

**CLIFFORD MSISKA**

**(interviewed by Sara Hossain, at Den Haag, on 8 February 2019)**

**How did you first meet Fazlul Huq (of Madaripur Legal Aid Association)?**

I first met Fazlul when he came to Malawi with Brenda Brainch. The idea was to interrogate justice providers to see whether mediation could be piloted. After talking to the police, court officials, PASI staff, community members, Fazlul and Brenda were convinced that there is fertile ground for mediation services. Thereafter I had a chance with Adam Stapleton to go to Madaripur to look at the great mediation services provided by Madaripur Legal Aid Association. When we observed the mediation session we were very impressed – Adam and I said to ourselves, we’re going to move forward with piloting village mediation services. That was around 2007/2008. Luckily enough Irish Aid in Malawi provided funds to train mediators. Immediately we trained them and they went into the communities and started conducting mediation and the services. Basically if you ask me to say Oh Clifford what are the similarities and differences between the two interventions, we have most of the mediation elements which are almost the same. There’s only one slight difference, if you look at mediation services being implemented by MLAA and you compare it to PASI’s model, the difference is that the principle of confidentiality. In the mediation session in Madaripur, I saw that it’s in an open place everyone comes in and observes what is going on, while in Malawi that is not involved. The mediator cannot disclose the process or what transpired during the mediation service who were the parties what were the issues.

My view is that mediation services are one of the best interventions for access to justice because the mediators are right there in the communities they understand the culture and customs and they conduct services in the language of the community and that makes the whole exercise very user-friendly.

I have compared the percentage of successful mediation and whether after the mediation one of the parties says I’m no longer going to be part of the settlement agreement, that has never happened, that is a good signal. So mediation is what people need.

In 2018, our mediators registered 8000 disputes, out of which 7000 were successfully mediated.

**When and why did you start working with prisons ?**

In May 2000, we piloted paralegal services in the criminal justice system to see if they would help with administration of justice for poor and vulnerable groups. We made good progress in terms of reducing under-trial prisoners, we realized that our efforts were not bearing fruit in terms of reduction of prison population because we were just shifting people from being remanded under trial and then crossing over to being a convicted prisoner, while the paralegals could help the person to move faster, and the court heard and either acquitted or convicted. Our prisons have got an official capacity of 5000 prisoners, but we were holding 10-12000.

After we went to Madaripur and comparing with what we were doing and the remand population in Bangladesh, we thought we had to act earlier, and do something to make sure the formal justice system has less cases going to police and courts then we would have fewer people in prisons, to filter out minor criminal cases to have an impact on the prison population.

**Why did you follow this alternative path as a lawyer?**

I was a legal officer for an NGO and used to go into prisons. I could see the number of people who came to me seeking simple advice and what they can do. And I thought what is going on, all these people have no idea what to do about their case. I then thought we need to have people right there in prison on a daily basis to respond to these problems. We realized that there was nobody in prison to get help. Some were illegally detained with remand expired. The paralegals would go to courts and point out the situation and then by 1999 we said let's show the criminal justice system how unfair they are. Let's just focus on juveniles and who is there and if lawfully detained, we found 108 juveniles. In two months, we found the numbers were growing again, and we realized we need to have people permanently stationed.

**What were your impressions of Fazlul Bhai ?**

My first impression was his passion for access to justice. Looking at Fazlul at his age you would think that he has no energy. But that was not what I saw when I met him. He is still passionate, and I thought about what drives him and that is what has inspired most of us.

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date: May 3, 2019, 10:45 PM

subject: for you

dear fazlul bhai

how are you ?

it has been too long since we have spoken

i don't remember if i had sent this to you. i took this 'interview' with clifford when i met him in the hague earlier this year.

i hope you find it of interest.

warmest wishes