

# Malawi Mitigation Investigation Guide

A guide to best practices for mitigation investigation in capital cases

# Acknowledgements

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The Guide is based on considerable input from all stakeholders in the Sentence Rehearing Project, but particularly from the paralegals of PASI and CHREAA working at the frontline of defence investigation in Malawi.



Cornell University

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# MALAWI MITIGATION INVESTIGATION GUIDE

## SENTENCE REHEARING PROJECT

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# 1. INTRODUCTION



This guide is intended to assist paralegals and lawyers to plan and conduct effective mitigation investigation and community sensitisation in the context of sentence rehearings triggered by the abolition of the mandatory death penalty ('Sentence Rehearing Project').

*PASI paralegals conducting interviews with family members near Mzuzu  
(Photo: Harriet McCulloch, Reprieve)*

The skills necessary for these two activities are similar to those needed for fact and mitigation investigation in all cases where the death penalty is a possible sentence as well as in other criminal cases. This Guide will therefore be helpful to paralegals and lawyers preparing for future criminal cases beyond the Sentence Rehearing Project.

The Guide is primarily aimed at defence investigation for two reasons. First, prosecutors often will not need to do any investigation to prepare for the sentencing phase of a capital prosecution. Typically, prosecutors rely on the facts of the offence (which are already established by the facts presented during the culpability phase) in their sentencing submissions. Second, the skills required for a defence mitigation investigation are qualitatively different from those required for a standard defence investigation in a non-capital case. Defence mitigation investigations involve a painstaking reconstruction of an individual's life story, and require specialised knowledge of mental health, intellectual disabilities, trauma, and other factors that can affect a person's behaviour.

Nevertheless, much of the guidance provided here will also be useful for prosecution investigations – particularly where the court record has been lost and fact investigation is needed.

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## 1.1. MITIGATION

In **Kafantayeni v. Attorney General of Malawi** (Apr. 27, 2007), ('Kafantayeni') the High Court struck down the mandatory death penalty for murder as unconstitutional because it prevented any consideration of the facts of the offence and the individual circumstances of the offender. By disallowing any discretion in sentencing, the mandatory death penalty resulted in disproportionate penalties and inhumane treatment. It also violated individual rights to a fair trial and access to justice.

As a result of the Kafantayeni decision, during every sentence hearing in a murder case in Malawi the judge is required to consider the "individual circumstances of the offence and the offender" when deciding on the appropriate sentence. Section 210 of the Penal Code of Malawi has been amended to reflect the fact that the judge in a murder case has the discretion to mete out any sentence, from a term of years to life imprisonment or death. Death sentences should only be imposed for offences that are truly "the worst of the worst" and where the offender is beyond all possibility of reform. This has been confirmed in subsequent cases in both the Supreme Court of Appeal and the High Court. These decisions apply not only to the sentence rehearings resulting from the Kafantayeni decision but also to all new murder cases and in appeals against sentence for people convicted of murder.

It follows that in every murder case that goes to trial, the defence should conduct a thorough mitigation investigation with the aim to gather evidence that may be presented at the sentencing phase of trial in support of a more lenient sentence.

It is worth emphasising here the importance of completing a comprehensive life history investigation prior to trial. Without such an investigation, the defence will potentially be deprived of crucial mitigating evidence, as witnesses may die and evidence may be lost. Useful evidence will very often be found in the villages or community where the prisoner lived or worked before his or her arrest, but it might come from a range of other sources too such as from prison officers and hospitals. Evidence may also come from the prisoner him or herself.

The form that this evidence takes can also vary from source to source. For example, hospitals may be able to provide evidence in the form of records confirming a prisoner's health problems, or a person who knew the prisoner well before the arrest might be able to provide evidence in the form of a statement.

This guide focuses on mitigation investigation under the Sentence Rehearing Project.

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## 1.2. COMMUNITY SENSITISATION

Community sensitisation is an exercise which has several purposes. One purpose is educative: to update the general public on the important change in the law that resulted from the Kafantayeni decision.

In this regard, the investigating paralegal's role is as a legal educator, informing people of the law.

But in the context of mitigation investigation, community sensitisation also has other purposes: first, to explain to the community why you are visiting and to set the scene ready for interviews with particular people from the community; and second, to explain to the community the possibility of a person being released and returning to their village, sometimes many years after they left. In respect of both of these purposes, community sensitisation aims to gain the trust of the community and to make sure the community understands and is comfortable with the process.

Advice about best practices for community sensitisation is included below.

## 2. PLANNING YOUR INVESTIGATION

### 2.1. INVESTIGATION PREPARATION

It is vital that your investigation is carefully planned before you go out in the field. You will be the most effective at conducting field investigation with a comprehensive investigation plan for your work.

BEFORE travelling read all of the case documents and discuss with the legal team to set the objectives for the investigation, read the template statements for traditional leaders and life history witnesses, write an investigation plan and compile all the necessary case documents as outlined in the following sections.

#### 2.1.1. Make contact with the prisoner's legal team

From the MHRC or the relevant lawyer, obtain the name of the prisoner, the name of the village, T/A and district and the contact details of family or community members of the prisoner. Also get the name and contact details of the Chancellor College student or paralegal who conducted the interview with the prisoner, if it's available. Some prisoners have been incarcerated for a long period of time and will not have telephone numbers for relatives but usually it should be possible to get directions to the location you will be visiting.

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### **2.1.2. Review all available case documents**

Ensure that you have read all the documents related to the case that are available to you and make a list of documents at Section 4 in the Template Investigation Plan at Annex [1]. That will act as your index and quick reference guide to the case file.

If you haven't received any case documents or need hard copies please contact the MHRC if the case is part of the Sentence Rehearing Project, or contact the defence lawyer representing the defendant in all other cases.

### **2.1.3. Create a witness list**

Create a witness list for all case-related witnesses using the Template Witness List at Annex [2]. Use this document to list all known witnesses at the point you start work on a case and add to the list as you come across new witnesses. Your investigation preparation should involve finding out where witnesses are located, how to get there, and any contact details for witnesses you are hoping to find, such as phone numbers.

Find out from the MHRC (or the lawyer) whether you will need to interview fact witnesses (often people who saw the incident, see below) and if so, obtain the location and contact details of these fact witnesses, if available, and add that information to your witness list.

### **2.1.4. Create an investigation plan**

This is the single most important document that you will create for your investigation work on a case. It will guide all of your work on the case and so needs to be created before you go into the field to conduct investigation. The investigation plan will be continuously developed as the investigation and casework continues. A Template Investigation Plan is included with this Guide at Annex [1]. The investigation plan acts as an up-to-date reference guide for your investigation work, allowing you to track your investigation and to explain the investigation to your colleagues and others working on the case. Your investigation plan should include the following:

- ✓ Prisoner information, family and home village information.
- ✓ The locations you will be travelling to and for how long. This will serve as a schedule for the investigation that will be conducted. Make sure you estimate how much time it will take to travel to locations and how many interviews or other investigation work will take place each day.
- ✓ Summary of the case facts – create a case overview based on the facts, information and documentation available to you.

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- ✓ Prisoner's life history – an understanding of the prisoner's life history will enable you to be more effective when on the ground. Through your own interviews with the prisoners and from prisoner interview notes ensure you have the most comprehensive life history possible, and from that create a summary and add it to your investigation plan.
- ✓ Reason for investigation and investigation aims – ensure that you are clear as to why you are conducting the investigation and the aims of the investigation so that as the investigation continues you can remain focused on your investigation aims.
- ✓ Relevant defence theories and strategy – as much as possible gain an understanding of the relevant defence theories and defence strategy so that you can plan your investigation in line with those theories and strategies.
- ✓ Investigation areas – what areas of investigation will you be involved in? Will your investigation be solely witness-based or is there anything else you can do, such as finding hospital records? Each area of investigation should be outlined in your investigation plan.
- ✓ Budgeting and logistics – budgets should be calculated for your investigation work. The logistics of your work should also be planned; which mode of transport will you use? Will you require accommodation? Will you need a guide or an interpreter? What supplies will you need?

#### **2.1.6. Create a records collection log**

If any records are being sought for your case then keep track of this by noting them in your investigation plan. For example, you might be trying to retrieve records from Zomba Mental Hospital.

#### **2.1.7. Understand the investigative environment**

Locate the village by contacting the family and community members where the prisoner has provided phone numbers or by contacting the community police officer for the district. See Table 1 below for contact details of some of the officers responsible for community liaison in certain districts. If you have an existing relationship with an officer or police station feel free to use these existing contacts to open avenues.

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Make a preliminary assessment of the area where field investigation will take place. This assessment should serve as a check that it is safe and feasible to travel to the area. For example, if you are travelling to a location that has recently been flooded then call ahead to make sure your intended route is passable. If you are visiting the location where the offence took place and you have concerns about possible hostility from the victim's family then consider taking a local police officer with you to the village.

**Table 1** *Contact details of police officers responsible for community liaison in the Southern Region*

**Insp Zawanda** (Mulanje)

0888 332 025

**A/Supt Mwale** (Limbe)

0888 759 930

**S/Insp Mulawu** (Chileka)

0888 393 445

**Clement Madeira** (Phalombe)

0882 839 551

**Officer Singano** (Mwanza)

0881 364 063

**Officer Mvuthe** (Chiradzulu)

0888 379 168

**S/Insp Bunya** (Thyolo)

0882 656 111



*Southern Region, Malawi – A paralegal makes their way through the mud on a motorbike during investigation in the rainy season (Photo: Tom Short, Reprieve)*

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### **2.1.8. Calculate your investigation budget**

Accurately plan a budget for your investigation. For cases in the Sentence Rehearing Project, you will need to work with the MHRC to agree on a budget covering the costs of the investigation. For other cases, you may need to seek funds for investigation from different donors or Government sources and you will need to ensure you do this in time. Remember, mitigation investigation is essential in all murder cases so if you hear that cases will be coming to court then you should start making enquiries.

For cases in the Sentence Rehearing Project, if you will need to make calls to find out the distance to the prisoner's home village (and the location of the offence if that's different and you need to travel there) then obtain airtime from the MHRC.

Communicate estimated distances to be travelled to the MHRC and indicate whether it will be necessary to budget for lunch, or lunch and dinner, or a full daily subsistence allowance to be provided (where an overnight stay is required).

### **2.1.10. Final checks**

- ✓ Ensure your transportation is roadworthy and that you have enough fuel for your travel.
- ✓ Ensure that you are appropriately dressed for embarking on work of this nature.
- ✓ Charge your phone, leave early in the morning to ensure you have enough time in the field, take notepads and pens (let the MHRC know if you need stationery) and try to take a camera or camera phone to document the community sensitisation.

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## 2.2. HOW CAN I ESTABLISH THE OBJECTIVES OF THE INVESTIGATION?


- Read this Guide.
- Read the case documents. These should be provided to you in advance of the investigation so you have time to familiarise yourself with the case and plan the investigation. If you don't have all the information you need, let the MHRC or the defence lawyer know. Don't go into the field unless you feel fully prepared.
- Discuss the case with the lawyer or MHRC interns or within your team, depending on timing and availability.
- If you need more information about the prisoner interview then contact the person who conducted the interview or ask PASI Zomba to talk to the prisoner again.
- If the court record is missing consider whether you need to try to locate a fact witness – someone who witnessed the offence and can give an objective account. If possible try to find a fact witness who is not related to the prisoner.
- Consider what mitigating factors might be available in this case. See a list of common mitigating factors at Table 2 and Section 2b. below.
- If you think a mitigating factor is present consider how you can record the information – is a witness statement enough? Can you ask witnesses for documentation? For example, if the prisoner may have been a juvenile at the time of the offence try to get copies of any documents that set out the prisoner's date of birth and ask witnesses if they can recall how old the prisoner was at the time of the offence. If they can't recall, ask them questions that might help you calculate his age – for example, ask if they were attending school and what standard or form they were in.
- Complete an investigation plan (see the Template Investigation Plan at Annex [1] at the end of this guide)

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## 2.3. MITIGATING FACTORS

Following the Kafantayeni decision, the High Court has complete discretion at sentencing. Anything that bears on the moral culpability of the offender can be potentially mitigating at sentencing. The following factors are especially important and need particular care and attention. If you are not sure if mental health is an issue in the case then liaise with the MHRC or a lawyer. Those interviewing the prisoner may not have noticed signs of mental illness or disability – this does not mean that mental health is not an issue in the case. Often, evidence of intellectual disabilities may be difficult to detect, and requires sensitive and creative questioning to uncover.

 Practice Tip
Common mitigating factors (A more detailed analysis of mitigating factors can be found in Chapters 5 and 8 of the Best Practices Manual)
<ul style="list-style-type: none"><li>➤ Age at time of the offence</li><li>➤ Minor role in offence</li><li>➤ Lack of premeditation</li><li>➤ Provocation that led to commission of offence</li><li>➤ Remorse</li><li>➤ Offender acted under a threat, fear of harm to him or his family, or under a strong influence by someone who has power over him</li><li>➤ Intoxication</li><li>➤ Defendant's mental condition, at the time of the offence and at the time of sentencing</li><li>➤ Physical or sexual abuse</li><li>➤ Extreme poverty</li><li>➤ Evidence of good moral character</li><li>➤ Lack of prior criminal history</li><li>➤ Good conduct in prison</li><li>➤ Cooperation with the authorities</li><li>➤ Family ties</li><li>➤ Stable work history</li><li>➤ After the crime, offender repaired (or made serious efforts to repair) the consequences of the offence, or somehow compensated the victim or his family</li><li>➤ Significant rehabilitation after the commission of the crime (especially if a long time has passed)</li></ul>

**Table 2** (from *Representing Individuals Facing the Death Penalty: A Best Practices Manual* © written by Death Penalty Worldwide (the 'Manual'))

### JUVENILES

Malawi does not currently have a national birth registry system. This means that people often do not have proof of their age. A number of the prisoners in the Sentence Rehearing Project were sentenced to death for offences committed when they were juveniles. This is an extremely serious breach of Malawian and international law. If there is any possibility that your client was under 18 at the time of the offence, do everything you can to collect and document evidence to establish the prisoner's age. See Table 3 for more guidance on establishing age.

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## △ Overcoming Barriers

### What should I do if it's difficult to determine my client's precise age?

In countries that have inadequate birth registration systems, it is often difficult to ascertain the precise age of a child offender. In situations where the age of a child involved in the justice system is unknown, the UN Economic and Social Council has mandated that countries take measures to ensure that the “true age of a child is ascertained by an independent and objective assessment.” Furthermore, international standards suggest that once there is a possibility that your client may be a juvenile, the state must prove he is not before he can be treated as an adult in the criminal justice system.

Nevertheless, as your client's advocate, you should make every effort possible to prove that your client is a juvenile if you believe him to be one. There are different steps that you can take to determine the age of your client when official state records are unavailable.

Local community mechanisms that are in place to record births can be useful in providing documentation of your client's age: in Ethiopia, UNICEF has contacted religious communities for certificates issued at the time of baptism or acceptance into Muslim communities in order to establish the age of unregistered individuals. In Sierra Leone, it has reached out to local chiefdoms that maintain similar records. You should begin by interviewing the family to determine whether similar local community traditions exist in the case of your client.

You may also be able to approximate the age of your client on your own by speaking to his family members. Many families are able to connect the birth of your client with a historically significant event, such as an earthquake or the election of a President, even when they can't remember an exact date. This should give you a general sense of your client's age.

Physical examinations of a prisoner are not effective to prove age if the offence occurred years ago. You should therefore object if the court seeks to ascertain your client's age through dental or wrist bone x-rays or an examination of your client's teeth. These examinations are highly speculative and will not be effective for prisoners undergoing resentencing hearings.

The key principle to remember is this: if there is any doubt whatsoever about whether your client was a juvenile at the time of the offence, then this must be resolved in favour of your client.

**Table 3** *Advice for establishing a prisoner's age (adapted from the Manual)*

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## ALCOHOL

Alcohol consumption can affect the defence case both at the culpability and sentencing stages. Intoxication can be an important mitigating factor at sentencing, even if it did not amount to a defence at trial. Alcoholism is a disease and can help the judge understand the individual circumstances of the prisoner. Heavy drinking is common in some communities.

Consider whether routine heavy drinking is normal in the prisoner's community – if you're not sure, talk to people from the area. It's also important to consider whether the prisoner drank heavily in comparison with other people in the community. Prepare questions about the prisoner's drinking – example questions are set out in the Mitigation Investigation Questionnaire at Annex [4]. Consider if there is any evidence that the prisoner had been drinking on the day of the offence – if so, seek to corroborate this evidence in your interviews with witnesses.

Consider what types of alcohol are normally drunk in this community: it doesn't have to be beer, spirits or home-brew. Remember to ask about "added ingredients" such as fertiliser, sisal, and anti-retroviral drugs. Ask about children in the community drinking "sachets". Ask about drinking competitions and anything else you think could document alcoholism or intoxication on the day of the offence, or both.

If women drink alcohol during their pregnancy the baby can develop Fetal Alcohol Spectrum Disorder (FASD) or Fetal Alcohol Syndrome (FAS). Even very small amounts of alcohol can harm a baby's brain, particularly if taken early in the mother's pregnancy. FASD and FAS are linked to a variety of physical and mental health problems. Women may be ashamed to talk about drinking alcohol when pregnant but careful and sensitive questions in a private setting should help the interviewee to feel more comfortable. Try to approach the question from different angles and remember that women who make home-brew may drink the product that they sell.

## MENTAL ILLNESS OR DISABILITY

It is vital that the judge can consider whether or not the prisoner has experienced or is currently experiencing mental illness or disability. This can be established through a mental health assessment by a mental health clinician or psychiatrist, or with medical records. The judge can also consider other



*Mzimba, Malawi, April 2015 – Paralegals, mental health professionals, lawyers and MHRC staff worked together for a good outcome in a case where mental health was a mitigating factor (Photo: Tom Short, Reprieve)*

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sources of information such as statements from family and community members or a statement from the prisoner.

It can be very challenging to conduct interviews with family and community members about mental health but the information that you collect is essential to ensure that the judge has an understanding of the prisoner's individual circumstances so that he or she can reach an appropriate sentence. Careful and sensitive questions in a private setting will help family and community members to feel more comfortable about sharing their recollections with you.

With mental health professionals from Malawi and the United States of America, we have developed a questionnaire for interviewing family and community members about the prisoner's life history and his or her mental health. This has been translated into Chichewa. It is attached at Annex [4] (in English) and Annex [5] (in Chichewa).

### **Vocabulary for discussing mental illness or disability**

Mental health clinicians have commented that there are challenges in describing mental illness and disability in Chichewa. Below is a list of some words which paralegals have suggested should act as 'red flags' for possible mental health problems. If an interviewee uses one of these words, record it in your notes and tell the legal team about it. See Section 3.4.2 below for more on interviewing techniques. If you need advice from a mental health clinician please contact Mr. Ndumanene Devlin Silungwe at Saint John of God Hospitality Services at [ndumanene.silungwe@sjog.mw](mailto:ndumanene.silungwe@sjog.mw).

***Kuzerezeka*** – this word is used to describe someone who cannot control him or herself, but who may not be violent. This person is not completely mad. They often can't learn and struggle greatly at school. They may take years to recover or the condition may be permanent. They may have a running nose, be unable to control bowels and may have physical signs, such as facial deformities.

***Kuzungulira*** – this word describes an addiction to Indian hemp or cannabis.

***Misala*** – this word describes someone who may be violent, may talk to themselves, or is sometimes very quiet. According to local beliefs, the condition arises from the victim's failure to follow instructions using charms or other things provided by a witchdoctor and from other sources such as cerebral malaria.

***Kupusa*** – this word is used to describe a person who cannot organise themselves. The person may look physically normal but other children will tease them. It is used as an insult.

### **Belief in witchcraft**

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Belief in witchcraft is widespread and can be extremely important in understanding the circumstances in which the prisoner committed the offence. There are three broad categories you should consider. These categories could overlap:

- Where a person is described by the community as being bewitched they may be exhibiting signs of mental illness.
- Where a person is suffering from extreme mental illness they may experience paranoia and hallucinations related to witchcraft. For example, they may become convinced that someone is trying to kill them using witchcraft, and may experience visual and auditory hallucinations.
- A sincere belief in witchcraft can be mitigating at sentencing. The courts have recognised that many people have a sincere belief in witchcraft and, while it isn't currently a defence under Malawi law, it can explain why someone would commit a crime and is therefore an important consideration at sentencing.

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## 2.4. USING THE QUESTIONNAIRE

### Practice Tip

#### Negative information

In one case in Malawi the prisoner had told her interviewers that her husband (the victim) had subjected her to sustained physical abuse.

The paralegals conducted interviews with a number of the witnesses identified by the prisoner in the prison interview.

The interviews did not focus on the subject of physical abuse even though this was a key part of the prisoner's mitigation.

Instead family members said that she had been a good member of the community and that there had been no problems.

This is a good example of how family and community members may believe that they can help the prisoner by attesting to their good character and positive relationships with others in the community. In this case, however, their testimony contradicted the defence theory of the case that the prisoner had a difficult relationship with her husband and had been the victim of repeated beatings.

"Bad" or "negative" information can often be "good" – for example, in one case the prisoner had killed his uncle during a psychotic episode. Evidence of his mental illness was therefore very helpful to establish that he lacked the intention to kill.

Paralegals familiar with the case interviewed his family and community members and collected evidence which showed that he might have been suffering from mental health problems for some time before the offence.

The Mitigation Investigation Questionnaire (at Annex 4) is aimed at **caregivers** – someone who cared for the prisoner when he or she was a child such as their mother or aunt – but will be useful to guide interviews with anyone who had a close relationship with the prisoner. The questionnaire also covers **pre-natal health**. The prisoner's mother, aunt or maternal grandmother may have information about this area. If the prisoner is elderly all of their caregivers may have died or have poor memory. In this case try to talk to people who knew them as children: their brothers and sisters, or friends.

**Before going into the field**, adapt the questionnaire to the specific prisoner by incorporating it into your investigation plan. Read the questionnaire a number of times so that you are familiar with the subject areas and the questions. The questionnaire is not a checklist – familiarise yourself with its contents and use it as a guide to your conversation.

In the field, develop a technique that means you are able to cover all of the areas and questions whilst maintaining a good rapport with the interviewee. For example, if there are two of you, one interviewing and the other taking notes (this is best practice), the paralegal interviewing can look at the questionnaire briefly to ensure the topics and questions have been covered. You should be aiming to make the witnesses feel comfortable talking to you and this can take time.

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## Practice Tip

### **Areas to look into during your investigation that may be relevant to the sentencing phase and mitigation:**

- (1) Medical history (including hospitalisations, mental and physical illness or injury, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage);
- (2) Family & social history (including physical, sexual or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighbourhood environment and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities);
- (3) Educational history (including achievement, performance, behaviour, and activities), special educational needs (including cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities;
- (4) Military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services);
- (5) Employment and training history (including skills and performance, and barriers to employability); and
- (6) Prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services).

**Table 4:** *Areas that you should plan cover during your investigation (from the Manual)*

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## 2.5. MISSING COURT RECORD – FACT INVESTIGATION



*John Chikayiku Nthara Banda [left] and Jamu Kalipentala Banda [right], with Malawi Prison Service Officer Andrew Dzinyemba. John and Jamu were released after 20 years. The judge considered witness statements collected by the state and the defence which showed that the men had been trying to assist the victim (Photo: Zara Brawley, Reprieve)*

In some cases the court record is missing so the facts and circumstances of the offence need to be established.

In these cases you should determine the location of the offence and possible fact witnesses.

‘Direct’ fact witnesses could include prosecution or defence witnesses from the trial or witnesses who saw the offence but were never interviewed.

‘Indirect’ fact witnesses are people who did not witness the offence but may still be able to give a reliable account of the facts – for example, a village headman who was told what happened at the time, or a member of the public who attended the trial.

In some cases the prisoner may maintain his innocence (as John and Jamu did – see the photo above). In the Sentence Rehearing Project it is very unlikely that the judge will set aside the prisoner’s conviction, but witness statements that confirm the prisoner’s account of what happened could allow the judge to consider the prisoner’s limited role in the offence or his lack of intent to kill or injure, and to reduce the sentence accordingly.

## 3. WITNESSES AND WITNESS INTERVIEWS – BEST PRACTICES

### Trust

Investigation is tricky work, especially when dealing with sensitive issues that are often at the heart of criminal defence cases. Information about sensitive issues can be of huge benefit to the defence case. Trust and building rapport with witnesses is key to effective investigation. Explained below are methods of gaining trust quickly and effectively when conducting investigation.

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## 3.1. TRUST BUILDING TECHNIQUES – CULTURE AND ENVIRONMENT

### 3.1.1. Awareness of the investigative environment

You should try to obtain comprehensive information about the local area within which investigation will take place. Having the best possible knowledge about the area in which you are working will be invaluable.

For cases in the Sentence Rehearing Project, you may well have excellent knowledge and awareness of the areas you visit for investigation. If you are involved in investigation in new geographical areas, perhaps even outside of Malawi, then special attention will need to be paid to cultural and environmental factors.

### 3.1.2. Environmental sensitivity

A sensitive approach should be taken to the area where you are working: the culture may be different to what you have experienced before and there may be other factors that you need to remain alert to. Whilst you work you should be conscious and sensitive to your environment. That sensitivity will help you to build trust as you investigate.

### 3.1.3. Cultural sensitivity

Cultural knowledge and cultural sensitivity will help you to gain and build trust. Try to ask and answer the following questions as you plan your investigation:

- Is the area very politicised?
- What is the dominant religion in the area?
- What are the practices of the local ethnic groups?
- Are there issues related to gender equality?
- What is the socio-economic background of the area and its people?
- What does the local infrastructure look like?
- What do you know about the local culture and cultural activities?
- What are the dominant social activities in the area?

The more that you know and the more culturally knowledgeable you are, the better you will be able to connect with the people who you want to interview. A wider cultural understanding will allow you to connect on a personal level with your witnesses and to put your witnesses at ease allowing them to see you less as an ‘outsider’ and more as someone who they can trust and confide in.

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## **3.2. TRUST BUILDING TECHNIQUES – SELF-AWARENESS, BEHAVIOUR AND LANGUAGE**

An assessment should be made as to how you will appear within the area you are visiting. How will others perceive your presence there?

When we talk about building trust from the perspective of the local environment and the local community, it is important to think about what can be done to ensure your presence is perceived by that community as non-threatening and what will help members of a community to trust you.

A big factor in building trust comes down to human nature: people do not easily trust someone they do not know, or do not know of, nor do they easily trust someone who does not look like someone they might know or know of.

### **3.2.1. Appearance and attire**

Careful thought about appearance is important – you need to appear as though you should be in that area, and that you are not out of place.

How you dress is an important part of the trust-building exercise and will be better informed by the local knowledge that you pick up. As much as you can, try to look like the people in the area where you are working. Often, this will come down to dressing as they do. Just because you are there conducting legal investigation does not mean you should wear a suit. Blending in is crucial because it will help you to move around and conduct your work without drawing added attention to yourself. You should consider whether wearing a traditional garment that is commonly worn in the area where you are working would assist in the process of trust building. Paralegals working on the Sentence Rehearing Project from PASI and CHREAA often advise volunteers from the MHRC or visiting student volunteers on what is appropriate attire for investigation. This kind of expert local knowledge is invaluable.

### **3.2.3. Behaviour**

Local knowledge will also inform how you behave within the local community. Once again the key is to blend in and this should be reflected in your general manner: behave confidently and casually, showing that you are comfortable in the area, but try to avoid anything that might mean you are perceived as arrogant or imposing.

Be aware of local and religious behavioural customs. Within some communities, physical contact between men and women may be prohibited. There may be customs relating to handshakes, eye contact and even physical seating positions.

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### **3.2.4. Language**

If you know the local language or local dialect then use it! This is another way of ensuring you 'blend in' easily. If a colleague knows the local language then plan to take them along with you on the investigation. Even just knowledge of simple greetings will help you to blend in and will also help you to build trust as an 'ice-breaker' allowing you to make initial contact with witnesses and others in a friendly way. In the Sentence Rehearing Project, if a volunteer from the MHRC or a visiting volunteer student is accompanying you on an investigation then consider teaching them a few words of the relevant language, whether it be Chichewa, or another language such as Chitumbuka or Lomwe. Even if an investigator is working with a co-investigator who speaks the relevant language and can translate, it is always important to make efforts to communicate with people because it shows a willingness to make human connections and helps to build trust.

## **3.3. BUILDING THE TRUST OF A WITNESS**

Building the trust of a witness has a direct effect on the type, quality and quantity of information you obtain. More often than not, building a certain level of trust with your witness must be done before they will be willing to provide any relevant information, and the stronger that relationship of trust, the better the information you will be able to obtain.

It is recommended that wherever possible you use the Investigation Plan to note down any information about a witness that might help you to build trust with them. The more you know the stronger your position will be when approaching and interviewing witnesses. Age, appearance, residence, the type of work they do, relatives and friends are all examples of the type of information that will be useful.

No two witnesses are ever the same. This means it is important to adopt a personalised approach to each witness. Your approach, your questions and the style of questioning you choose to use must be tailored to each witness.

Read on below for advice on interviewing different types of witnesses: traditional leaders, life history witnesses and fact witnesses.

## **3.4. INTERVIEW TECHNIQUES – FROM HELLO TO INTERVIEW TO STATEMENT**

Often the point at which you gain the trust of a witness is exactly when you will move from initial contact into an interview situation. What is paramount here is to avoid going straight from "hello" and to the heart of your interview questioning with nothing in between. It is

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always a challenge to build trust in the limited time available for investigation but there are a few methods that can help you to do this.

### **3.4.1. First contact**

Initial contact is important and first impressions often make all the difference to how the rest of your time with a witness will go.

**Introduction** – wherever possible try to be introduced to a witness by someone the witness already trusts. Find out whether a family member, friend, community or village representative can introduce you to the witness and set up a meeting for you. During investigation in the Sentence Rehearing Project, paralegals have sometimes been able to arrange for a prisoner at Zomba Central Prison to speak with their family (either before paralegals visit the family, or even during the visit) to explain to them that the paralegals are working to help them. This introduction directly from the prisoner is a very effective way of building trust but may not always be possible.

The person you are interviewing may not have had much recent contact with the prisoner and, especially if they are a good friend or a family member, they will likely want to hear how the prisoner is. Often the prisoner will have given the person interviewing him or her a message to pass back to their home village – check the interview notes when planning the investigation, include any message in your Investigation Plan, and pass it on when you reach the village. This is a good way of building confidence with witnesses.

If you know a friend, family member or other contact of the witness then some creative ‘name dropping’ can often get you past the initial contact phase. If you are able to say “John said I should speak to you” or “the village chief said it would be ok to come and see you”, it may help in the initial stages of witness contact. Many paralegals have links with local representatives across the country that could be useful here.

**Understatement** – often an understated approach is effective. You will need to explain the purpose of your visit while at the same time doing all you can to ensure the witness feels comfortable and that they are at ease talking to you about difficult issues. Always stay calm and reassure the witness. An understated approach can help with this.

**Stay nice** – adopt a relaxed and open stance in terms of body position and body language. Avoid encroaching on the physical space of a witness and always follow their lead on where you should sit or stand. If you are at the entrance to someone’s home, make your presence known then leave an open space between you and the witness. That space gives the witness a physical comfort zone to be able to end the conversation if they are uncomfortable while at same time providing space for them to accept you. Remain calm and composed, and

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above all simply ‘stay nice’. The aim here is reassure the witness that you are someone worth speaking to and that they have no reason to end the conversation.

**Be versatile** – you may have to go from “hello” to interview right there on the doorstep. You may soon realise that the witness does not want to speak and you will need to adapt to this, first by trying again to gain their trust or by trying to find a way to get the information you need very quickly before you are shut out. If this does happen then try to find ways to interject questions while still aiming to gain trust.

**Laid back persistence** – a witness may agree to be interviewed but ask you to come back another time. This may be legitimate but sometimes it could be a way to avoid talking with you. A good approach here is to be politely persistent by following up with the witness after the initial contact until you are able to pin down a time to talk properly. In many ways getting to the interview stage is the hardest part but it is also the stage where you will have to gain further trust for interviews to be most effective.

### △ Overcoming Barriers

**What should I do if friends or family of the witness do not want me to interview the witness alone?**

Interviewing each witness individually is best practice. Conducting individual interviews is usually the best way to make people feel at ease and it also ensures that your witnesses’ statements are not tainted by the opinions of others within their family or community. This is particularly important when the alleged victim resides in the same community, and when witnesses live in a rural area or village where gossip about the incident has generated an accepted version of the truth that may not coincide with the facts. Sometimes, however, witnesses resist being interviewed alone and separately from close friends and family members. In these cases, try to recognise and address their concerns. For example, in some cultures it may be inappropriate for a man to be alone with a woman who is not his wife or close relative. In such cases, it would be helpful to ensure that your investigative team includes members of both sexes.

If having others present during the interview is unavoidable, try to limit the number of people, especially if their presence may make the witness uncomfortable or less forthcoming. Also, ask those present not to answer for the witness, or to make comments that may affect the witness’ statements.

**Location** – if possible allow the witness to choose the location so it is somewhere they feel most comfortable. Let them know if you think somewhere else would be better – the location should be somewhere quiet and not easily watched or overheard by other people.

See **Table 5** (left, from the Manual) for advice on helping witnesses to feel comfortable about being interviewed alone.

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### 3.4.2. Interview techniques

**Small Talk** – draw on your knowledge of the witness and your cultural knowledge to allow for casual conversation, especially in the early stages of the interview. Often, you can draw from your observations of the environment – including, for example, discussions about weather and/or harvests. These initial chats will help you to build trust but also introduce ‘go back to’ topics that will assist you to break up interviews and keep interviews flowing.

**Purpose of work** – once you have reached the interview stage you can move on to fully explaining the purpose of your visit and to explaining your role and the reason for the interview. This explanation should help you get the witness past any anxiety. If there has been a community sensitisation meeting, then build on the explanation given at the meeting. If community sensitisation has not yet happened, then you will need to explain the reason for your visit in full. For the Sentence Rehearing Project, it is important to explain that you are working for the defence team and that any information the witness provides will only be used to help the prisoner. You should also clarify that the prisoner is having a new hearing where the judge will give a fair sentence based on all the evidence given to them and that the conviction is not being challenged.

**Choice of interviewer** – if you are a multi-member team then you should decide who is the best person to lead the interview. This decision could be based on any number of factors, but one thing to always consider is whether any member of your team seems to have a particularly good relationship with the witness after the initial contact.

**Interview in pairs** – one person should conduct the interview while another takes notes. It is important to first take notes during the interview and then later use these to write a statement. Doing it this way allows you to record the relevant information and then to reorder it in a way that makes it as coherent and compelling as possible.

**Create an open and safe interview space** – as with your initial contact, create an open physical space to conduct the interview. Adopt a physical posture that is open and non-threatening, and which the witness will find welcoming and reassuring. This is both a space for acceptance and confiding by the witness and a space for you to work in as you develop the interview.

**Manage the interview location** – the interview space may be within a larger space, one where there are other family members or background activity, or perhaps a public space or an outside area. Quiet, private areas are usually preferable for interviews but if none are available then there is still a lot you can do to make the available interview location a good place to work. Stay observant and versatile, maintain confidentiality and maintain the trust

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of the witness. It may be beneficial to have another team member who can manage whatever else might be happening at the location.

**Be sensitive** – as much as possible maintain a sensitive and versatile approach to your interviewing and one that is clearly non-threatening and non-forceful. You need to respect your witness and ensure that there is nothing in your interview technique that could lead your witness to shut down the interview. Difficult subject areas will often cause emotional reactions and you will need to deal with those reactions sensitively. You may need to take breaks or, in some cases, to even postpone interviewing until a later date. Above all, while you should do all you can to gather information needed to support the defence of your client, this must be balanced with the needs of your witness during what can sometimes be a difficult and emotionally draining experience.

**Be non-judgmental** – your main role is to obtain information from the witness. Sometimes the information you are given may conflict with your personal values but you must remain neutral and non-judgmental in your approach, your dialogue and even your body language.

**Making a record of the interview** – always ask if it is ok to take notes and, if the witness agrees, try to take detailed notes on everything that is said. If the witness is uncomfortable at first with notes being taken, it is still worth going back to ask again as they may change their mind once they become more comfortable with you. As a last resort, you could choose suitable moments when exact information such as a date or a phone number is given to take out your notepad and ask “it is ok if I write that down?”

Adopt a natural, reassuring questioning style that incorporates questions naturally within a fluid conversation. At the same time, make sure you are accurately recording the information you are given. Your notes may form the basis of a statement so they need to be accurate. If you are unsure about details – such as names, places, dates or events – then do not be afraid to ask questions to verify those details. Read over your notes at the end of your interview and ensure you have covered all the questions you wanted to ask and that you have not missed any important information. It can be a tricky task but try to build a rapport and trust with the witness at the same time as making sure your information recording is accurate. The difficulty of doing these things at the same time is why it is often best to work in a team of two, with one leading the questions and the other taking notes.

If you are the one taking notes then try to capture everything the interviewee says. Taking these notes is difficult so you will need to practice. Consider developing some symbols or shorthand to use to help you take notes. You can write your notes in whichever language is easiest – English, Chichewa or the language that the interviewee is using – but bear in mind that the notes will be used to create a statement written in English and that you might need to share the notes with a defence lawyer. One approach is to write the notes in English but

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to also write down a word in the language used by the interviewee if you think that the English translation of that word doesn't quite capture the right meaning.

**Don't write out the statement as the interviewee is speaking – take notes during the interview, write statements after the interview.**

### **3.4.3. From interview to providing a statement or testifying**

You've done the hard part and gone from locating a witness to agreement to be interviewed and then carrying out the interview. The final hurdle is encouraging your witness to agree to sign a statement or to testify in court and, if providing a statement, to get this written out in agreement with the witness so they can sign it. For your witness, it may have taken immense courage for them to go through the interview and they may be relieved that the process is over, but at this point you need to ask them to continue their assistance. In the Sentence Rehearing Project you may often only have one shot at getting the statement that will be used in court so getting the witness' agreement and then working quickly but carefully to put together the statement based on your notes are both important skills that need to be developed.

Explain to the interviewee that you would like to write out a statement setting out what they have said. Explain that you will read it to them or they can read it themselves (if they can read English), they can make any changes and, once they are happy with the statement, that they will sign it or make their sign using a fingerprint.

**Make it ok** – some witnesses may feel uneasy signing a statement. They may feel even more intimidated about the prospect of testifying in court. In the Kafantayeni resentencing cases, very few witnesses will actually need to testify. You will need to reassure the witness that what you are asking them to do is ok and safe – and in the interests of the prisoner you are representing. This is very much about trust and about the witness understanding how important their assistance is.

**Continue to build trust** – you need to continue building trust throughout the testifying or statement-creating period. If you are working in a pair then it can often help if one team member chats with the witness while the other one works on writing the statement. Be available for contact so that you can do as best as you can to alleviate concerns and anxiety.

**Close the interview** – close the interview but keep the lines of communication open. Explain what will happen with the information, what it will be used for and explain the next steps. If appropriate, offer to keep the witness informed of the progress of the case. Tell the witness how you can be contacted should the witness have any queries or concerns, and check that you have their correct contact details. If the witness is a friend or family member of the

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prisoner, then ask them if there is any message that they would you like to pass back to the prisoner.

Here you close the interview but leave your relationship with the witness open, as you may need further information and assistance. Two-way communication is preferred, so as much as possible ensure that you have a means of contacting the witness and vice versa.

### **3.5. HOSTILE WITNESS GUIDANCE**

#### **3.5.1. Personal safety**

Personal safety is of paramount importance when dealing with witnesses. No witness interview or information that can be obtained from an interview is worth risking injury or harm to yourself.

It is recommended that hostile witnesses should, wherever possible, not be approached alone. If you believe a witness may be hostile – for example, if they are related to the deceased – then consider what precautions you might need to take, such as asking a local police officer to accompany you. While you should not go alone, in some situations going in a smaller team will help to keep hostile witnesses calm and this should be assessed when you reach the location of the witness. The presence of an impartial third party such as a local police officer, religious leader, or a traditional leader may help to defuse any initial tensions.

#### **3.5.2. Witness assessment**

Making a detailed witness profile in your Investigation Plan will allow you to make an assessment of the personal safety risk involved in locating and interviewing a potentially hostile witness.

#### **3.5.3. Area assessment**

Where is the witness located? Where will you approach the witness and what are the personal safety implications?

#### **3.5.4. Mode of transport**

Identify the best mode of transport possible based on the level of risk. Should the risk become serious during approach or interview you may need a quick and easy way out of danger.

#### **3.5.5. Notification procedures**

You should notify a team member of work on the ground that may involve hostile witnesses. If you are travelling into areas of potential danger then inform a team member before you

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leave. Implement a check-in procedure to ensure your personal safety and, if you think it is necessary because of the risk involved, implement a code-word procedure that you can use to tell your team members on the ground that it's time to leave the area or your colleagues back at the office that you need help.

#### **3.5.6. Risk to property**

Ensure that all electronic files have been backed up if you have identified a legitimate risk to property. If there is no reason to have laptops or any other electronic equipment in your possession then they should be left at the office or at home.

#### **3.5.7. Risk to non-caseworkers**

Be careful how you share contact information and personal information with hostile witnesses. Do not share your address and take care when sharing contact telephone numbers. Do not do anything that could put a family member or friend at risk.

### **3.6. IN THE FIELD IN A HOSTILE SITUATION**

#### **3.6.1. Approach**

Trust has to be built with hostile witnesses. Potentially this is more difficult to do than with friendly witnesses so creativity should be used to diffuse potential hostility. You will use similar techniques to those used with non-hostile witnesses in terms of approach and interviewing techniques but you will need to be prepared for a witness who is potentially more volatile and much more reluctant to assist you.

#### **3.6.2. Immediate hostility**

Prepare yourself both mentally and physically for hostility when first contact is made, from the moment you approach the location of a hostile witness or you call the name of the witness in a public place.

Assume a non-threatening physical position but also assume a physical position that demonstrates that you do not feel threatened. Do not become a victim in a hostile encounter with a witness. As with non-threatening witnesses, take an open approach, making sure you give enough space for the hostile witness and that your non-aggressive approach is clear to them. Sometimes hostile witnesses who have suffered because of the actions of your client may at first be aggressive or rude but you can work to calm them down and try to engage in an open conversation.

Whenever a witness refuses to talk to you, it is very rarely personal and you should try not to be offended. Instead, use your professional skills to navigate the witness towards an interview situation.

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In a hostile situation, your role may in part be to show acceptance and to soak up the hostility, opening the way for a dialogue with the witness. Remain polite, calm and composed throughout. If you believe you are at risk then apologise to the witness for the inconvenience, thank him or her for their time and exit the immediate area as quickly as possible.

Successful negotiation will often require thinking on your feet from within a hostile situation. There is no textbook formula for this but success often rests on the investigator being able to maintain calm control and continually working to create a relationship of trust in a short space of time. Try to offer the witness reassurances that it is ok for her or him to speak with you.

In the Sentence Rehearing Project, some paralegals have reported that they have been able to gain trust from potentially hostile witnesses by clearly explaining that although they are working for the defence, they are providing information to the courts so that a judge can decide on a fair sentence. Explaining that the process is overseen by the courts which act impartially may help to put witnesses at ease.

### **3.6.3. Unpredictable hostility**

Hostile witnesses can be the most unpredictable and can swing from reluctance to willingness to assist from day to day, or even from minute to minute. In this situation, it is important that you maintain a consistently calm and confident stance right from the first contact.

## **3.7. PROBLEM SOLVING**

When dealing with all types of witnesses you will have to think on your feet and deal with issues that often relate to a lack of trust in you and your team or to a witness' own anxiety and fear about assisting you or being involved with the case that you are working on.

How do you solve the problems that arise? The best way out of problems is usually to offer positive routes out of negativity. This takes skill but it all goes back to being able to build and maintain trust with your witnesses. Consider these examples of turning negative attitudes towards a good outcome:

**"I don't have time for this"** → **"It won't take long"**

**"I don't want to speak to you"** → **"Listen, just give me a few minutes at least"**

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## **Recovery or exit**

In a hostile situation, then the only two outcomes are that you manage to recover the situation and proceed with the interview or you decide it's time for you to exit. If you are forced to exit then make sure you stay open, leave contact details and try to take the phone number of the witness or others in the village to you can follow up, but always aim to leave as 'Mr. Nice Guy'.

## **3.8. PRISONER INTERVIEWS**

Trust will need to be built with the prisoner on whose case you are working. While many prisoners will show respect and even gratitude to you because you are working on their case and are 'on their side', this does not mean that trust will be automatically follow. You will need to take time to build trust with the prisoner, not least because the prisoner will be one of your most valuable witnesses. He or she may have information about the facts of the offence and where it took place, about who else was involved, about the exact circumstances that lead to the incident, or even about key witnesses. Information the prisoner provides will also be the starting point for all investigation of possible mitigation that relates to the circumstances of the offender, such their childhood, physical and mental health, relationships and other aspects of their life and social history.

The prisoner is a key component of the legal team and you should make them feel that they are and let them know how valuable their role will be. As a part of the legal team inform the prisoner about the work that you will be doing and be open to accept their input, their ideas and their advice about the investigation. Any assistance they can provide will feed into your Investigation Plan.

### **3.7.1. The prisoner interview environment**

Interviews that take place in prisons in Malawi may be difficult due to the prison environment. Prisoners may not feel comfortable about opening up to you because interviews are taking place in prison where they may feel that they can be seen or heard by prison staff or other prisoners. Sometimes it is possible to use a private room for interviews and if the prisoner indicates that he or she is uncomfortable talking in the open then ask a prison office if you can use a private room. This is especially important when you are talking about the most sensitive kinds of information, such as details of the offence or about difficult issues such as mental health problems or family violence.

### **3.7.2. Building trust with the prisoner**

Create a safe and open space, even within the difficult prison environment, where your interviews will take place. Allow a relationship of trust to develop without adopting a

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forceful approach. You may have to be patient and cannot expect that a prisoner will fully trust you during a first visit, or even after two or three.

Be accepting and non-judgmental. Remember your role here is to obtain information for your investigation. Exhibit this attitude through your approach, through your dialogue, and even through your body language.

**Do not patronise** – be mindful of your behaviour, your approach, your language style and tone and ensure that you are never patronising towards the prisoner.

Do not go straight into a prisoner interview and start asking questions about the case. Remember this is an individual who is disconnected from the outside world, from his family and friends and his community. Spend time just talking about how he is doing, about his conditions of confinement, about his family or politics or sport. Show concern for the prisoner's welfare. This human interaction will assist you in building trust.

### 3.7.3. Interviewing the prisoner

Be patient and understanding. The prisoner may have been incarcerated for some time and experienced physical and psychological trauma that may have affected his memory or his recollection of events that took place in the past. The passage of time may also just be a simple reason for a prisoner not remembering events that happened some time ago. Do not assume that a prisoner is lying if he says something that is inconsistent with the trial record: memories can be hazy and sometimes the trial transcript may not have captured all the facts. By being patient and understanding you will help the prisoner to help you. As outlined above, maintain a non-threatening, non-forceful and sensitive approach to your interviewing at all times.

As with all witnesses, ensure that your recording of the interview through note-taking is accurate. Repeat questions in the same visit – perhaps looping back to a point that is unclear sometime later in the interview and in later visits as a way to get to the prisoner's most consistent recollections. The prisoner will be a vital link connecting you with key witnesses and his community and village. Make sure you record the relevant details in interview notes, including names, relationship to the prisoner, phone numbers, locations and detailed directions.



*Zomba, February 2015 – a prison officer marks the prison record of a man released after a sentence rehearing where the court considered evidence gathered by paralegals (Photo: Tom Short, Reprieve)*

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## 4. ROUTINES FOR BEST RESULTS: CHECKLISTS ✓

The more investigation you do, the more you will develop a routine covering the things that must be done to prepare for investigation, during investigation in the field and after investigation once you're back in the office.

### 👍 Success Story

#### Winning the Case Through Investigation

In one murder case in Malawi, the legal team was able to corroborate their client's self-defence claim through investigation. None of the police reports indicated that the defendant had acted in self-defence and this information was not included in the defendant's statement to the police. Nevertheless, the defendant insisted that he had been attacked by the alleged "victim". He swore that when he was arrested, he had stab wounds to the back of his head and the back of his arm. He showed his lawyers the scars.

Armed with this information, his lawyers tracked down the police officer who had arrested him. A paralegal from the region knew the police officer and located him at a roadblock. When interviewed, the police officer confirmed that the defendant had serious, deep wounds at the time of his arrest.

At trial, the police officer was compelled to tell the truth about the defendant's wounds. The defendant also testified in his own defence. After hearing all the evidence, the court acquitted the defendant of all charges.

(from the Manual)

The first thing to be checked off your list of tasks will of course be completing an Investigation Plan tailored to the facts of the case and the defence strategy. After that you will need to do a huge range of things: calling ahead to find out the location of witnesses, making practical arrangements for getting to the investigation location, sensitisation, interviewing and taking notes, perhaps arranging for refreshments, writing and signing statements, making photocopies of the statements, passing information on to the MHRC and so on.

At Annexes [8] and [9] are two comprehensive checklists that you should use to guide you through the process: one for going into the field and one for once you are back at the office.

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## 5. CONDUCTING COMMUNITY SENSITISATION – BEST PRACTICE

The entry point to community sensitisation will almost always be local traditional leaders. When you first approach a traditional leader you should take time to clearly explain why you are there and ask for their support through the process. If they agree to assist then ask them to gather the members of their community. Depending on the facts of the case, you may need to make a decision about whether you should briefly meet with the relatives of the families of the prisoner and/or the deceased before speaking to the whole community. It is important to start the sensitisation by clearly identify the visiting team and the institutions they are representing, what they do and their role in the visit. Community members, especially in rural areas, may have preconceptions about visitors from outside and first impressions really matter here. The team needs to be friendly and flexible so as to get all the community members on the same footing and to make sure they are comfortable with the process. In many ways, this is similar to building trust with individual witnesses – it all goes towards creating a space in which people feel at ease to give information.

After you have made your introductions, provide an overview of the project and explain in broad terms how the law changed because of the Kafantayeni decision. The team should emphasis that what the court is considering in the resentencing process is the sentence that the prisoner receives. Under the new law, a High Court judge will consider all the available evidence and make sure that the sentence the prisoner



*Working in a team of two, paralegals from PASI East conduct a sensitisation meeting (Photo: Harriet McCulloch, Reprieve)*

receives is one that properly reflects the circumstances of the incident and the offender. Not all cases are the same and therefore the sentences won't be the same – it's all about reflecting the individual circumstances. In the sentence rehearings conducted so far, prisoners have received a range of sentences. It is the High Court judge hearing the case who decides what the appropriate sentence should be. Sometimes members of the community may have questions at this stage.

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We can never know the outcome of a case until the hearing. Making sure the relations know that the defence team is doing all they can to gather and present evidence for a fair sentence should help to reassure them. At the same time, the team should be careful in the way the process is presented so that the expectations of the relations of prisoners are not raised unreasonably.

Always make sure that the information conveyed is accurate. Experience has shown that when the new sentencing process is explained clearly, the community is usually very receptive to the presence of paralegals carrying out investigation. Sometimes, the community sensitisation also helps to reassure relations of the deceased who may want to speak to paralegals after hearing about the resentencing process. Nonetheless, always be careful when speaking to relations of the deceased as the news of resentencing may stir up emotions. Again, emphasising that the decision on sentence will be made by the courts after considering all the circumstances of the offence and the offender may help to put people at ease.

Explain the process of interviews and how long it may take to finish. Ask the traditional leaders to accompany the team if the interviews will be conducted at a different place to where the sensitisation meeting is conducted. Inform them of any feedback on the progress of the matter and make sure you take a note of their contact details.

Further tips for best practice include:

- ✓ Take refreshments if the community sensitisation meeting has been arranged in advance.
- ✓ Ask the traditional leader to invite the family of the prisoner and other community members for the community sensitisation meeting.
- ✓ If members of the victim's family live in the same village or if the offence is within the prisoner's family discuss with the traditional leader and/or the police officer how to approach the community sensitisation meeting – should they be invited or could this create a dangerous situation?
- ✓ If you need to wait for community members to gather, consider asking the traditional leader for permission to interview him/her and other witnesses already present to maximise your efficiency.
- ✓ Try to hold the meeting in an open space where the community can all gather, where they can hear easily, and where they feel comfortable to sit and listen to what you have to say.
- ✓ Leave some time for questions from the community.
- ✓ Try to take a camera or cameraphone to document the community sensitisation.

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My notes:

- ✓ Ask for permission to document the community sensitisation meeting with a camera and a note-taker. You need to make a record of the sensitisation meeting. This will help the MHRC to show what progress has been made in the project but even more importantly it can also be used in court to show that the community has been informed of the change in law which may help to reassure the judge that the prisoner will be well-received if he or she is released. A Template Community Sensitisation Memo for recording the meeting is included as Annex [3].

## 6. WITNESS TYPES

### 6.1. TRADITIONAL LEADERS

Find out if the traditional leader is a relative of the prisoner or victim.

If they are a relative of the prisoner, or a relative of neither but they know the prisoner well then consider interviewing the traditional leader as a life history witness and consider whether they could answer questions about the prisoner's life history and mental health.

If they are a relative of the victim then consider whether the traditional leader will be able to give an unbiased statement. If your interview suggests that he or she cannot give an unbiased statement, thank them very much for their time and do not take a signed statement. However, as a relative of the victim if they are willing to give a statement favourable to the prisoner then this may be a very powerful part of the evidence supporting a lenient sentence so try to explore this with them.

Use the interview best practices outlined above.

Use the Sample Statement from Village Chief in Annex [7] as a basis for the statement.

See below for best practice for writing witness statements.



*A witness being read his statement (Photo: Emile Carreau)*

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My notes:

## 6.2. LIFE HISTORY WITNESSES

Once again, it is important to build trust with the witness from the very beginning. Share what you know about the prisoner's current health and welfare – and pass on any message from the prisoner given during interviews. Often you will be providing a vital link between the prisoner and his family that without you would not be possible.

Where you are interviewing a caregiver, or someone who may have information about the prisoner's life history or mental health, use the questionnaire to guide your interview. If you are interviewing another life history witness, such as a religious leader or friend, use the Sample Statement from Life History Witness in Annex [6]. Use the interview best practices outlined above.

If you feel that the family members are reluctant to share negative information with you then consider calling Zomba Central Prison and asking the officers to bring the prisoner to the phone to confirm to family members that they should speak to you. For example, where the prisoner has confirmed the existence of negative information such as alcoholism or drug use but family members deny that the prisoner experienced these problems then it may help for the prisoner to speak to the interviewee on the phone. Family members' natural instincts will be to protect their loved ones so it is important that they understand that the prisoner wants them to share sensitive information to aid his or her defence.

Try to get hold of copies of all available documentation to support any information that the interviewee gives you about the prisoner. For example, in relation to good character, if the witness tells you that the prisoner was a member of the local church then ask if they have photos of prisoner at church, or copies of any church study certificates.

Similarly, try to obtain supporting documentation for any information you collect about mental or physical health problems. Record the name of the place where any illnesses were treated and the date this happened. In the Sentence Rehearing Project, important documentary evidence has been found at hospitals after paralegals obtained details of treatment from family members during their investigation.

## 6.3. FACT WITNESSES

If you are able to locate a witness who claims to know what happened then first find out what their involvement in the case has been to date. Try to determine if the witness was a police witness or a prosecution witness at trial, or a witness for the defence, or if the witness saw the offence but was not interviewed by police or asked to come to court at the time of the trial.

Follow interview best practices (see above). Ask the witness about their recollection of the event, gently probing to make sure you get the fullest possible account.

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My notes:

If the witness appears to be biased against the prisoner – for example, if the witness has a personal grudge against the prisoner – then thank the witness for their time and do not go on to take a statement. Keep your notes and provide them to the MHRC or the defence lawyer.

If, however, the witness appears to be neutral and is happy to give a statement, continue the interview, taking notes as you go along, and then follow the best practice for writing witness statements below. Make sure you get a full account of the facts and include detail that shows that the witness is a reliable source of information about the offence.

## 7. WRITING WITNESS STATEMENTS – BEST PRACTICES

- ✓ Use the templates but don't be afraid to change or add information.
- ✓ Don't write the statement until you have finished interviewing the witness and have taken time to collect your thoughts about how to structure the statement and what information should be included.
- ✓ Discuss the statement with your interviewing partner to ensure you haven't missed anything.
- ✓ Rearrange the order of what the witness has told you so that the information flows in a clear and coherent way. Remember, each statement tells a story. You want to make sure that the narrative flows naturally from one topic to another. It will often make sense to use a chronological format, starting from the prisoner's childhood and moving gradually to the present day.
- ✓ It is not necessary to include everything that the witness has told you. Only include information which is relevant and helpful.
- ✓ Remember the objectives you set before going into the field.
- ✓ Write out the statement carefully in English.
- ✓ Make sure that your handwriting is clear.
- ✓ As you are writing, ask the witness to clarify any issues that are not clear or that need more details to ensure your statement is comprehensive.
- ✓ Make sure you don't make any mistakes – your mistakes will make it difficult for the judge to rely on what the witness is saying. Think carefully about what you are writing.
- ✓ If the witness is unsure about something then sometimes the right decision will be to not include the information at all in case other earlier or later statements from other witnesses conflict with it. Other times, however, it may be appropriate to reflect the uncertainty in the statement.
- ✓ Remember the interview formalities – include the date and a statement of truth:  
*"This statement is true to the best of my knowledge and belief and I have made the*

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My notes:

*statement knowing that, if it were tendered in evidence, I would be liable to prosecution if I wilfully stated in it anything that I know to be false or did not believe to be true."*

- ✓ If the witness cannot read English, include the line: "*(INTERVIEWER'S NAME) read this statement to me.*"
- ✓ If you are not writing because your colleague is the one writing up the statement talk to the witness and make sure they feel at ease – ask if they have any questions about the process.

## Further help

If you have any comments or questions about this guide please contact Harriet McCulloch ([harriemcculloch@gmail.com](mailto:harriemcculloch@gmail.com)), Chris Chang ([christopherchenleechang@gmail.com](mailto:christopherchenleechang@gmail.com)), Tom Short ([tomwshort@gmail.com](mailto:tomwshort@gmail.com)), or Professor Sandra Babcock ([slb348@cornell.edu](mailto:slb348@cornell.edu)). For advice on community sensitisation, contact Alfred Munika ([centrecrapac@gmail.com](mailto:centrecrapac@gmail.com)). For advice on issues relating to mental health, contact Ndumanene Devlin Silungwe ([ndumanene.silungwe@sjog.mw](mailto:ndumanene.silungwe@sjog.mw)).

Please see also:

[www.reprive.org.uk](http://www.reprive.org.uk)

[www.255researchandinvestigation.com](http://www.255researchandinvestigation.com)

[www.lawschool.cornell.edu](http://www.lawschool.cornell.edu)

[www.aclu.org](http://www.aclu.org)

[www.deathpenaltyworldwide.org](http://www.deathpenaltyworldwide.org)

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My notes:

## LIST OF ANNEXES

Annex 1 – Template Investigation Plan

Annex 2 – Template Witness List

Annex 3 – Template Community Sensitisation Memo

Annex 4 – Mitigation Investigation Questionnaire: English

Annex 5 – Mitigation Investigation Questionnaire: Chichewa

Annex 6 – Sample Statement from Life History Witness

Annex 7 – Sample Statement from Village Chief

Annex 8 – Going into the field – Checklist

Annex 9 – As soon as you get back to the office – Checklist

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My notes:



## Annex [1]

### TEMPLATE INVESTIGATION PLAN

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**Date:**

**Investigator:**

**Organisation:**

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Prisoner name:

Names of co-defendants:

Prisoner's current location:

Prisoner's home village:

Location of offence:

Investigation region:

Date of offence:

Date of sentencing:

Date of commutation:

Date of appeal (if applicable):

Dates of bail (if applicable):

Other key dates:

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My notes:

## 1. Summary of the case facts

Write a brief summary of the facts – if there is a court record you may need to summarise that, or if there is only a prisoner interview then refer to that. The aim is to think through the known facts and provide a quick reference point for you to look back at as you carry out the investigation and learn more about the case. If you need more information, contact the person who conducted the interview. This will usually be a Chancellor College law student or a PASI Zomba paralegal.

**INCLUDE A NOTE OF THE INVESTIGATION OBJECTIVE(S) e.g. collect evidence about the case facts; gather mitigation evidence; etc. This should help prepare you for gathering the right kind of information. Remember that one investigation will normally have several different objectives.**

## **2. Prisoner's life history**

**Write a brief summary of the prisoner's life history as recounted by the prisoner in the interview – you can copy and paste from the prisoner interview. If you need more information, contact the person who conducted the interview. This will usually be a Chancellor College law student or a PASI Zomba paralegal.**

**INCLUDE A NOTE OF THE INVESTIGATION OBJECTIVE(S)**

### 3. Case contact info

**A. Human rights worker(s):** [please provide the names/contact details of the individual(s) assisting you]

Name	Contact Info

**B. Lawyers:** [please provide the names/contact details of the individual(s) assisting you]

Name	Contact Info

**C. Village contacts:**

Name	Contact Info

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My notes:

**D. Local investigators:** [please provide the names/contact details of the individual(s) assisting you]

Name	Contact Info

**E. Local support staff:** [please provide the names/contact details of the individual(s) assisting you]

Name	Contact Info

#### 4. List of background documents

List the documents you have been given, for example:

- Interview with the prisoner – this should detail potential witnesses and contact details AND the prisoner’s recollection of the facts [if you do not have a recent interview with the prisoner, tell your contact person at the MHRC]
- Any witness statements taken in previous investigation trips
- Any court records (there may be no court record or the court record may be incomplete)

Document name and date	Notes

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My notes:


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My notes:

## 5. Aims of investigation

The overarching aim of investigation is to [ADD INFO]:

An additional aim is the exploration of [ADD INFO]:

## 6. Relevant defence theories and strategy

Here you will document a case theory that will develop as you gather more information.

## 7. Areas of investigation – tick or underline relevant areas

Case file review

Research – public source research, deep internet research

Records collection

Frontline investigation – visits to key locations

Frontline investigation (witness-based) – witness location and interview

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My notes:

## 8. Projected Investigation

### 8.1 File review

Obtain files from current and former legal teams where necessary and review in order to assist in planning of investigation. Files to review include but not limited to:

- Trial transcripts
- Witness statements
- Police reports
- Defence investigation reports

### 8.2 Research

[If relevant, add any research that needs to be done]


### 8.3 Records collection

[If relevant, list any records that need to be collected]

Record	Relevance

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My notes:



#### 8.4 Frontline investigation – location visits

Visits to key areas connected with the case to include but not limited to:


#### 8.5 Meet with prisoner

Aim of meeting, information to be obtained

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#### 8.6 Frontline investigation – witness location and interviews

##### 8. Fact witnesses

Write a list of potential witnesses and what you would like to talk to them about. If the case has a court record, then this may not be necessary or perhaps you will just need to find a witness to talk about just a few facts; for example, a fact witness who saw the prisoner drinking just before the offence. Check with the MHRC or the lawyer. For example:

- A. **Witness 1** – Alfred’s friends Peter and Andrew. **Focus of the interview** – other people present, intoxication, extra ingredients in beer, Alfred’s behaviour in the community (before the fight), the identity of the victim and the details of the fight

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My notes:

including details of self-defence. **Location** – Peter and Andrew live in the same village as Alfred.

- B. **Witness 2** – Nelly. **Focus of the interview** – other people present, intoxication, added ingredients to the beer, previous behaviour of Alfred, previous behaviour of the victim, details of the fight including details of self-defence. **Location** – Nelly’s bar is in a neighbouring village.
- C. **Witness 3** – any other people present during the fight (Peter, Andrew and Nelly may have information on who was there). **Focus of the interview** – see above.

<b>Witness 1</b>	
<b>Witness 2</b>	
<b>Witness 3</b>	
<b>Witness 4</b>	
<b>Witness 5</b>	
<b>Witness 6</b>	
<b>Witness 7</b>	
<b>Witness 8</b>	

## 9. Life history witnesses and traditional leaders

Write a list of potential witnesses and what you would like to talk to them about. For example:

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My notes:

- A. **Witness 1** – Alfred’s mother. **Focus of the interview** – caregiver questionnaire and Alfred’s age. **Location** – Alfred thinks his family still lives in the same village.
- B. **Witness 2** – village traditional leader. **Focus of the interview** – Alfred’s behaviour before the incident (use the template statement). **Location** – Alfred’s home village.

<b>Witness 1</b>	
<b>Witness 2</b>	
<b>Witness 3</b>	
<b>Witness 4</b>	
<b>Witness 5</b>	
<b>Witness 6</b>	
<b>Witness 7</b>	
<b>Witness 8</b>	

## 10. Logistics

**Complete a short summary of your plans for the investigation**

- A. Which officers will participate in the activity? Include contact details.

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My notes:

B. Which traditional leaders will participate? Include contact details.

C. What vehicle will you use?

D. How long do you think the journey will be?

E. Will it be necessary to stay overnight? A full day is needed for investigation so make sure this is taken into account when planning. If you need to stay overnight, where

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My notes:

do you intend to stay? [Please contact the MHRC if there are any concerns about the need to stay overnight, including budgeting]

F. Estimated budget

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My notes:

Annex [2]

**SAMPLE WITNESS LIST**

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**Date:**

**Investigator:**

**Organisation:**

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NAME + ALIAS	CONTACT INFO	RELEVANCE	NOTES

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My notes:

Annex [3]

TEMPLATE COMMUNITY SENSITISATION MEMO

MEMORANDUM RE. COMMUNITY SENSITISATION IN THE CASE OF [X]

**From:** [name], [organisation]  
**To:** [name of prisoner] defence team  
**Re:** [Community sensitisation meeting [and village mitigation investigation] in the case of [name of prisoner] on [date]

[The community sensitisation was not/was arranged in advance] [as it was not possible to contact any of the family / community members by phone][by contacting [name]][contact details]. [Name of prisoner] comes from the village of [X], T/A [X] in the district of [X].

On [date] I ([name]) travelled with the paralegals [X], [X] (tel:[X]) of [organisation] to conduct [a community sensitisation meeting with traditional leaders and community representatives][and village mitigation investigation] in relation to the case of [name of prisoner] in the context of the Sentence Rehearing Project.

[Details of journey and directions]

[Details of the community sensitisation meeting]

[List of people who gave witness statements]

[Any further contact details obtained]

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My notes:

## Annex [4]

### MITIGATION INVESTIGATION QUESTIONNAIRE: ENGLISH

#### I. BASIC INFORMATION ABOUT THE INTERVIEWEE

- ☐ Full Name:
- ☐ Relation to [PRISONER]:
- ☐ Village:
- ☐ T/A
- ☐ District
- ☐ Phone Number (if applicable):
- ☐ Best method of contacting him/her:

#### II. CURRENT CONTACT/RELATIONSHIP WITH PRISONER

- ☐ Do you currently have any contact with [PRISONER]?
- ☐ When did you last speak with [PRISONER]? When did you last see [PRISONER]? If you are in contact with [PRISONER], through what means? How often is the contact (and why)?

#### III. MAP OUT PRISONER'S FAMILY TREE AND SOCIAL HISTORY

- ☐ Tell me about [PRISONER]'s family. (Add details to the genogram).
- ☐ Tell me about other people who were involved in looking after [PRISONER] and his siblings (Add detail to genogram)
- ☐ Could you tell me a little about your relationship with [PRISONER]? How well do you know him? How long were you [friends, co-workers, etc.]?
- ☐ If they are not currently in contact with [PRISONER], ask them why not (i.e. too expensive to visit, etc.).

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My notes:



- ☐ Can you tell me a little about [PRISONER]? What was he like as a [brother/child/father/student/friend]?
- ☐ Did he have any positions of leadership in the village? Was he involved in the community (e.g. charity work, sports clubs, music groups)? Were there rituals of passage that he was involved in? What were they like, and what do you remember of him at that time?
- ☐ What was his reputation in the village/community?
- ☐ Did he have a job? What did he do? At what age did he start working? What kind of work did he do as a child?
- ☐ Who taught him the work he did? How did he learn the things he did? Did others help him?
- ☐ Did he have problems learning his work? What kinds of problems did he have at work? Can you remember anything unusual happening at work or in relation to work?
- ☐ Did he go to mosque or church? Did he hold any positions of leadership? Did you ever notice any change in his religious observance? What role does religion play in his life?
- ☐ Where did he go to school? How far did he get? Why did he stop attending school? How poor were the family compared to others?
- ☐ Did he learn to read and write?
- ☐ For teachers/principals/religious leaders/bosses: How did [PRISONER] get along with the other students/members/co-workers? Did [PRISONER] socialize with other students/members/co-workers? Did he have any positions of responsibility at school? Did you notice anything unusual about [PRISONER]'s behavior? Can you tell us anything about [PRISONER]'s family life?
- ☐ What impact has [PRISONER]'s incarceration had on you/[PRISONER]'s family?

#### IV. DETERMINE POSSIBLE MENTAL ILLNESS/MENTAL DISABILITIES

- ☐ If the interviewee does visit [PRISONER] in prison or knows people who do, ask what impact prison has had on him and in particular on his mental state. Ask about anxiety, lack of appetite and the effect of being held in a "condemned cell" if on death row.

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My notes:

- ☐ Ask about [PRISONER]'s village. Have [PRISONER]'s family always lived in the same village? (If not, get details of other locations). Describe the geography of the village and any important landmarks nearby.
- ☐ Has it been necessary for anyone in the family to be cared for in some way? (Ask them to try and think back to [PRISONER]'s grandparents and to include [PRISONER]'s children if any. If yes, ask for details.)
- ☐ Has anyone in the family turned to alcohol or drugs in order to make themselves feel better? (Ask them to try and think back to [PRISONER]'s grandparents and to include [PRISONER]'s children if any. If yes, ask for details.)
- ☐ Has anyone in the family ever been bewitched? (Ask them to try and think back to [PRISONER]'s grandparents and to include [PRISONER]'s children if any. If yes, ask for details.)
- ☐ Has any in the family ever been 'confused in the head'? (Ask them to try and think back to [PRISONER]'s grandparents and to include [PRISONER]'s children if any. If yes, ask for details.)
- ☐ Has anyone in the family ever been violent towards others? (Ask them to try and think back to [PRISONER]'s grandparents and to include [PRISONER]'s children if any. If yes, ask for details.)
- ☐ What serious problems have people in [PRISONER]'s family faced? (Ask them to try and think back to [PRISONER]'s grandparents. If yes, ask for details)
- ☐ Can you remember anything unusual about [PRISONER]'s family?
- ☐ What serious problems has [PRISONER]'s community faced? (Ask them to try and think back to [PRISONER]'s grandparents). Have there been any problems with diseases or illnesses?
- ☐ Describe any community or family members that [PRISONER]'s community or family has experienced problems with, for example if it has been necessary to exclude anyone from the community (Ask them to try and think back to [PRISONER]'s grandparents.)
- ☐ What was [PRISONER]'s health like as an infant, child, teenager? Did he ever suffer from any serious illnesses? Malaria, tuberculosis, other illnesses?
- ☐ Did he ever suffer any head injuries? (If yes, ask for details—what caused the head injury, how old was he when it occurred, how long, how often, were there any witnesses).
- ☐ Did he ever lose consciousness or did he ever lose time? (Details: what age, how long, how often, were there any witnesses).
- ☐ Did he suffer any memory loss? (Details: what age, how long, how often, were there any witnesses).

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My notes:

- ☐ Did [PRISONER] ever experience the symptoms of cerebral malaria: as a child, 1 – 3 days of fever or weakness and then not conscious (coma) or as an adult, fever, headache, body ache, delirium and falling unconscious (coma)?

[If yes to questions relating to malaria, TB or head injuries]:

- ☐ Did [PRISONER] ever experience problems with his/her speech or language following the injury or illness?
  - ☐ Did [PRISONER] experience problems concentrating or remembering things after the injury or illness?
  - ☐ Did [PRISONER]'s behaviour change after the illness or injury?
- ☐ Did he suffer from headaches?
- ☐ Did he ever have seizures?
- ☐ Did he seem to daydream? Were there times when you would call him, and he would not answer?
- ☐ Did you or anyone in your family ever take him to a hospital? Why? (Details: age, how long, how often, were there any witnesses, which hospital).
- ☐ Did you or anyone in your family ever take him to a traditional healer? Why? (Details: what age, how long, how often, were there any witnesses).
- ☐ What sort of traditional remedies, if any, did he receive for any mental difficulties? Did he ever go to a doctor?
- ☐ As a child, did [PRISONER] grow more slowly than other children? Was [PRISONER] smaller than other children his age?
- ☐ How did he interact with the other children at school, in the village? What was he like when he was playing with other children? What problems did he experience with other children? Was [PRISONER] ever bullied or dominated by other children or later on, by other people?
- ☐ Can you remember any times when [PRISONER] behaved unusually when playing with other children?

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My notes:

- ☐ Who were [PRISONER]'s friends when he was growing up and later on? What was their relationship like?
- ☐ Was [PRISONER] helpful to his parents/other relatives?
- ☐ Was [PRISONER] able to learn from his mistakes?
- ☐ When he was no longer a small child, was [PRISONER] able to look after himself? If not, why? Was this because of financial problems? Did he have a job? Did he have somewhere to live?
- ☐ How was [PRISONER]'s health? Did he ever injure himself? Did he get sick regularly?
- ☐ How much alcohol did he used to drink? How frequently? At what age did he start drinking?
- ☐ Did he ever use drugs? What kinds? How much? How frequently? At what age did he start taking them?
- ☐ Was the use of alcohol common in his family?
- ☐ Did anyone in the family take drugs?
- ☐ Did his parents or others in the family drink? Did they drink more or less than others in his/her community?
- ☐ Did [PRISONER]'s mother ever drink alcohol? Did she drink when she was pregnant with [PRISONER]? If you know, when did she find out she was pregnant with [PRISONER]?
- ☐ How was the behaviour of his parents when they were drunk?
- ☐ What was the relationship like between his parents? Did they ever fight? Did they fight with loud words, or were their fights physical? Can you describe some of those fights? What happened when [PRISONER] intervened to stop those fights?
- ☐ What was [PRISONER]'s family like when he was growing? Describe their relationships and the atmosphere of the house.
- ☐ Did he have a family or community nickname?
- ☐ Was there a familial relationship between his parents or his grandparents?

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My notes:

- ☐ Was he ever a victim of violence from a family member? How severe was it?
- ☐ Was he ever a witness to any other form of violence within his family or in the community?
- ☐ How was he punished as a child when he misbehaved? Did he misbehave more or less than his brothers/sisters? What kind of trouble would he get into as a young child?
- ☐ Were there any indications that [PRISONER] was a victim of sexual abuse or sexual violence by a family member or anyone within the community?
- ☐ Did [PRISONER] ever suffer from quick anger, or panic attacks?
- ☐ [If the answer is yes]: What sets him off? Does he ever lose it?
- ☐ At what age did this behaviour start?
- ☐ Did [PRISONER] or those close to [PRISONER] ever report that [PRISONER] was confused, had been hearing voices or seeing things that weren't there?
- ☐ Tell me about the times when [PRISONER] behaved irrationally or in a way that you found confusing or unexpected.
- ☐ Did [PRISONER] or those close to [PRISONER] ever state that they were concerned that another person had tried to hurt [PRISONER] by "pushing or pulling them down" because of jealousy or other problems?
- ☐ Before prison, did [PRISONER] ever express any feelings of hopelessness or any other strong or unusual feelings?
- ☐ Have you ever noticed anything unusual about him, compared to your other [brothers/sisters/children/people in your community]?
- ☐ Have you ever noticed anything else that is unusual about the prisoner's behaviour? In particular, had [PRISONER] been acting strangely in the weeks and months before the offence?

#### **V. INFORMATION ABOUT PRE- AND POST-NATAL HEALTH**

[These questions should be addressed to mothers, elder siblings, aunties, grandmothers, fathers, or other individuals who raised [PRISONER]. When interviewing one of these individuals, start by

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My notes:

explaining that prenatal and post natal health (problems) can have long term effects on physical growth, cognitive development and future learning capacity, school performance, educational outcomes, and work performance.]

- ☐ Did the family ever experience times of severe malnourishment? Times where there was no food at all? Any droughts during the pregnancy? Include details: when, how often. How would you get additional food? What was your diet when you were pregnant?
- ☐ In particular, as a child and before the age of 5, did [PRISONER] and his family have problems with eating enough protein, like meat or fish?
- ☐ Did [PRISONER]'s mother drink alcohol? Did she drink when she was pregnant with [PRISONER]? When did she find out she was pregnant?
- ☐ Are any details known about the pregnancy and the delivery of [PRISONER]?
- ☐ Were there any complications during the pregnancy? [Ask for details].
- ☐ Were there any complications during delivery? [Ask for details]. How was the delivery of [PRISONER] compared to the delivery of his siblings? Did [PRISONER]'s mother deliver in a hospital or at home? Who was present?
- ☐ Were there any times when [PRISONER] experienced times of severe malnourishment? Times where there was no food at all? Due to drought? Due to unemployment of the caretaker? Include details: when, how often. How would you get additional food?
- ☐ How quickly did [PRISONER] develop in comparison with other children in the family/community? At what age did he learn to walk, talk, use the toilet? Was this earlier or later than the other children?
- ☐ At what age could [PRISONER] dress, feed, look after himself? Did he need help to look after himself? Who would usually care for him? [Details]

#### **VI. SPECIFIC QUESTIONS REGARDING [PRISONER]**

- ☐ Consider: Do you need to verify the prisoner's age at the time of the offense in order to argue that he was a juvenile? If yes, ask relatives in what year [PRISONER] was born.
- ☐ Consider: Are there any specific illnesses/claims mentioned in the prisoner interview or trial transcript that the interviewee would be able to clarify/verify?

#### **VII. SUPPORT FOR [PRISONER]'S REINTEGRATION INTO COMMUNITY**

- ☐ Would you support [PRISONER]'s return to the community?
- ☐ Do you know if there is anyone [PRISONER] could stay with if released? If yes, who?

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My notes:

- ☐ Would you be willing to assist [PRISONER] in rehabilitating into the community (i.e. by providing accommodation/work references, etc.)? If yes, how?

#### **VIII. ATTENDANCE AT HEARING/WILLINGNESS TO DRAFT A CHARACTER REFERENCE**

- ☐ Would you be willing to write a character reference letter/affidavit on behalf of [PRISONER]?

[If they say yes, work with them to draft it. A sample affidavit is included in the mitigation interview packet, but please expand/adapt it to encompass all relevant/helpful information. Given resource constraints, handwritten affidavits should suffice. Ensure that the interviewee and one to two witnesses sign the document.]

At a minimum, all reference letters should include: relationship of the interviewee to the prisoner, how long they have known the prisoner (if not a relative), character of the inmate, what impact the prisoner's incarceration has had on that person and the family, whether they would be able to support the inmate in any way if released (accommodation, financial support, work support, guidance), and the date of the letter]

- ☐ Would you be interested/willing to serve as a character witness at [PRISONER]'s resentencing hearing?

[Explain that this would greatly help [PRISONER]. Also explain that it would entail travelling to Zomba. If they agree to assist [PRISONER] and the resentencing hearing has already been scheduled, please provide them with the date of the proceeding. Otherwise, explain that you will contact them with details once the hearing is scheduled. [If they cannot attend, please ask them the reason.]

#### **IX. ADDITIONAL CONTACTS**

- ☐ Is there anyone else you recommend we speak to in order to get support for [PRISONER]?
- ☐ If yes:

**Name:**

**Relation to prisoner:**

**Village:**

**T/A:**

**District:**

**Phone Number (if applicable):**

**Best method of contacting him/her:**

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My notes:

**Name:**  
**Relation to prisoner:**  
**Village:**  
**T/A:**  
**District:**  
**Phone Number (if applicable):**  
**Best method of contacting him/her:**

**Name:**  
**Relation to prisoner:**  
**Village:**  
**T/A:**  
**District:**  
**Phone Number (if applicable):**  
**Best method of contacting him/her:**

[Finally, thank the interviewee for his/her time. Tell them how much you appreciate having had the opportunity to speak to him/her. Give him/her a sense for how long you expect the appeal/resentencing to take. Tell him/her that you will do your best to help [PRISONER], but that you cannot make any promises or even predict what will happen. You can, however, assure him/her that you're trying to make sure [PRISONER] is not executed (if applicable), he receives the physical/mental health care that he needs and that his sentence is reduced.]

[\*\*Depending on how the interview goes, you may also want to take photographs of the individual, as well as his/her home and surroundings. Before taking any photographs, however, please ask the interviewee if it would be ok. You can explain that photographs of the individual will (with his/her permission) be shared with the prisoner.]

#### **[PRISONER] GENOGRAM**

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My notes:



Please add to/correct this using the information you obtain during the interview.

[Paternal grandparents]

[Maternal grandparents]

|

|

[PRISONER] father [M] [PRISONER] mother

|

[PRISONER]'S [SIBLINGS] [PRISONER] M [PRISONER]'s [wife/husband]

|

[PRISONER]'S [CHILDREN]

## [PRISONER]'S LIFE HISTORY

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My notes:

Please add to this using the information you obtain during the interview.

Date	Event	People involved

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My notes:


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My notes:

Annex [5]

MITIGATION INVESTIGATION QUESTIONNAIRE: CHICHEWA

**MAFUNSO ENA A M'NTCHITO YOWUNIKANSO ZILANGO YA KAFANTAYENI OFUNSIDWA KUMUDZI**  
**KWA WOMANGIDWA**

**I. ZOKHUNZA AMENE MUKUWAFUNSA MAFUNSO**

- ☐ Dzina lonse:
- ☐ Ubale ndi [WOMANGIDWA]:
- ☐ Mudzi:
- ☐ T/A:
- ☐ BOMA:
- ☐ Nambala ya foni (ngati zingatheke):
- ☐ Njira yabwino yolumikizana nawo:

**II. KULUMIKIZANA/UBALE WA PANOPA NDI MKAIDI**

- ☐ Kodi panopa mumalumikizana ndi [WOMANGIDWA]?
- ☐ Munayankhula naye komaliza [WOMANGIDWA] liti? Munaonana naye [WOMANGIDWA] komalizira liti? Ngati mumalumikizana naye, mumalumikizana m'njira yanji? Mumalumikizana naye pafupipafupi bwanji (chifukwa chiyani)?

**III. FUFUZANI BWINOBWINO ZA ABALE ENIENI A WOMANGIDWAYO KOMASI MBIRI YA CHIKHALIDWE CHA DERALI**

- ☐ Tandiuzeni zokhuza kubanja kwa (WOMANGIDWA) (Wonjezerani zimenezi pa mutu umene ukukamba za abale enieni).

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My notes:

- ☐ Tandiwuzeni zokhuza anthu ena amene anatengapo gawo lomuyang'anira (WOMANGIDWA) ali wang'ono komanso abale ake ena (Wonjedzerani zimenezi pamutu umene ukukamba za abale ake enieni)
- ☐ Mungandiwuzeko pang'ono za ubale wanu ndi (WOMANGIDWA)? Mumamudziwa bwinobwino? Ndi nthawi yayitali bwanji imene mwakhala [mukucheza/ kugwira naye ntchito (kapena zina)]?
- ☐ Ngati panopa samatha kulumikizana ndi (WOMANGIDWA), afunseni kuti n'chifukwa chiyani (monga kukwera mtengo kwa mayendedwe ndi zina).
- ☐ Mungandiwuzeko pang'ono m'mene (WOMANGIDWA) analili ngati [m'chimwene wanu/mwana/bambo/wophunzira/nzanu]?
- ☐ Kodi anali ndi udindo wa utsogoleri uliwonse m'mudzi muno? Kodi amatengapo gawo lililonse pa ntchito iliyonse (monga zothandiza anthu ena, masewero, magulu oyimba) Anavinidwa/kulowa chinamwali kapenakulandira mwambo uliwonse wa chinamwali? Unali wotani, ndipo mumakumbukira zotani za iye pa nthawi imeneyi?
- ☐ Amalandira ulemu wotani m'mudzi muno?
- ☐ Kodi anali pa ntchito? Amagwira ntchito yanji? Anayamba kugwira ntchito ali ndi zaka zingati? Ndi ntchito yotani imene amagwira ali mwana?
- ☐ Ndi ndani amene anamuphunzitsa ntchito imene amagwirayi? Anaphunzira bwanji ntchito imeneyi? Kodi alipo anthu ena amene anamuthandiza?
  - ☐ Anakumana/kapena amakumana ndi mavuto otani kuntchito? Pali china chilichonse chodabwitsa anakumana nacho kuntchito?
  - ☐ Ankapita ku tchalichi kapena kumzikiti? Anali ndiudindo uliwonse? Munawonapo kusintha kulikonse mmoyo wake wa uzimu? Chipembezo chinasintha bwanji moyo wake?
  - ☐ Ankaphunzira sukulu kuti? Kunali kotalika bwanji? Anasiya sukulu chifukawa chiyani? Banja lake linali losowa bwanji kuyerekeza ndi mabanja ena?
  - ☐ Amatha kulemba ndi kuwerenga?
  - ☐ Ili ndi funso lofunsa: Aphunzitsi/ aphunzitsi akulu/atsogoreri a mipingo ndi mabwana: Womangidwayu amakhala bwanji ndi anzake/opnunzira anzake komanso

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My notes:

wogwira nawo ntchito? Amatha kucheza bwino ndi anzake? Anali ndiudindo kusukulu? Munadabwapo chilichonse ndi khalidwe lake? Mungatifotokozere china chilichonse chokhuzana ndi moyo wake wa mbaja?

- ☐ Banja lanu linakhuzidwa bwanji ndi kumangidwa kwamunthu uyu (DZINA LA womangidwa)?

#### **IV. PEZANI NGATI WOMANGIDWAYO ALI NDI VUTO LAMISALA KAPENA LOKHUZA BONGO**

- ☐ Ngati wofunsa mafunso anamuyenderapo womangidwa kundende kapena ngati akudziwa anthu amene anakamuwona kundende, awafunse kuti moyo wakundende udasintha bwanji moyo wake komanso maganizo ake. (Mumfunse nkhawa zomwe anali nazo komanso chilakolako chake pazakudya chinakhuzidwa bwanji pamene anali kundende).
- ☐ Fufuzani dzina la mudzi wa womangidwa. Banja lake limakhalabe mmudzi womwewo? (Ngati anasamuka, fufuzani za kumene akukhala). Fotozani kumene mudziwo uli molingana ndidzachilengedwe zodziwika zomwe zili pafupi.
- ☐ Banja lake linalandilapo thandizo lililonse (Afunseni ngati akudziwa za agogo komanso za ana ake a womangidwayo. Ngati analandilapo thandizo afotokoze).
- ☐ Kodi anthu a mbanjalo anamwapo mowa kapena kugwiritsa ntchito mankhwala ozunguza bongo kuti ayiwale mavuto? (Afunseni akumbukire za agogo komanso za ana, kapena achibale a womangidwayo. Ngati anamwapo mowa ndi kusuta mankhwala ozunguza bongo afotokoze).
- ☐ Mbanjali alipo amene wofunsidwayu akuganizira kuti adalodzedwapo; kapena kuchitilidwa nsaje, kaduka ndi anthu ena? (Afunseni aganizire za agogo, achibale, komanso ana awomangidwayo. Ngati analozedwapo afotokoze).
- ☐ Alipo anazunguzika mutu mbanjali? (Aganizire za agogo komanso ana a womangidwayo. Ngati anazunguzikapo mutu afotoze).
- ☐ Alipo mbanjali anavutitsa kapene kuchitirapo wina nkhaza? (Afunseni aganizire agogo, achibale, komanso ana. Ngati anachitirapo wina nkhanza afotokoze).
- ☐ Ndi mavuto a akulu otani amene anthu a mbanja la womangidwayo anakumana nawo? (afunseni aganizire agogo ndi ana awomangidwayo. Ngati anakumanako ndimavuto afotokoze).

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My notes:

- ☐ Pali china chilichonse chodabwitsa chinachitikirapo m'banja la womangidwayo?
- ☐ Pali mavuto a kulu amene anthu ku mudzi wa womangidwayo anakumananawo? (Aganizirepo za agogo, kapena mtundu wake wa awomangidwayo). Anakumanapo ndivuto la matenda kapena kudwala?
- ☐ Fotokozani za mavuto amene anthu a mderali kuphatizapo banja la womangidwayo anakumana nawo, mwachisanzo; kusolidwa. (Aganizire za agogo, kumtundu, komanso ana awomangidwayo).
- ☐ Umoyo (thanzi) la womangidwa linali bwanji ali mwana komanso wachinyamata? Anadwalapo kwambiri malungo, chifuwa cha chikulu ndi matenda ena?
- ☐ Anavulalapo mmutu? (Ngati ndi choncho afotokoze: chinachitika nchiyani, anali wamsinkhu wotani, anadwala nthawi yotalika bwanji, anavulalapo kangati, panali kufooka kulikonse?)
- ☐ Anakomokapo, kapena kusokonezeka wosazindikira nyengo/nthawi? (Afotokeze: anali ndi zaka zingati, zinatenga nthawi yayitali bwanji, zinachitikapo kangati, panali anthu ena owonerera/mboni).
- ☐ Anadwalapo nthenda yoyiwala/kusazindikira? (Afotokeze: anali ndi zaka zingati, zinatenga nthawi yayitali bwanji, zinachitika kangati, panali anthu ena owonerera/mboni?)
- ☐ Womangidwayo anawonetsapo zizindikiro za malungo a m'bongo ali wan'gono: kukhala tsiku limodzi mpaka atatu ali wozizidwa komanso kufooka komanso wosazindikira chilichonse, kapena ali wamkulu anadwalapo matenda wozizidwa thupi, kupweteka mutu, kuphwanya kwathupi, kuzizimuka ndikukomoka?

(Ngati anadwalapo malungo, chifuwa chachikulu kapena kuvulala mmutu):

- ☐ Womangidwayo anali ndivuto la kuyankhula potsatira kudwalako kapena kuvulala?
- ☐ Womangidwayo anali ndivuto lozindikira kapena kumbuka patsatira kudwalako kapena kuvulala?
- ☐ Khalidwe la womangidwa linasintha kutsatira kudwala kapena kuvulalako?
- ☐ Anadwalapo mutu?

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My notes:

- ☐ Anawonetsapo khalidwe lovutitsa mongodzidzimuka?
- ☐ Anakhalapo ndi khalidwe lolingalira kwambiri; kapena kukhala ndimaganizo a nkhwawa, chisoni amgonagona? Pali nthawi imene munamuyitana koma osavomera
- ☐ Munamutengerapo kuchipatala? Chifukwa chiyani munamtengera kuchipatala? (Aphotokozere: anali wamkulu bwanji, nthawi, yayitali bwanji, zinachitika kangati, panali mboni, chipatala chiti?)
- ☐ Ndi thandizo lotani lachikuda, ngati lilipo, limene analandirapo pa nthawi imene mutu wake sumagwira bwino? Kodi anapitapo kukakumana ndi adotolo?
- ☐ Kodi [WOMANGIDWA] anakula mochedwa kwambiri kuyelekeza ndi ana ena? Kodi [WOMANGIDWA] anali wochepa msinkhu kuyelekeza ana ena ofanana naye zaka?
- ☐ Kodi amacheza bwanji ndi amnzake ku sukulu, kumudzi? Kodi amakhala motani akamacheza ndi ana ena? Amakumana ndi mavuto lotani akamacheza ndi ndi anzake ena achichepere? Kodi [WOMANGIDWA] anamenyedwapo ndi anzake kapena kulamulidwa kwambiri ndi ana anzake, kapena ndi anthu ena atasinkhukapo?
- ☐ Kodi mutha kukumbikirapo nthawi imene [WOMANGIDWA] anaonetsako makhalidwe achilendo akusewera ndi anzake?
- ☐ Kodi anzake a [WOMANGIDWA] anali ndani pamene amakula komanso ndindani iwo amene anali mtsogolo mwake? Kodi ubale wake ndi anzakewa unali wotani?
- ☐ Kodi [WOMANGIDWA] amathandiza makolo ake/ abale ake ena?
- ☐ Kodi [WOMANGIDWA] amatha kuphunzirapo kuchokera pa zomwe iye mwini walakwitsa?
- ☐ Kodi [WOMANGIDWA] amatha kudziyang'anira yekha, atakula? Ngati yankho ndi ayi, chifukwa chiyani? Kodi ndi chifukwa cha mavuto a zachuma? Kodi anali pa ntchito iliyonse? Kodi anali ndi kokhala?
- ☐ Kodi umoyo wa [WOMANGIDWA] unali wotani? Kodi anayamba wadzivulaza yekha? Kodi amadwala pafupipafupi?
- ☐ Amamwa mowa wochuluka bwanji? Mowawu ammwa mochuluka bwanji? Anayamba kumwa mowa ali ndi zaka zingati?

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My notes:



- ☐ Kodi anagwiritsako ntchito mankhwala ozunguza bongo? Ndi mankhwala otani? Ochuluka bwanji? Pafupipafupi bwanji? Anayamba kugwiritsa ntchito mankhwalawa ali ndi zaka zingati?
- ☐ Kodi kubanja kwawo kunali anthu ambiri okumwa mowa?
- ☐ Kodi alipo wina m'banja mwawo amene amamwa/amagwiritsa ntchito mankhwala ozunguza bongo?
- ☐ Kodi makolo ake kapena abale ake ena a kubanja kwake amamwa zoledzeretsa? Kodi amamwa kwambiri kapena pang'ono kuyelekeza ndi anthu ena mdera la kwawo?
- ☐ Kodi alipo wina m'banja mwawo amene amamwa/amagwiritsa ntchito mankhwala ozunguza bongo?
- ☐ Kodi makolo ake kapena abale ake ena a kubanja kwake amamwa zoledzeretsa? Kodi amamwa kwambiri kapena pang'ono kuyelekeza ndi anthu ena mdera la kwawo?
- ☐ Kodi amayi a [WOMANGIDWA] amamwa mowa? Kodi mowawu amamwa ali ndi mimba ya [WOMANGIDWA]? Ngati mukudziwa, anazindikira nthawi yanji kuti ali ndi mimba ya [WOMANGIDWA]?
- ☐ Kodi khalidwe la makolowa akaledzera limakhala lotani?
- ☐ Kodi ubale wa pakati pa makolo akewa unali wotani? Kodi amakangana? Kodi akakangana amalongozana, kapena kumenyana? Mungathe kulongosola m'mene ina mwa mikangano yawo imakhalira? Chimachitika ndi chiyani [WOMANGIDWA] akayetsa kuletsetsa mikanganoyi?
- ☐ Kodi banja la [WOMANGIDWA] linali lotani pamene amakula? Fotokozani ubale wa pakati pa anthu a banjapa komanso m'mene amakhalira pabanjapa.
- ☐ Kodi womangidwa anali ndi dzina lina la macheza pa banjapa kapena m'mudzi muno?
- ☐ Kodi panali ubale wapaderadera pakati makolo ndi agogo ake?
- ☐ Kodi [WOMANGIDWA] amatha kuzunzidwa mwa njira ina yake ndi munthu wina wa kubanja kwake? Zimachika pafupipafupi, kapena kochuluka bwanji zimenezi?

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My notes:

- ☐ Kodi amatha kuwonerera nkhanza zina zilizonse pabanja pano kapena m'mudzi muno?
- ☐ Kodi pofuna kumulanga akalakwitsa amamulangiza bwanji? Kodi iye amalakwitsa kawirikawiri kapena mocheperako kuyelekeza ndi abale ake ena a m'banja mwake? Ngati mwana, kawirikawiri amalakwitsa chiyani?
- ☐ Kodi panali zizindikiro zilizonse zosonyeza kuti [WOMANGIDWA] akuchitilidwa nkhanza zokhunza kugonana kuchokera kwa abale ake kapena anthu ena a m'mudzi muno?
- ☐ Kodi [WOMANGIDWA] anakhalapo ndi vuto lokwiya mwachangu kapena kumva kupanikizika?
- ☐ [Ngati yankho ndi inde]: Chimamukwiyitsa ndi chani? Kodi amapambana mu zimenezi?
- ☐ Zimenezi zinayamba ali ndi zaka zingati?
- ☐ Kodi achibale a [WOMANGIDWA] anayamba anenapo zoti womangidwayu ndi wosokonekera mutu ndipo akhala akumva kapena kuona zinthu zoti palibepo, monga mazangazime, kapena atulo?
- ☐ Kodi ndikangati kamene mutha kunena kuti [WOMANGIDWA] akhala akuonetsa khalidwe lachilendo lobweretsa chisokonezo mwadzidzi?
- ☐ Kodi omangidwa kapena amene ali kufupi ndi omangidwa anayamba anenepo kuti anthu ena amafuna kumupweteketsa mtima omangidwayo pomukokela pansi chifukwa cha nsanje kapena mavuto ena?
- ☐ Kodi omangidwayo ali m'ndende anayambambapo awonetsera kupanda chiyembekezo kapena maganizo ena mwamphamvu kapenso maganizo ena achilendo
  - ☐ Kodi Mwaonapo china chake cha chilendo ndi iyeyo, poyelekeza ndi achimwene/azilongo/ana/kapena anthu ena m'mudzi?
  - ☐ Kodi mwaonapo chinachake cha chilendo ndi khalidwe la omangidwa? Makamaka, kodi (omangidwa) akhalapo akupanga zachilendo kwa milungu ndi miyezi ingapo pasanachite mlandu?

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My notes:

**V. ZOKHUNZA M'MENE MAYI A WOMANGIDWA ANALILI ALI NDI MIMBA YA [WOMANGIDWA] KOMANSO ATANGOBADWA**

Mafunso awa afunsidwe kwa amayi, ana akulu, azakhali, agogo kapena kwa aliyense amene anamusungapo [omangidwa]. Pamene mukufunsa mmodzi mwa anthuwa, yambani mwafotokoza mavuto auchembere kuyambira nthawi yoyembekezera ndi ena amene atha kubweretsa mavuto kwa nthawi yayitali mayi atachila ndipo atha kukhala chotchinga pa kakulidwe ka munthu, nzeru ndi kuthekera kophunzira mutsogolo, makhonzedwe a ku kusukulu, zotsatira za kusukulu ndi m'mene angagwilire ntchito.

- ☐ Kodi banja lanu linayamba ladutsapo munyengo yosowa zokudya zopatsa thanzi? Kodi panali nyengo imene munalibiletu chakudya? Inalipo nthawi ya chilala nthawi yomwe mayi a womangidwa anali woyembekezera? Phatikizandinso izi: Ndi liti? Zinachitika kangati? Nanga mumapeza bwanji chakudya choonjezera? Nthawi imene mayi ake a womangidwa anali woyembekedzera chakudya chawo chenicheni chinali chani?
- ☐ Ali ndi zaka zosapitilila zisanu (5 years), kodi [WOMANGIDWA] komanso banja lawo lonse linakumanapo ndi vuto losowa chakudya chokulitsa thupi, monga nyama kapena nsomba?
- ☐ Kodi amayi a [WOMANGIDWA] amamwa mowa? Amamwa nthawi imene ali ndi mimba ya [WOMANGIDWA]. Anazindikira patatha nthawi yayitali bwanji kuti ndi woyembekezera?
  - ☐ Kodi mukudziwapo zina zokhudzana ndi mimba komanso kubadwa kwa [WOMANGIDWA].
  - ☐ Kodi panali mavuto ena ndi mimba ya [WOMANGIDWA]? [pemphani kuti afotokoze bwino]
  - ☐ Kodi panali mavuto anji nthawi yakubereka [pemphani kuti afotokoze bwino]. Kodi mungasiyanitse bwanji kubadwa kwa [WOMANGIDWA] ndi kubadwa kwa ana ena pakhomopo? Kodi [WOMANGIDWA] anabadwira ku chipatala kapena kunyumba? Panali ndani panthawiyo?
  - ☐ Inalipo nthawi imene [WOMANGIDWA] anasonyeza zizindikiro za kusowa kwa chakudya? Kodi panali nthawi imene panalibiletu chakudya chifukwa cha chilala, kusalembedwa ntchito kwa omusunga? Phatikizandinso izi: chaka chanji, ndipo

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My notes:

ndikangati akhala munyengo yotereyo. Nanga amatha kupeza bwanji chakudya choonjezera?

- ☐ Mungasiyanitse bwanji kakulidwe ka [OMANGIDWA] ndi ana ena pabanjapo kapena m'mudzimuno/mwake? Anayamba kuyenda, kuyankhula komanso kugwilita ntchito chimbuzi ali ndi zaka zingati? Mukayelekeza ndi ana ena inu mukuona kuti anafulumira kapena kuchedwa?

- ☐ Kodi [WOMANGIDWA] anayamba kuvala, kudya komanso kuziyang'anira yekha ali ndi zaka zingati? Kodi amafuna omuthandizira pa chisamaliro chake? Nanga ndi ndani amene amamusamalira nthawi zambiri? [Fotokozani bwino].

#### **VI. MAFUNSOWA AKUKUKHUDZANA KWAMBIRI NDI [OMANGIDWA]**

- ☐ Inu ofunsa mukuyenera muganizire bwino: Kodi mukufunika kufufuza mwapaderadera kuti mutsimikizile pa zaka zimene [WOMANGIDWA] anali nazo panthawi imene anapalamula mulandu kuti zitsimikizike kuti anali mwana? Ngati mukufuna kutero, funsani achibale chaka chimene [WOMANGIDWA] anabadwa.
- ☐ Takumbukirani: Kodi pali matenda amene anawatchula [WOMANGIDWA] pa nthawi imene amafotokoza mulandu wake ku polisi kapena kubwalo la milandu amene iye mwini atha kutsimikizira.

#### **VII. CHITHANDIZO KWA OMANGIDWA KUTI AKABWELERE NDIPO AVOMELEZEKE M'MUDZI**

- ☐ Kodi mutha kugwirizana ndi zoti [WOMANGIDWA] abwelere m'mudzi muno?
- ☐ Kodi mukudziwa amene atha kukhala ndi [WOMANGIDWA] atamutulutsa m'ndende? Ngati alipo, ndi ndani?
- ☐ Kodi mutha kuthandiza kuti [WOMANGIDWA] akhadzikike m'mudzi muno (monga pomupatsa malo okhala/ kumuchitira umboni kwa anthu amene angafune kumulemba ntchito ndi zina)? Ngati mungatero, mungachite bwanji zimenezi?

#### **VIII. KUPEZEKA PA NTHAWI YOWUNIKASO CHILANGO KUBWALO LA MILANDU/ KUDZIPEREKA POLEMBE KALATA YOKHUDZA MAKHALIDWE A WOMANGIDWA**

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My notes:

- ☐ Kodi mutha kulemba kalata ya umboni yokhudza makhalidwe a [WOMANGIDWA] m'malo mwa iye mwini?
- ☐ Ngati angavomere kutero, athandizeni kulemba kalatayi. Kalata ya chiyelekezo yothandiza kuchepetsa chilango yaphatikidzidwa m'makalata othandiza kufunsa mafunsowa, komano yetsetsani kutambasula kuti muphatikizemo mfundo zothandiza zoyenera. Zolembedwa zimene zalembedwa ndi iwo mwini zimakhala zopambana kwambiri. Onetsetsani kuti amene mukuwafunsa mafunsowa komanso mboni imodzi kapena ziwiri zasayinira chikalatachi.
- ☐ Kalata za umbonizi zisalephere kuphatikizapo ubale wa amene mukuwafunsa mafunsowa ndi womangidwa, kuchuluka kwa nthawi imene iwo akhala akumudziwa womangidwa (ngati si wachibale), makhalidwe a womangidwayu, zotsatira za kumangidwa kwake ku banja la womangidwayu kapena kwa munthuyu, ngati angathe kumuthandiza womangidwayu atatulutsidwa (pomupatsa malo okhala, chuma, ntchito, kapena malangizo/ chitsogozo) komanso tsiku limene kalatayi yalembedwa.
- ☐ Mutha kusangalatsidwa mutadzakhala mboni pa makhalidwe a [WOMANGIDWA] pamene chilango chake chidzikawunikidwanso kubwalo la milandu?
- ☐ [Fotokozani kuti chiganizo chawo kupanga izi chidzakhala chofunikira. Longosolani kuti ngati atavomera, adzayenera kuchita kupita/kubwera ku Zomba. Akhozanso panthawi iyi kupatsidwa TSIKU lakumveranso mulanduwu; apo ayi adziwe nthawi imene adzafunikire kubwalo lamilandulo.]
- ☐ [Ngati sangathe kupita kukamvetsera mulanduwu, afunseni afotokoze zifukwa zake]

## IX. ANTHU ENA OWONJEZERA OYENERA KUYANKHULA NAWO

- ☐ Kodi pali wina amene tikhonza kuyankhula naye amene angathandize [WOMANGIDWA]?
- ☐ Ngati alipo:

**Dzina:**

**Ubale ndi womangidwa:**

**Mudzi:**

**T/A:**

**Boma:**

**Nambala ya lamya (ngati ilipo):**

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My notes:

**Njira yabwino yokumanira naye:**

**Dzina:**

**Ubale ndi womangidwa:**

**Mudzi:**

**T/A:**

**Boma:**

**Nambala ya lamy (ngati ilipo):**

**Njira yabwino yokumanira naye:**

**Dzina:**

**Ubale ndi womangidwa:**

**Mudzi:**

**T/A:**

**Boma:**

**Nambala ya lamy (ngati ilipo):**

**Njira yabwino yokumanira naye:**

[Pomaliza athokozeni amene mumawafunsa mafunsowa chifukwa cha nthawi yawo imene agwiritsa ntchito poyankha mafunsowa. Awuzeni kuti ndinu oyamika kwambiri chifukwa choti iwo alola kuyankha mafunsowa. Adziwitseni m'mene inuyo mukufunitsitsira kuti chigamulochi chikawunikidwetso. Atsimikizireni kuti muyetsetsa m'mene mungathere kuti mumuthandidze [WOMANGIDWA], komano simungathe kulonjedza chilichonse kapena kulosera zomwe zizachitike. Komabe mukhonza kuwatsimikizira kuti muyetsetsa kuwonetsetsa kuti [WOMANGIDWA] asanyongedwe (ngati n'koyenera kutero), akulandira chisamaliro cha umoyo kapena mankhwala choyenera, komanso kuti chilango chimene analandira chichepetsedwe]

[\*\*Motengera ndi m'mene kafukufuku wanu analili, mukhonza kujambula chinthunzi cha munthu amene mumamufunsa mafunsoyu komanso nyumba yawo ndi zina zopedzeka pa nyumbayi. Komabe musanayambe kujambula zithunzi, chonde apempheni amene mumawafunsa mafunsowa ngati kuli kotheka kutero. Afotokozeleni kuti chithunzichi (ngati angavomeleze kutero) mukawaonetsa womangidwayu.]

**ABALE AKE ENIENI A [WOMANGIDWA]**

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My notes:

[Chonde wonjedzerani kapena kukonza za pa mutu umenewu mogwiritisa ntchito zimene mwapeza pamene mumafunsa mafunso]

[Agogo a kuchimuna]	[Agogo a kuchimuna]

Bambo a [WOMANGIDWA][M] Mayi a [WOMANGIDWA]

Achimwene/Alongo a [WOMANGIDWA] [WOMANGIDWA] M Mkazi/mamuna wa [WOMANGIDWA]

[ANA] a [WOMANGIDWA]

**[MBIRI YA M'MENE [WOMANGIDWA] AMAKHALIRA KUNYUMBA**

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My notes:

[Chonde wonjezerani zimene mwapeza pa kafukufukuyu pa mutu umenewu]

Tsiku	Zochitika	Anthu okhunzidwa
	TSIMIKIDZIRANI TSIKU LIMENE [WOMANGIDWA] ANBADWA	

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Tsiku	Zochitika	Anthu okhunzidwa
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My notes:



	TSIMIKIDZIRANI TSIKU LIMENE [WOMANGIDWA] ANBADWA	

### Annex [6]

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My notes:

## SAMPLE STATEMENT FROM LIFE HISTORY WITNESS

[DAY, MONTH, YEAR]

[NAME OF INTERVIEWEE]

Village:

T/A:

District:

Age (of interviewee):

Occupation:

My name is [NAME] and I am the [mother/older sister/friend/former teacher/etc.] of [PRISONER]. I have known [PRISONER] [my/his entire life/for XX years].

[Begin with relevant information about the prisoner's early childhood and adolescence, including information about childhood illnesses, injuries, developmental delays, periods of famine, or other evidence of traumatic events such as the premature death of parents or other relatives.]

[If applicable, include paragraph on [PRISONER'S] mental or physical illnesses. Also include any mitigating information such as the mental health of [PRISONER'S] family members, his impoverished upbringing, and his efforts to overcome a difficult childhood.]

Before [PRISONER] was arrested... [Insert paragraph on the prisoner's involvement in the community prior to his incarceration. Please include any good characteristics of the prisoner — e.g. he was a good father, a charitable and hardworking individual, etc.]

NOTE: It is most helpful to include specific facts, stories, or anecdotes that illustrate the prisoner's positive character traits. Generalized statements e.g. "he always supported his younger brothers and sisters" are helpful, but specific illustrations are much better — e.g. "he left school to work so that he could pay the school fees for his three younger sisters. He paid their fees for three years before

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My notes:

he was arrested. He also encouraged them to do their homework and pay attention at school. Because of his encouragement, all of his sisters completed secondary school.”

Encourage the interviewee to speak about any of the prisoner’s good qualities. If the interviewee has stayed in contact with the prisoner, also ask him/her to discuss any positive changes they have seen in the prisoner since his incarceration.]

[If applicable, insert a paragraph on the impact the incarceration has had on that person and his family. Detail any family hardships, including the loss of the main breadwinner, the children’s father, a loving husband, etc.]

If [PRISONER] is released from prison, I would welcome him back into [the community/ my family]. To make his transition easier, I would provide [PRISONER] with [a home/a job/financial support/guidance/etc.] I miss [PRISONER] and hope to see him again.

[If the interviewee cannot read English: (INTERVIEWER’S NAME) read this statement to me.] This statement is true to the best of my knowledge and belief and I have made the statement knowing that if it were tendered in evidence, I would be liable to prosecution if I willfully stated in it anything that I know to be false or did not believe to be true.

[DATE]

[PRINT/SIGN NAME]

**INTERVIEWEE**

[PRINT/SIGN NAME]

**WITNESS (Legal Aid/MHRC/etc.)**

[PRINT/SIGN NAME]

**INTERPRETER**

Interviewee’s contact number:

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My notes:

## Annex [7]

### SAMPLE STATEMENT FROM VILLAGE CHIEF

[DAY, MONTH, YEAR]

[NAME OF VILLAGE CHIEF]

Village:

T/A:

District:

Age (of interviewee):

Occupation: Village Chief

My name is [NAME] and I am the Village Chief of [NAME OF VILLAGE]. I have been the Village Chief for [XX] years. Before I became Village Chief, I was [...].

[If the Chief has known the prisoner for a long time, begin with relevant information about the prisoner's early childhood and adolescence, including information about childhood illnesses, injuries, developmental delays, periods of famine, or other evidence of traumatic events such as the premature death of parents or other relatives.]

[If applicable, include paragraph on [PRISONER'S] mental or physical illnesses. Also include any mitigating information such as the mental health of [PRISONER'S] family members, his impoverished upbringing, and his efforts to overcome a difficult childhood.]

I remember [PRISONER'S] arrest and the facts surrounding his case.<sup>1</sup> The incident occurred [XX] years ago. Before the incident, [PRISONER] was... [Insert a few sentences on the prisoner's

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<sup>1</sup> The scope of the statement will largely depend on the Chief's ability to recall the prisoner and the facts of the case. If the Chief was a close friend of the prisoner, please feel free to expand the statement so that it looks closer to the sample character reference letter.

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My notes:

involvement in the community prior to his incarceration. Please include any good characteristics of the prisoner's — e.g. he was a good father, a charitable and hardworking individual, etc. If the prisoner's arrest and involvement in the crime surprised the Chief, please feel free to include that information as well.]

[If applicable, insert a paragraph on the impact the incarceration has had on the prisoner's family. Detail any family hardships, including the loss of the main breadwinner, the children's father, a loving husband, etc.]

Because of his previous good character [and...], we would welcome him back into the community if he were released. His release would also help his family members who have struggled during his long incarceration.

[If the interviewee cannot read English: (INTERVIEWER'S NAME) read this statement to me.] This statement is true to the best of my knowledge and belief and I have made the statement knowing that if it were tendered in evidence, I would be liable to prosecution if I willfully stated in it anything that I know to be false or did not believe to be true.

[DATE]

[PRINT/SIGN NAME]

**VILLAGE CHIEF**

[PRINT/SIGN NAME]

**WITNESS (Legal Aid/MHRC/CC)**

[PRINT/SIGN NAME]

**INTERPRETER**

Interviewee's contact number:

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My notes:

## Annex [8]

### GOING INTO THE FIELD – CHECKLIST ✓

- Make sure you have completed an Investigation Plan tailored to the facts of the case and the defence strategy.
- Make sure you have prepared thoroughly, following the guidance above.
- Be prepared to put into practice everything that you have learnt.
- Ensure that you have the necessary writing materials, that your phone is charged and that you have phone credit
- Check the prisoner interview to see if the prisoner asked the interviewer to pass messages onto his family and community: write any messages down to take with you.
- Re-read templates for statements from the life history witness and the traditional leader and re-read the questionnaire.
- Leave early in the morning, travel to village and meet with village head and other traditional leaders. Contact these people in advance if possible.
- When you arrive in the village, introduce yourself to the village headman and explain why you are there or confirm the arrangements that you have previously made by telephone.
- Ask the village headman to invite the family of the prisoner and other community members for the community sensitisation meeting.
- If members of the victim's family live in the same village or if the offence is within the prisoner's family discuss with the village head and / or the police officer how to approach the community sensitisation meeting – should they be invited or could this create a dangerous situation?
- If you need to wait for community members to gather consider asking the village head for permission to interview him/her and other witnesses already present to maximise your efficiency.
- Ask for permission to document the community sensitisation meeting with a camera and a note-taker.
- Conduct community sensitisation meeting – see below for details of how to conduct a community sensitisation meeting.
- The paralegal who is not conducting the meeting should take detailed notes of the presentation and questions and comments from the community.
- Collect a register of who attended.
- Provide refreshments if the meeting has been arranged in advance.

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My notes:

- Ask the traditional leaders, fact witnesses (if relevant) and life history witnesses to stay behind so you can interview them. If any need to leave then make sure you get their phone number and try to arrange a time to meet later in the day.
- For the Sentence Rehearing Project, distribute lunch allowances to traditional leaders at an appropriate point. Ask them to sign the relevant forms.
- Interview the traditional leaders, fact witnesses (if relevant) and life history witnesses.
- If you can't locate the witnesses named by the prisoner, identify and interview alternative fact and life history witnesses. It is an important skill to be able to follow new leads and seek out new witnesses once you're out in the field.
- Collect information regarding the victim's family such as location and contact details if available. For the Sentence Rehearing Project, this information should be given to the MHRC so that it can be passed on to the Director of Public Prosecutions where relevant.
- Get contact details so that you can let the community know when the court hearing is. Explain that the attendance of witnesses may assist in reintegration as the community member can explain what happened at court.
- Give directions to Zomba High Court: at the time of writing no funds are currently available to cover transport.

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My notes:

## Annex [9]

### AS SOON AS YOU GET BACK TO THE OFFICE – CHECKLIST✓

- Write a memo of the meetings following the template set out at Annex [3] above.
- Scan the original witness statements, your interview notes and documents necessary for liquidating the funds received from the MHRC.
- Courier all of these documents to the Malawi Human Rights Commission and email to the MHRC electronic versions of these as well as a copy of the memo, ideally with copies of any photos taken during investigation.
- If you cannot access a scanner, take photos of the statements on your mobile phone (if possible) and take photocopies of the originals before couriating. **Keep the photocopies in your office in case the original receipts and statements get lost.** Email the scans or mobile phone photos to the MHRC.
- Use the existing Investigation Plan to note any new witness contact information or to record any information you think may be helpful if you or another investigator needs to go back to the same places to get further information at a later date.
- Pass on any information you have collected about the victim's family to the MHRC who will direct it to the relevant person at the Office of the Director of Public Prosecutions.

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My notes: