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Safety Security and Access to Justice in Malawi: 1998 - 2004

Aim

To present a brief overview of the DFID Safety Security and Access to Justice (SSAJ) programme undertaken in Malawi between 1999 and 2004 (MaSSAJ)

Background and Scenario

Malawi is a poor country, suffering heavily from the effects of poverty and HIV/AIDS. It is also a young democracyⁱ with 'a weak and under funded parliament, an underdeveloped civil society, widespread corruption within the civil service and the dominance of patron/client relationship in political engagement.'ⁱⁱ However, despite its many problems, Malawi has managed to avoid the scourge of civil war experienced by many post-colonial Africa nations in the past decades. DFID is the largest single bilateral donorⁱⁱⁱ to Malawi and the total UK Government commitment to the 2000-2005 Poverty Reduction Strategy Programme was approximately £70 million.^{iv}

Map of Malawi



Key Facts - Malawi

Capital: Lilongwe

Area: *total:* 118,480 sq km

Natural resources: limestone, arable land, hydropower, deposits of uranium, coal, bauxite

Land use: *arable land:* 20.68% , *permanent crops:* 1.18%, *other:* 78.14% (2005)

Population: 13,013,926 *note:* estimates for this country explicitly take into account the effects of excess mortality due to AIDS (July 2006 est.)

Age structure: *0-14 years:* 46.5% (male 3,056,522/female 3,000,493); *15-64 years:* 50.8%

(male 3,277,573/female 3,332,907); *65 years and over:* 2.7% (male 139,953/female 206,478) (2006 est.)

Population growth rate: 2.38% (2006 est.)

Life expectancy: 41.7 years (est. 2000)

Ethnic groups: Chewa, Nyanja, Tumbuka, Yao, Lomwe, Sena, Tonga, Ngoni, Ngonde, Asian, European

Religions: Christian 79.9%, Muslim 12.8%, other 3%, none 4.3% (1998 census)

In 1999 an overarching SSAJ programme was initiated by the UK Government, at the request of the Malawian government. However, 'due to the complex nature of the programming design (the first of its kind undertaken by DFID) together with delays in gaining formal GoM [Government of Malawi] approval and engagement of secretariat staff the programme did not officially commence until January 2002.'^v The programme was the first SSAJ project solely funded by DFID, with an overall budget of £35 million. It was one of the first justice reform programmes to undertake reform on a sector wide approach (SWAp). The programme has a life span of 5 years with a two year inception period included. It was intended for there to be a second 5 year phase but to-date that has not materialised.

Main Objectives

This case study concentrates on four undertakings within this project, including the National Council for Safety and Justice (NCSJ), the logframe – or strategy document underpinning the programme, the Primary Justice Pilot initiatives and finally the National Crime and Victimization Survey.

The Logframe

The logframe for the programme was produced as a result of a two year consultation period prior to the inception of the programme. The consultation process involved a wide array of local stakeholders, including members of the government, non-state justice, Civil Society Organisations, academia, and faith groups. This assessment focussed on the existing capacity of the country, what the country needed to improve as well as the desires of the country. This was one of the biggest consultative processes in any UK programme ever undertaken^{vi}. This assessment period, both in terms of the depth of the assessment and the time taken is considered to have only been possible because the country was stable and such an assessment period would be impossible in the post-conflict environment of Sierra Leone.^{vii}

The consultation period was undertaken by UK based and international designers of the programme, but these were not the individuals who were to form the Secretariat to manage the actual project. It was unfortunate that DFID was unable to create a functioning and capable Secretariat in the immediate period following the assessment. In fact it took nearly two years to produce a complete team, and this delayed the start of the programme. The

gap between consultation and the start of implementation meant that the logframe, produced during the assessment, was out-of-date on many issues as many of the people who had been consulted had either moved position, left government or for other reasons were no longer available. It is estimated that 50 percent of the individuals who were interviewed as part of the consultation phase were no longer in post by the time the Secretariat was in place^{viii}. The Secretariat was therefore left with the difficult position of implementing a plan that was to some extent out-of-date and unreflective of the desires and needs of the stakeholders at that time and therefore lacking in local ownership.

Another issue arising from the logframe was that it was far too over prescriptive in the actions to be taken, the objectives to be achieved and the timeframe in which to accomplish it. The Secretariat had therefore to amend the logframe before any work could be undertaken. However, this strategic framework was highlighted as essential by the OPR which stated: 'The requirement for a strategic policy framework that through consultative and participative processes identifies objectives, priorities, strategies and resource needs is an essential element in ensuring a programme meet the needs of the poor and vulnerable.'^{ix}

The Secretariat included sector wide representatives; including advisors for the police, the penal system, legal advisers and non-state justice advisers. All were expatriate staff, but this was felt necessary to bring the required expertise into the programme, the support staff were Malawian. During the course of the programme locally recruited staff shadowed the roles of some of the advisors, who were, in the fullness of time intended to take over the Secretariat. These sorts of mechanisms which can be built into such programmes can form successful capacity building exercises which may ensure the sustainability of the project beyond a donor's capacity or willingness to do so.

National Council for Safety and Justice

One of the primary objectives of MaSSAJ was to establish a NCSJ which comprised 'over 30 people that included relevant ministers, the principal representatives of other justice related institutions, representatives of civil society, traditional authorities and DFID'^x plus business and academia representatives. The Council was supported by justice experts, the MaSSAJ programme manager and support staff, and its objective was to discuss and advance the SSAJ agenda and programme with guidance from MaSSAJ Secretariat, who are contracted by DFID. This is a good example of a top level programme, which focused heavily on the involvement of the government. Although this Council was initially a great success, it also suffered as a result of the involvement of such high level participants as ministers, as the decisions made were heavily politicised and also had high visibility within the government. It also suffered a high turnover of staff who were moved from position to position within the government and poor attendance as a result of busy schedules.

The Secretariat were quick to act to rectify this situation and formed a management committee which comprised of lower level government stakeholders, this alleviated problems of low attendance as well as removing the politics from the decision making process. This management committee proved to be more dynamic and effective. Both of the committees of the NCSJ proved to be a successful mechanism to foster and maintain local ownership within the government at both the highest level and at a mid-ranking level. It also helped provide

cross government coordination and a strategic oversight body for the programme, which is necessary to help prioritise and allocate resources to correspond to local needs and desires.

National Crime and Victimization Survey

MaSSAJ commissioned a new Crime and Justice Statistics Division within the National Statistics Office based in Zomba and later Lilongwe (see Map above). This division undertook a National Crime and Victimization Survey. The survey was country-wide and involved surveying 'more than 10,000 people'^{xi} regarding their attitudes towards the police and justice system within Malawi. As reported by Stone, the survey gave a 'voice to the poor people throughout the country in the process of setting security priorities and providing a baseline against which to measure future success.'^{xii} The Secretariat achieved a great success in initiating such a survey as it built the 'credibility of the programme'^{xiii} within the government and local population and also helped to communicate with the wider population. Furthermore, the survey helped to foster ownership amongst the local population and helped to tailor the programme to the needs of all the population. The National Crime and Victimization Survey also provided the Programme Managers and the GoM with a set of statistics so that improvements in the justice system could be properly measured against a benchmark. This extensive assessment is a highly desirable facet of a JSR programme for the reasons outlined above but it is likely only to be viable in a stable environment.^{xiv}

Primary Justice Pilots

In Malawi 82 to 85 percent of the justice is provided by the non-state justice system^{xv}. MaSSAJ recognised that this was a functioning informal institution providing cheap, quick, restorative and sustainable justice within Malawi and that this capacity could be utilised.^{xvi} Non-state justice systems often suffer from perceived faults of inequality towards women, children and minorities; however, this problem was not confined to the non-state justice system but was to be seen across the formal system as well.

In order to help deal with these perceived inadequacies, MaSSAJ established Primary Justice Pilots and Primary Justice Forums to help try and guide the informal justice systems and also give, when requested, specific training to those within the informal system. It was hoped that by trying to reform subtly the traditional structures it would enable fairer access to justice to all sectors of society. These changes were driven by a local need and were enabled by the Secretariat which led to considerable local ownership and enthusiasm for the changes made. The justice pilot programme is a prime example of working with the existing capacity within a country and also working at the grassroots level to grant immediate access to justice to as much of the population as possible.

Current Programme

Despite the successes of the programme which were achieved within a short 2 year time frame the programme has unfortunately become less active since the end of 2004 as a result of changes in the political leadership in Malawi and DFID funding decisions. However, in 2007 DFID are understood to currently be recruiting advisers to reinvigorate the programme. This case study will be updated to reflect changes as they occur.

Questions

- Identify the successes and failures within the SSAJ programme – and try and find alternative examples within other programmes.
- Identify the actors involved in the programme and identify the role they played.

Issues for Discussion

- Consider how this programme in a benign environment might differ from one in a post-conflict environment such as Sierra Leone.
- Consider the role of traditional justice and analyse the benefits and disadvantages of involving traditional justice in an SSAJ programme.

Further Research

DFID, *Justice and Poverty Reduction: Safety, Security and Access to Justice for All*, 2000.

DFID, *Safety, Security and Accessible Justice: Putting Policy Into Practice*, July 2002.

OECD/DAC, 'Equal Access to Justice and the Rule of Law', *Issues Brief*, 2005.

United Nations Development Programme, Bureau For Crisis Prevention and Recovery, *Justice Sector Reform: BCPR's Programmatic Approach*, November 2002

ⁱ The first multiparty election was held in 1994 following a 30 year period of dictatorship by Hastings Kamuzu Banda until 1994.

ⁱⁱ DFID, Evaluation of DFID Country Programmes: Country Study: Malawi, 2000-2005, DFID Evaluation Report EV661, p.7.

ⁱⁱⁱ *Ibid.*, p.8.

^{iv} *Ibid.*, p.ix.

^v DFID, Malawi, Safety Security and Access to Justice Programme; Output-to-Purpose Review; September /October 2003, p.9.

^{vi} Interview with Programme Manager, Piet Biesheuvel 20 July 2006, Shrivenham, Wiltshire.

^{vii} Interview with Piet Biesheuvel 20 July 2006, Shrivenham, Wiltshire.

^{viii} Interview with Piet Biesheuvel 20 July 2006, Shrivenham, Wiltshire.

^{ix} DFID, Malawi, Safety Security and Access to Justice Programme; Output-to-Purpose Review; September /October 2003, p.9.

^x *Ibid.*

^{xi} Interview with Piet Biesheuvel 20 July 2006, Shrivenham, Wiltshire.

^{xii} Stone, Christopher *et. al.* 'Supporting Security, Justice and Development: Lessons for a New Era'; *Vera Institute of Justice*, June 2005, p.5.

^{xiii} Interview with Piet Biesheuvel 20 July 2006, Shrivenham, Wiltshire.

^{xiv} Confirmed in an interview with Piet Biesheuvel 20 July 2006, Shrivenham, Wiltshire

^{xv} Interview with Piet Biesheuvel 20 July 2006, Shrivenham, Wiltshire.

^{xvi} DFID, Malawi, Safety Security and Access to Justice Programme; Output-to-Purpose Review; September /October 2003, p.19.