Health

The sixth workshop focused on mental health in prisons and was facilitated by Dr. Ndumanene Silungwe, a clinician from St. John of God's Hospital based in Mzuzu. The aim of the training was to educate paralegals on mental health in prisons in order to increase their knowledge generally of mental health in Malawi, and specifically in prisons. In addition it was hoped that the paralegals would become more confident and proactive in being able to recognise a prisoner or remandee suffering from mental health difficulties, and working together as organisations (PASI, LAB and DPP) to achieve this.

The workshop was attended by LAB, DPP and PASI paralegals. Due to the larger numbers, IRLI hired a room off site to conduct the training.

The workshop lasted a full day and was divided into 2 modules. The first module looked at crimes and criminal behaviour in the context of social justice and the second workshop looked at mental illnesses and intellectual disabilities in the context of the criminal justice system.

The feedback was positive, and there was a lot of interaction throughout the workshop.

Evaluation: 78% of participants strongly agreed after the workshop that they had increased their knowledge of mental health in Malawi as a whole (the remaining 22% agreed with this). 74% strongly agreed that they had increased their knowledge of mental health in prisons, while the remaining 22% agreed with this. 100% reported that they are now more confident in their ability to recognise a prisoner or remandee suffering from mental health difficulties. From baseline and endline surveys there was a clear increase in knowledge. At the beginning of the training 93% of participants were unable to name more than two mental illnesses, at the end of training 61% were able to name three or more mental illnesses and 87% were able to correctly identify treatment options available to prisoners suffering from mental health problems by the end opposed to 43% that could not name any possible treatments at the beginning of the training.

Seventh workshop, 30 June 2015, Murder v Manslaughter

The seventh workshop was on the difference between murder and manslaughter and potential defences to each crime. The aim of this workshop was to increase the knowledge of paralegals on the elements of a crime, the differences between murder and manslaughter and potential defences to the charge of murder, and defences to other crimes. Paralegals from LAB, PASI and the office of the DPP were invited to attend. As was the case for the previous workshops, due to the larger numbers, IRLI hired a room off site in which to conduct the training.

The workshop lasted a full day and was divided into 3 modules. The first module looked at the elements of a crime, the second module focused on the differences between murder and manslaughter and the third module looked at potential defenses to the charge of murder.

The PL organised the logistics, prepared the workshop materials and provided support on the day while the workshops were delivered by a senior state advocate in addition to the IRLI PL, with role-play exercises performed by paralegals.

A number of group exercises were conducted, where the paralegals were divided amongst each other (LAB, DPP and PASI) and prizes were given out for correct answers, and legislation brought forward. This format was well received, and feedback was very positive.

Evaluation: 64% of participants agreed after the workshop that they had increased their knowledge of the elements of a crime, the remaining 36% strongly agreed with this. 59% agreed that they had increased their knowledge about the elements necessary to prove homicide as opposed to manslaughter, while the remaining 41% strongly agreed with this. 59% agreed that they had increased their knowledge about the potential defences to a homicide charge, while the remaining 41% strongly agreed with this. The group discussion and Question and Answer sessions were very well received with 70% of participants reporting that they found it to be extremely useful with the remaining 30% reporting it to be very useful.

Eighth workshop, 7 July 2015, Interview Skills

The eighth and final workshop of the reporting period, which followed on from the seventh workshop, focused on training paralegals on how to correctly, and effectively interview a homicide remandee. The questions which should be asked to a homicide remandee were handed out, and it is hoped that paralegals will take these questions with them during any interview/meeting with a homicide remandee. The training focused on improving the paralegals' knowledge of why certain questions should be asked in order to gain a better result for their client, and the importance of taking complete statements from a homicide remandee at the outset.

The same format was followed as with the seventh workshop, i.e. role plays and small competitions, which again was well received. A senior legal aid advocate and PASI

paralegal were facilitators on the day, in addition to the IRLI PL. The feedback was very positive, and comments were made that the interactive nature should be continued.

Evaluation: 56.25% of participants strongly agreed after the workshop that they had refreshed their knowledge of the elements of a crime generally and specifically the elements of homicide and manslaughter, while the remaining 43.75% agreed with this. 56.25% strongly agreed that they had increased their confidence in being able to take a complete defence statement, while the remaining 43.75% strongly agreed with this. 62.5% strongly agreed that they had increased their confidence in being able to provide effective legal assistance to remandees charged with the crime of homicide, while the remaining 37.5% agreed with this. The role-play exercises and the group discussion and Question and Answer sessions were very well received with 100% of participants reporting that they found it to be either extremely or very useful. A number of participants commented that they enjoyed the role-plays and found them to be the most useful element of the workshop indicating that they would like more time to be devoted to role-play exercises.

As aforementioned, the training of LAB paralegals has expanded to include PASI and DPP paralegals where possible. This was done in order to allow a greater impact to be made as well as encouraging paralegals from different organisations to work together. It must however be noted that the training of additional persons has increased the cost of running these workshops, in addition to an increase in the time expended on organising the workshops. However, IRLI believes that the benefit of all interested parties working together on similar issues outweighs the increased cost.

This does, however, mean that we may have to reconsider the number of workshops conducted in the next reporting year so as to keep within budget. We are considering holding in or around 5 workshops for all paralegals, with smaller case study 'brain storming' sessions with each organisation separately held in house (thus saving on cost). Our research suggests that the aim of training will not be compromised by holding brain storming style sessions, and we would hope to be able to carry out an overall greater number of trainings by conducting both workshop and internal 'brain storming' trainings.

Output 2.3: Improved Understanding of Human Rights, Restorative Justice and Due Process by Targeted Communities

| | |
|-------------------|---|
| Indicator 2.3.1: | Number of community sensitisation meetings held |
| Annual Target: | 4 |
| Progress to date: | 4 |

| | |
|-------------------|--|
| Indicator 2.2.2: | Number of people who attend community sensitisation meetings |
| Annual Target: | 50 |
| Progress to date: | Approximately 800 attended in total. |

IRLI held 4 community sensitisation meetings during the year. The first two meetings were held in local communities, where the whole community was mobilised. The communities were chosen as they had been identified as having a relatively high volume of reported crimes, instances of mob justice and children coming into conflict with the law.

The meetings focused on crime prevention, access to justice (particularly for women and children) and the rights of accused persons and child suspects regarding arrest, detention and bail, in addition to the concepts of restorative justice and diversion.

Local speakers from the different stakeholders in the criminal justice system were invited to speak at these events. The local group village headmen were also invited, along with other community leaders.

First Meeting, Chinsapo Traditional Authority

The first of these meetings took place in Chinsapo at Kakule Primary School. IRLI had been working with Chinsapo CVSU on child diversion in this community, which has a high number of young offenders. The meeting was arranged in partnership with PASI and Chinsapo CSVU.

The topic for discussion was Child Diversion and Child Protection. There were speakers from Malawi Police Service, District Social Welfare Department, Legal Aid Bureau, PASI and local community members. A Lilongwe Child Justice Magistrate was the guest of honour. There were also several group village headmen in attendance, with drama groups and a local choir who provided entertainment. The total attendees were approximately 250.

Second Meeting, Chiuzira Traditional Authority

The second meeting took place at Chiuzira primary school in Area 23. This was identified as an area with a lot of problems with mob justice. The police station at Area 23 had been attacked a few months previously. The theme of the meeting, broader than the first meeting, was on 'Access to Justice, Rights of the Accused & Alternatives to Custody'.

The speakers included a first grade magistrate, Legal Aid paralegal, representative from Malawi Police Service, District Social Welfare Department, and local community members.

There were approximately 500 people at this meeting, including 200 children, and the meeting was very interactive with dance groups providing entertainment. After the formal discussion, a question and answer session was held where the audience directed criticism towards the MPS. IRLI wants to maintain the relationship with MPS, and indeed develop it, thus the format of community sensitisation meetings has now changed.

Third Meeting, Tsobango Traditional Authority

It was decided to restrict the number of children attending the community meetings, and lessen the entertainment provided. The purpose for this is to ensure that as much information as possible on the topics being discussed is delivered.

The third meeting was held at Tsobango, with facilitators including a High Court judge, senior member from Malawi Police Service, and a senior legal aid advocate. There were also members of the local police unit in attendance.

The meeting was attended by approximately 80 village headmen and other community leaders who were very engaged during the meeting. An overview of the Malawi criminal justice system was presented, and there appeared to be a lack of knowledge of how the system operated in basic terms. The feedback from the Senior Chief and the speakers was extremely positive and we were encouraged to continue with these types of meetings.

Fourth Meeting, Kalumbu Traditional Authority

The fourth meeting was held at Kalumbu, hosted by the Senior Chief of that district. The speakers included a High Court judge, the head of the Social Welfare, senior member from the Malawi Police Service, and senior Legal Aid advocate. 64 attendees were present, in addition to the speakers and Senior Chief, and throughout the meeting, all attendees were fully engaged. There was immediate feedback to conduct further trainings, and indeed requests were made to have the trainings extended to a full day, even two days.

Way Forward

At each meeting IRLI was requested to carry out further trainings on legal issues. Certain of the communities had never before received any training on bail, and other basic legal concepts. As the senior community members and group village headmen are asked to inform their communities of the trainings given, consideration is being given to extending the number of trainings provided, and indeed going back to each community within a six month period.

D. Work with Judiciary

1. *Output 2.2 One Day Magistrates Workshops*

IRLI had not originally included magistrates workshops in the programme proposal as it was previous practice to conduct one annual partner workshop, with the participation of visiting Irish speakers, which was delivered through additional external donor funding. However, in the period of time from when the programme proposal was developed and the implementation period began, IRLI undertook 2 one day workshops which proved to be very successful. It was evident that additional training for magistrates was needed as many have a very basic level of legal training, particularly Third Grade Magistrates, and there is little in the way of continuous professional development.

IRLI therefore developed a series of workshops, each of which focussed on a different stage of the court process or various legal issues. When consulting with the Central Resident Magistrate (CRM) during the preparation phase of the workshops, she requested that the magistrates be split into separate groups for trainings. This was to ensure that all magistrates were not absent from court on the same date.

Training One: 18 and 25 February 2015, Training on Camp Court Procedure and Pre-Trial Guarantees

The aim of the first series of workshops was to ensure:

- Increased knowledge of the purpose of a camp court and a magistrate's role in conducting same;
- Increased knowledge of pre-trial guarantees such as the right to a fair trial, the right to human dignity, the presumption of innocence, the burden of proof, the right to be heard, etc.;
- Increased knowledge of the right to bail and pre-custodial time limits;
- Increased knowledge of the new Guidelines surrounding camp courts;
- Increased capacity and confidence in holding camp courts in the future;
- Increased awareness generally of the rights of remandees in the administration of justice;
- Increased quality and quantity of camp courts held in the Central Region; and
- Reduction in the number of prisoners held on expired remand warrants in prisons

A total of 16 out of 28 magistrates from the Central Region attended the first date of the trainings, and a total of 16 out of 28 magistrates from the Central Region attended the second date of the trainings. In circumstances where there was capacity at the second workshop for more participants, a number of Legal Aid paralegals were also asked to attend (a total of 6 paralegals attended).

The workshops were divided into two distinct parts. In the morning session, magistrates boarded a bus to Maula Prison where they observed a camp court in session. In the afternoon, the magistrates returned to Bridgeview Hotel to receive formal training on pre-trial guarantees and to discuss the camp court procedure.

At both workshops, the camp court at Maula Prison was presided over by a very experienced First Grade Magistrate. Prior to each camp court, a legal literacy session was carried out by PASI. The afternoon training on pre-trial guarantees and the camp court procedure was delivered by a senior resident magistrate on each occasion.

During both workshops it became apparent that, whilst magistrates had requisite knowledge of most pre-trial guarantees, there were a number of issues surrounding the camp court procedure:

It is clear from the Baseline and Endline surveys taken that even following the workshop, magistrates were still unclear about the entirety of their duties at a camp court. Whilst 85% of magistrates were aware following the workshop of the need to take a note of cases being dealt with by other magistrates and ensure they are informed of what occurred at camp court, 77% remained unaware of their duty to take a record of proceedings, to carry out inspections of the prison and to review the report of the camp court one week later.

It was also apparent from the discussion during both workshops that there was considerable confusion surrounding what matters can be dealt with at a camp court, what orders can be made and whether cases of other magistrates can be heard. It appeared that the main cause for the confusion arose from the current format of the Camp Court Guidelines and that action was required in order to clarify the area. As a result, IRLI drafted a Concept Note on the future of camp courts (see below), which is currently being finalised. IRLI shall also review its policy regarding the number and type of camp courts being held in future.

After the workshops, Justice Mwale, a High Court judge and facilitator at the training, expressed her scepticism as to whether the magistrates were actually gaining any substantial knowledge during these types of trainings. The CRM also expressed her doubt that the magistrates had absorbed any of the matters discussed. This theme was also raised by Justice Kachale who commented that the knowledge imparted during these types of workshops is clearly not being observed by some magistrates.

It therefore became clear to IRLI that format of "lecture" training employed in workshops was not having the desired impact. IRLI therefore reviewed its approach to training of magistrates and has decided to adopt an alternative methodology going forward, as detailed below.

Evaluation: Prior to the training, all magistrates were aware of the 48 hour custody time limit, 92% were aware that an accused person must be present/represented in court when extending the time limit; 77% were aware that bail can be granted at any stage of the proceedings; and 70% picked the three correct principles which must be taken into account when deciding whether to grant bail (one magistrate got 2 out of 3 correct).

Training Two: 27-28 May and 3-4 June 2015, Training on Child Justice Issues and Treatment of Child Suspects

One matter which came to light during the camp court workshops (and also previous IRLI workshops with magistrates) was the lack of knowledge relating to child justice issues⁸.

This apparent lack of knowledge of magistrates was also highlighted during a Court Users Committee Task Force meeting on 23 February 2015. During the meeting, it was stated that an assessment had been conducted in most districts in Malawi which revealed that magistrates were not carrying out their duties as provided under the law.

⁸ *At the workshop, one magistrate believed that the upper age limit of a child was 10 years of age. In addition, training on "child justice law" was requested by a number of magistrates in the Evaluation Forms both during these workshops and on previous occasions.*

This led therefore to the decision that trainings on child justice matters was more pressing than trainings relating to rules of evidence, as was originally planned. The aim of the trainings was to ensure that magistrates have:

- Increased knowledge of the Child Care, Protection and Justice Act, 2010 as it relates to children suspected to have committed offences;
- Increased knowledge with regard to Preliminary Inquiries and Child Justice Courts;
- Increased knowledge of the legal basis for diversion;
- Increased capacity for identifying the types of person and offences which are suitable for diversion; and
- Improved record keeping with regard to cases involving child suspects.

In light of the decision to change the format of trainings, IRLI adopted a much more practical approach to the trainings on child justice issues. The format thereof consisted of:

- i) short lectures on aspects of dealing with child justice issues; followed by
- ii) breakout sessions whereby the magistrates put their new knowledge into practice.

Practical exercises were introduced in order to increase retained knowledge including: quizzes, group discussions, real-life case studies, role plays, puzzles, group work, mock interviews, mock trials and presentations of former child suspects.

In addition, it was observed at previous trainings that participation and engagement in discussions was much more substantial when various different stakeholders were present. The invitation to the workshops was therefore extended to police officers, court clerks, social welfare, Senior State Advocates and PASI paralegals.

Due to the increase in practical exercises being employed and the substantial number of topics involved, it was decided to increase each training to two days instead of one.

The first set of training was attended by 18 magistrates, 9 members of Malawi Police Service, 1 social welfare officer, 1 court clerk and three paralegals from PASI. The second training was attended by 30 magistrates, 11 members of Malawi Police Service, 1 Senior State Advocate from the Office of the Director of Public Prosecutions and 2 members of children's homes. These numbers were a significant increase on the previous trainings for magistrates which may be attributed to IRLI directly contacted the magistrates, instead of relying on the Courts Administration Service.

The impact of the alterations made to the mode of training was very much apparent, particularly during the second training. The participants significantly increased their knowledge⁹ on the change of age of the child¹⁰, who is permitted to be diverted from the criminal justice system¹¹, and who may act as an appropriate adult for a child¹².

⁹ This was measured by conducting Baseline and Endline Surveys. One question on the survey tested participants' knowledge of who is permitted to be present in a courtroom during a child justice matter. The results showed that participants had requisite knowledge before the training commenced, and therefore there was not a measurable increase in knowledge for this question.

¹⁰ In the first training, one third incorrectly believed the age of the child to be a person under 16 years of age before the training, whereas only three participants provided an incorrect answer following the training. In the second training, 45% incorrectly stated that a child was a person under 16 years of age before the training, whereas **all** participants showed awareness that the age of the child was a person under 18 after the training.

¹¹ In the first training, just under half of the participants believed that magistrates were the only persons permitted to divert children away from the criminal justice system (there were four correct options). Following the first training, just under half correctly selected three of the four persons listed could divert children – with two participants selecting all four persons. In the second training,

Overall, participants provided exceptionally positive feedback. They very much welcomed the practical aspects of the training and commended the 'encouraging' group work and the friendly nature of facilitators. One participant stated that it would help them to teach others about the topic in the future.

Recently, the National Child Justice Forum requested IRLI's materials from this training with a view to implementing similar trainings for magistrates in other regions in Malawi. IRLI have been requested to attend such trainings and assist with facilitation where required.

It is therefore proposed to adopt a similar practical approach to all magistrates trainings in the future. However, this will result in increased spending per training in light of the extra material to be printed, the additional facilitators required and the requirement for breakout rooms. As a result, the overall number of trainings may need to be reduced.

2. EU DGP Proposals

Judiciary

IRLI submitted a proposal to the EU Democratic Governance Programme seeking funding for two separate workshops on sentencing to address the challenges related to sentencing and to additionally, and in conjunction with the Malawi Judiciary Development Programme and the Judicial Training Committee, through these workshops, create a set of guidelines on the confirmation process to be adhered to by all High Court judges and magistrates. IRLI was informed in January 2015 that the proposal had received final approval.

a. Workshop to Create Guidelines on the Confirmation Process (the "First Workshop")

The First Workshop is scheduled to take place on 11 August 2015 in Blantyre (in circumstances where there are a higher number of High Court judges residing there). The workshop will be attended by High Court judges, Assistant Registrars of the High Court, Chief Resident Magistrates as well as other grades of magistrates, a representative from the Centre for Human Rights, Education Advice and Assistance and a representative from the Law Commission.

The aim of the workshop is, as stated above, to develop a set of guidelines on the confirmation process to be adhered to by all High Court judges and magistrates. The confirmation procedure is a process whereby High Court judges can review the sentences imposed by magistrates. Given that approximately 90% of cases are dealt with by lay magistrates at first instance, the importance of this process of review of decisions of magistrates at first instance cannot be understated.

In preparation for the First Workshop, the PL has prepared an Explanatory Note on the Issue of Confirmations and Reviews, which is currently being circulated to the High Court judge facilitators for approval. During the workshop, the challenges relating to the confirmation and review procedure will be discussed and, it is hoped, a general common approach will be agreed upon to improve the process in the future. In addition, it is

61% of participants prior to the training selected magistrates as being the only person permitted to order diversion of children, whereas after the training, 41% selected three out of the four persons permitted to order such diversion.

¹² *In the first training, many participants linked the term "appropriate adult" to a person's age. However, participants answers following the training were much improved (even if there remained an over reliance on family members as appropriate adults). Before the second training, only 25% of participants had an answer which was generally in the ballpark, whereas after the training, this figure increased to 71%.*

intended that, during the workshop, a technical working group will be established whose function shall be to conceptualise the common approach and incorporate same into a Terms of Reference. The Terms of Reference shall then be submitted to the Chief Justice for the ultimate purpose of drafting Confirmation Guidelines. Once approved, the Guidelines shall also be circulated to the Attorney General, who has indicated his support for same to be developed into secondary legislation if deemed necessary.

b. Three Day Workshop for Magistrates (the "Second Workshop")

The Second Workshop will focus on sentencing and jurisdiction generally and will include topics such as: an overview of sentencing in criminal matters; aggravating and mitigating factors; alternative sentencing options; magistrates sentencing guidelines and relevant jurisprudence; sexual offences and sentencing; judgment writing and legal reasoning; and the confirmation process – duties and obligations and introduction to the Terms of Reference. The ultimate aim of the workshop is to ensure more coherence in sentencing practices, enhance knowledge of the different aspects of sentencing and increase the production of high quality reasoned written judgments in the criminal sphere.

The Second Workshop is scheduled to run from 15-17 September 2015 in Lilongwe, and participants will include a selection of lay magistrates Malawi-wide¹³. IRLI has also arranged for two Irish experts - a former High Court judge and a Senior Barrister who carries out a substantial amount of work for the State in Ireland - to travel to Malawi for the purposes of presenting at the Second Workshop.

3. Confirmation lists

In line with its work with the judiciary, IRLI has also engaged in advocacy efforts with regard to the backlog of cases awaiting confirmation from the High Court. In this regard, PASI compiled a list of all such cases awaiting confirmation following an extensive review with the Malawi Prisons Service and the Malawi Police Service. IRLI thereafter spent a number of weeks reviewing these lists for the purposes of highlighting cases where magistrates had exceeded their jurisdiction. The lists were brought to the attention of the Chief Resident Magistrate of the Central Region, who promised to review the lists and, in particular, to prioritise those cases where jurisdiction was exceeded or which involved children held responsible for an offence.

E. Office of the Director of Public Prosecutions (DPP)

An IRLI PL is seconded to the Office of the DPP, who almost exclusively focuses on homicide matters. There is a consistent backlog in these files in the Malawi criminal justice system, with many persons remaining on remand in prison or detention centres for years.

a. Best Practices Handbook

For the past six months, the PL seconded to the Office of the DPP has carried out a significant amount of preparatory work on the proposed Joint Best Practices Handbook by the DPP and IRLI on dealing with homicide cases within the Office of the DPP.

In the first instance, the PL carried out a full analysis of the current systems in place in the Office of the DPP as well as a needs assessment in relation to the processing of homicide files and interaction with essential partners. This analysis involved the conducting of interviews with all paralegals and Senior State Advocates in the Offices of the DPP throughout Malawi. In addition, the PL interviewed all essential external partners to obtain their views on how the Office of the DPP's is progressing homicide files. Such partners

¹³ IRLI's initial proposal requested the training for Central Region magistrates only; however, this was not accepted by EU DGP, whose policy is to include magistrates from across all regions in Malawi

included various High Court judges in Malawi, various members and ranks of the Malawi Police Service, the Legal Aid Bureau, the Catholic Commission for Justice and Peace (CCJP) and various members of the Paralegal Advisory Service Institute (PASI). This necessarily required visits to Blantyre and Mzuzu in circumstances where the Offices of the DPP, High Court judges and the Legal Aid Bureau are also situated in these cities.

Following the collation of all information relating to the processing of homicide files and the challenges related thereto, the PL spent a number of weeks compiling a 25 page report to the DPP which proposed suggestions to these challenges. This was felt to be a necessary precursor to the drafting of the Best Practices Joint Handbook in circumstances where proposed solutions could not be incorporated into same without the DPP's prior approval. The report proposes some fundamental changes to the processing of homicide cases, where current practices create alarming results, and can lead to breaches of constitutional rights. Perhaps one of the most worrying aspects which came to light during the analysis was the lack of proper procedure in place for cases involving child suspects. Fundamental changes to the system were suggested to ensure that such cases are afforded the attention they deserve in future.

The report was submitted to the DPP on 22 June 2015 and the PL is awaiting the comments of the DPP (which were promised to be delivered by the end of August).

b. Participation in preparation for Homicide Trials

In addition, the PL actively participated in homicide trials which recently took place in Dedza for the purposes of gaining first-hand experience of the trial process and thereby identifying changes that should be introduced. The PL worked closely with the junior Senior State Advocate assigned to the homicide cases in order to provide advice on the compilation of legal submissions and also sentencing submissions. In addition, the PL accompanied the paralegals during witness tracing in order to observe the process and advise them on any changes which could be implemented (such as spending more time interviewing the witnesses rather than merely focussing on service of the Witness Summons). The PL attended the hearings of the trials in Dedza, from which an insight was gained into plea bargaining and various aspects of the trial process. Suggested amendments to the process were incorporated into the report submitted to the DPP.

c. Drafting of Legal Opinions

Throughout this process, the PL has also worked on a number of homicide files within the Office of the DPP. A total of 15 cases have been assigned to the PL, many of which are homicide files dating back in excess of 10-15 years. Due to the work of the PL, one case has already been discontinued, the DPP has agreed to the employment of plea bargaining in another case, one case has been fully prepared for trial and one case has been closed and properly archived. With the remaining cases, the PL actively engages with the paralegals and the Malawi Police Service for the purposes of gathering further evidence, which necessarily involves an element of capacity building due to lack of knowledge and/or lack of procedure of such parties.

These activities were not originally included in the Results Framework as they have developed during the course of the year. However, a new line has been inserted so that the results can be reflected accordingly. Following consultations with a number of external consultants, it is intended to now include the capacity building in the DPP in an amended Results Framework for the next programme period.

F. Programme Successes

As is highlighted above, all activities due for this reporting period have been achieved, with the exception of programme 2 of Mwai Wosinthika, which is due to complete in early September 2015.

The following successes are worthy of mention:

- 1.** Accomplishing, and indeed in some instances surpassing annual targets, with Mwai Wosinthika programme two due to complete in the coming weeks.
- 2.** Increase of recognition of IRLI within the criminal justice sector at all levels, IRLI has become increasingly involved in high-level policy decisions, such as:
 - Uncertainty Caused by Current Camp Court Guidelines;
 - Member of Court User Committee (CUC) Taskforce;
 - Member of Sub-taskforce on Plea Bargaining Rules;
 - Member of Technical Group on Developing Confirmation Guidelines;
 - Member of National Child Justice Forum;
 - Participant at launch of the Draft Review of the Judiciary Strategic Plan up to 2017.
- 3.** The release of a child from Kanengo police station on bail who was identified by a paralegal who had attended the child justice training, and who confirmed to IRLI that through the training provided by IRLI he had identified that the child should not be held in the police cell.
- 4.** The discontinuance of a homicide case following the preparation by an IRLI PL of a legal opinion, and the release of the accused from custody.
- 5.** Securing Justice Advocacy Africa (JAA) and the National Institute for Trial Advocacy (NITA) as partners for the Advocacy Training provided to advocates, paralegals, and police prosecutors.
- 6.** The handing over of 19 computers donated by the Law Society of Ireland to the Malawi Judiciary, with the ceremony taking place in the High Court in Malawi attended by the Chief Justice, who asked to attend, and IRLI was commended by the Chief Justice for our work in the criminal justice system.
- 7.** The invitation by Chancellor College (the training school for lawyers in Malawi) for a PL to guest lecture to the students. This was undertaken in March 2015.
- 8.** The assistance to St. John of God's Hospitaller Services of the holding of training to prison wardens in Maula prison on mental health issues.
- 9.** *Human Rights Day, 2014*

Funded by the Irish Embassy and Irish Aid, IRLI partnered with the Child Right's Advocacy and Paralegal Aid Centre (CRAPAC) and the Paralegal Advisory Service Institute (PASI) to commemorate International Human Rights Day by holding four specific events in prisons in the Central Region of Malawi in December 2014. This was the first year IRLI got involved in commemorating Human Rights Day. IRLI viewed it as a great opportunity to raise awareness of human rights violations in Malawi's prisons (particularly as no other actor was carrying out any activities involving the prisons or prisoners' rights in 2014), to encourage the need for respect of detainees' basic human rights among key stakeholders, to empower local NGOs and to use it as a way to connect with prisoners and to carry out some of our activities on a broader scale, such as legal literacy programmes.

Importantly, certain issues of cases came to light, including the case of an elderly man who has been on remand since 2006 in Kasungu Prison. A statement was later taken and IRLI, in partnership with the LAB, is now dealing with this case with a view to trying to move it forward. Many other names and statements were also taken during the events.

In addition to the main activities, each prisoner also received a meal as well as a piece of soap. In the afternoon, a disco took place as well as some sporting activities.¹⁴ The project received much exposure both in print media and on the radio.

10. Irish State Visit

In November, 2014, President Michael D. Higgins arrived in Lilongwe to begin the first official visit by an Irish head of state to Malawi. During his four day trip to Malawi, the President visited projects funded by Irish Aid as well as other Irish NGOs. IRLI was honoured to have been selected to present to President Higgins about the work being done by IRLI within the criminal justice sector. The President later acknowledged IRLI's work in an interview for the Irish Times where he said that the project is an "initiative that is being assisted by very fine young people from the legal system in Ireland".

11. Overseeing the Ministry of Gender, Children, Disability and Social Welfare replacing the Malawi Police Service as IRLI's Main Implementing Partner for the Mwai Wosinthika Diversion Programme

As aforementioned, the Mwai Wosinthika diversion programme is now run in conjunction with the Ministry of Gender, Children, Disability and Social Welfare, who provide facilitators to conduct the programme sessions. This has greatly helped to strengthen the foundations of the programme, and the experience of the facilitators in diversion, and child issues is of great benefit to the children who participate in the programme.

12. Memorandums of Understanding (MOUs)

IRLI has signed several MOUs with several stakeholders in the criminal justice sector including Malawi Prisons Service, Malawi Police Service, Malawi Judiciary, Office of the Director of Public Prosecutions, Legal Aid Bureau, Ministry of Gender, Children, Disability and Social Welfare.

13. CONGOMA/NGO Board Registration

IRLI is now registered with the Council for Non-Governmental Organisations in Malawi (CONGOMA) and the NGO Board in Malawi. As a prerequisite to registration, two Malawian trustees must be on the IRLI Board, and two High Court judges are now board members, Justice Esme Chombo, President of Lilongwe High Court, Central Region and Justice Dorothy Kamanga, High Court Judge in Blantyre, Southern Region and Chair of the Malawi Judiciary Development Programme.

¹⁴ A large amount of sporting equipment was also donated by the German Embassy.

G. Programme Challenges

1. *Judicial Officers' Industrial Action*

A major challenge faced by IRLI in the first half of the project year was the strike undertaken by judicial support staff from mid-November 2014 until the beginning of January 2015. During this period, all courts were closed thus frustrating the criminal justice sector as a whole. This resulted in increased pressure on IRLI during the latter six months of the reporting period.

2. *M&E and Record Keeping*

Challenges pertaining to M&E and record keeping continue to be faced by IRLI. For example, it is extremely difficult to obtain accurate figures with regard to those who are being diverted by the MPS away from the formal criminal justice system. These challenges exist due to a number of reasons - a lack of resources, a lack of proper training when it comes to data management/record keeping, a lack of accountability and weak institutional structures. IRLI is currently revising the method in which certain activities are measured.

3. *IRLI Team*

IRLI began Year 1 with three PLs, however one PL unfortunately had to terminate her contract prematurely in October 2014 due to a medical condition. She was replaced in December 2014, however the disruption in personnel delayed the implementation of certain activities during the first six months of the reporting period. There has however been a significant development and formalisation of roles following the recommendations of the External Evaluation which was undertaken in March 2014. This has greatly improved the handover process for new volunteers and the division of responsibilities.

H. Financial Report

Please see full breakdown of Expenditures in Annex A which shows expenditure of \$116,196 from HDF's Year 1 budget of \$149,891. This leaves a surplus of \$33,695 and variance of 22%.

1. *Programme Lawyer (PLs) Costs*

The programme year started in July 2014 with just three (3) team members on the ground (Programme Manager plus two PLs), but due to the extra funding received from HDF IRLI was able to expand the team in November 2014 and recruited a Programme Officer - bringing the team to four (4). There remained funds for a fifth PL but this position was not filled due to recruitment delays. The fifth PL, who will be based in the Malawi Police Service, is now due to arrive in Lilongwe on 21 September 2015.

This resulted in an underspend from HDF funds of \$24,920 for 12 months stipend and \$3,871 for 12 months expenses totalling \$28,791.

These funds were reallocated for Output 2.2 Magistrates Workshops (Section D.1) in addition to running costs relating to the PL's work in the Office of the DPP (Section E), the NITA Advocacy Workshop for LAB and DPP paralegals (Section C) as well as general programme activity costs .

2. *Project Vehicle*

In order to purchase a vehicle for IRLI, it was required that the organisation be registered with CONGOMA and the NGO Board. As outlined above, IRLI registered with the NGO Board in June 2015.

IRLI then began to actively seek to procure a vehicle and have entered into an agreement to purchase a Toyota Rav 4. The purchase price was agreed at \$10,200 with a total expected spend of \$10,500 and at time of writing funds are being arranged to be transferred to the seller.

3. *Output 1.1, Output 1.2 Malawi Police Service trainings in Lilongwe and Central Region*

There was an overspend of \$791 (-28%) in the Lilongwe MPS training workshops. This was due to the fact that the workshops were extended to a full day as opposed to the half day workshops that were originally envisaged. The full day sessions have certainly proved to be much more effective, due to the volume of content being covered.

The overspend in the Lilongwe MPS trainings can be offset against the underspend of \$4,002 (48%) in the trainings of MPS stations in the Central Region. As outlined above, these trainings took place in Dowa and Salima. The original plan was for a PL to spend two weeks with each station after the trainings in order to monitor whether the training provided was being implemented.

While reassessing IRLI's monitoring and evaluation approach, it was decided that it would be better to go back to these stations after a period of three and six months rather than spending two weeks at the outset. This is a better gauge of the impact of the trainings and also is more cost effective. The costs of these monitoring and evaluation visits have been factored into the overall figure being reported but represent the projected expenditure required to complete this activity.

4. Output 1.3 Child Diversion Programme

IRLI's expenditure for the two child diversion programmes, the second of which will finish in early September, is scheduled to go over budget by \$821 (-20%). There are a number of reasons for this overspend.

Firstly, IRLI's target was that 15 children complete each diversion programme. However, 19 finished the first programme and 18 are due to finish the second programme. This has meant that IRLI has had to cater for more children than expected. IRLI felt it was important to accommodate the extra children in the programmes.

Secondly, the costs for conducting home visits were underestimated, both in quantity and price. Regarding quantity, IRLI has had to conduct approximately 30 home visits for each programme to assess whether the identified children are eligible.

These home visits are extremely important to the programme. They ensure that suitable children are enrolled on the programme and are key to monitoring the progress of the children once they have completed the programme. This is essential in evaluating what kind of impact the programme is having.

5. Output 1.4 LAB, Output 2.2 DPP

As mentioned above, a major challenge faced by IRLI in the first half of the programme year was the strike undertaken by judicial support staff from mid-November 2014 until the beginning of January 2015. During this period, all courts were closed which meant that little progress could be made towards IRLI's case work and planned activities in the LAB. IRLI anticipated that this would result in an underspend in the LAB so funds were therefore reallocated towards the 8 LAB&DPP training workshops, particularly the mental health training which required an external facilitator from St. John of Gods (Section C.2).

There was no budget line originally for the activities in the DPP and funds were reallocated accordingly from the fifth PL underspend. However, there was also an underspend on this amount due in part to the changeover of PLs during the Oct-Dec 2014 period. This also coincided with the strike of the judicial support staff which had a major impact on the activities being conducted by the DPP.

6. Output 2.2 Training of Advocates and Paralegals - NITA Workshop (Section C.2)

IRLI had originally budgeted for an additional \$5,600 for capacity building in the LAB. However, at the beginning of the programme period there was a change of Director in the LAB with the Chief, Mary Kachale, moving to take up the role of DPP in August 2014. A new Director, Masauko Chamkala, was appointed in February 2015. In the interim period there was very little input and guidance as to how best to use this budget allocation.

It was decided therefore to use these funds for the larger 3 Day Advocacy Training Workshop for advocates and paralegals which was implemented in collaboration with JAA and NITA (Section C.2 Output 2.2). In addition, as IRLI was visited in Malawi in May 2014 by Director Mary Keane and Coordinator Emma Dwyer, and there is a Director's visit scheduled for September 2015, the M&E budget line was reallocated to cover the cost of an Irish speaker to travel for this training.

7. Output 2.1 Judiciary Workshops (Section D.1)

As mentioned previously, a portion of the anticipated underspend from the 5th PL was reallocated to Output 2.2 Magistrates Training, however, there was still an underspend remaining of \$9,680. This is due to the fact that the reallocation exceeded what was required.

8. Annual Monitoring Visit

As explained above, the funds for the Annual Monitoring Visit (M&E budget line) were reallocated towards the NITA Advocacy Workshop so that an Irish speaker could participate. It was felt that the participation of Anne Power SC, a former judge of the European Court of Justice, was very important for the programme as she had the opportunity to meet with programme partners and represent IRLI at high level stakeholder meetings which also served some of our monitoring objectives.

9. Proposed use for underspend

Following the HDF Financial Monitoring visit, IRLI will develop the annual workplan for the next programme period (July 1 2015- 30 June 2016) taking into account the proposed use of the Y1 underspend. Certain budget lines as submitted in March 2014 will need to be adjusted and new activities, such as the work in the DPP and the Magistrates Trainings, will need to be reflected.

Operational costs will also need to be revised as the cost of fuel has increased. IRLI has also agreed to assist the team with certain vehicle costs including comprehensive insurance, vehicle registration and other legal registration documents. As the volunteers use their own personal vehicles to undertake IRLI work, it was felt to be appropriate to assist with these costs. The cost of car maintenance however continues to present a challenge and is one which we will also have to consider going forward. The programme vehicle will greatly assist with work to be undertaken outside of Lilongwe and in remote communities but with a team of 5 it will still remain the case that personal vehicles remain the main mode of transport and, where possible, thought should be given to providing additional assistance for maintenance costs.

ANNEX A: 12 Month Financial report

Grantee: IRISH RULE OF LAW INTERNATIONAL

Expenditure Budget V Actual

| | |
|---------------------------------------|--------|
| USD FX Rate (used for budget): Year 1 | 1.4000 |
| USD FX Average Rate: Year 1 | 1.2112 |

| Year 1 (1 July 2014-30 June 2015) | | | | | |
|--|----------------------|-----------------------|------------------------|------------------|----------------|
| Description | Total Project Budget | Budget Rec'd from HDF | Actual HDF Expenditure | HDF Variance | HDF Variance % |
| Programme Lawyer Flights | 10,500.00 | 6,300.00 | 4,975.94 | 1,324.06 | 21.02% |
| Programme Lawyer Stipend | 99,680.00 | 49,840.00 | 39,215.24 | 10,624.76 | 21.32% |
| Programme Lawyer Insurance | 7,000.00 | - | - | - | #DIV/0! |
| Programme Lawyer Pre Departure Exp | 2,100.00 | 2,100.00 | 2,175.26 | 75.26 | -3.58% |
| Programme Lawyer Project Expenses | 18,851.00 | 14,980.00 | 10,392.60 | 4,587.40 | 30.62% |
| Output 1.1: Police Station Diversion Tra | 2,800.00 | 2,800.00 | 3,591.03 | 791.03 | -28.25% |
| Output 1.2: Expanded Police Station D | 8,400.00 | 8,400.00 | 4,397.19 | 4,002.81 | 47.65% |
| Output 1.3: Diversion Aftercare Progra | 4,200.00 | 4,200.00 | 5,021.25 | 821.25 | -19.55% |
| Output 1.4: Legal Aid to remandees | 1,190.00 | - | - | - | #DIV/0! |
| Output 1.5 Camp Courts | 1,680.00 | - | - | - | #DIV/0! |
| Output 2.1 Judiciary Workshops | 22,330.00 | 22,330.00 | 12,649.40 | 9,680.60 | 43.35% |
| Output 2.2 Improved Skills in DPP | 1,190.00 | 1,190.00 | 784.59 | 405.41 | 34.07% |
| Output 2.1 Visting Lawyers Partner Trai | - | - | - | - | #DIV/0! |
| Output 2.2 Training of Advocates and | 2,534.00 | 1,484.00 | 1,297.24 | 186.76 | 12.58% |
| Output 2.2 Training of Advocates and | 9,982.00 | 8,022.00 | 6,939.22 | 1,082.78 | 13.50% |
| Output 2.3: Community Sensitisation W | 2,247.00 | 2,247.00 | 1,774.05 | 472.95 | 21.05% |
| Project Vehicle&Maintenance Costs | 16,800.00 | 16,800.00 | 14,739.70 | 2,060.30 | 12.26% |
| Programme Activity Costs | 9,198.36 | 9,198.36 | 8,243.60 | 954.77 | 10.38% |
| M&E Travel, Accom, Per Diem | - | - | - | - | #DIV/0! |
| Mid-term Evaluation | - | - | - | - | #DIV/0! |
| Independent Final Evaluation | - | - | - | - | #DIV/0! |
| Direct Costs Sub-Total | 220,682.36 | 149,891.36 | 116,196.31 | 33,695.05 | 22.48% |
| IRLI Technical Staff Apportionment | 14,000.00 | - | - | - | #DIV/0! |
| Admin Costs Sub-Total | 14,000.00 | - | - | 0.00 | #DIV/0! |
| Total Budget Costs | 234,682.36 | 149,891.36 | 116,196.31 | 33,695.05 | 22.48% |