



REPORT

Symposium on Legal and Administrative Reforms to address Congestion in Correctional Facilities

13th and 14th of September 2017
Sandy's Creations

Programme for Legal Empowerment and Enhanced Justice Delivery (PLEED)



Table of Contents

I.	INTRODUCTION	2
II.	THE NEW MANDATE OF ZAMBIA CORRECTIONAL SERVICE.....	3
III.	FINDINGS FROM THE VISITS TO CORRECTIONAL FACILITIES IN ZAMBIA.....	3
IV.	SUMMARY OF PRESENTATIONS AND RECOMMENDATIONS.....	5
1.	The Socio-Economic Impact of Pre-Trial Detention in Zambia	5
2.	Discretionary Powers of the National Prosecution Authority and Orientation of Prosecutors and State Advocates	6
3.	The Legal Aid System in Zambia	7
4.	Provision of Police Bond and Court Bail in Zambia	8
5.	Sexual Offenses, ZAWA Act and Narcotic Drugs and Psychotropic Substances Act – The Impact of Harsh Minimum Sentences	9
6.	Principles of Sentencing, Confirmation of Sentencing and Orientation of Magistrates and Judges.....	10
7.	The Coordination of the Criminal Justice Process	11
8.	Juvenile Justice: Enhanced Use of Diversion in Juvenile Cases and the Issuing of Social Welfare Reports.....	12
9.	The Granting of Parole as a Means to Reduce Overcrowding in Zambian Correctional Facilities?!.....	15
10.	Setting Standards for Maximum Duration of Remand.....	16
11.	Community Sentencing Orders	17
12.	The Criminal Procedures Code and Penal Code – Overview on the Reform Efforts by ZLDC	18
V.	REFORMS ROADMAP – OUTCOME OF GROUP WORK.....	21
VI.	SYMPOSIUM AGENDA	32
VII.	ANNEX: FULL PRESENTATIONS	36

I. INTRODUCTION

Between 2012 and 2016 Zambia Correctional Service has experienced an increase in the prison population with an overpopulation of almost 250% (average population: 21,000 against a holding capacity of about 8,500 inmates)¹ in 2016. In Zambia, the prison population rate² is almost twice as high as in European countries (about 125 in Zambia against 75 in Germany), the remandee-convict ratio is increasing, the capacity of correctional facilities is overstretched and the infrastructure and facilities for hygiene, health and recreation are in poor condition. The overcrowding in Zambian correctional facilities thus impedes the realization of human rights for prisoners.

In order to understand some of the underlying causes for the overcrowding of Correctional Facilities, the Minister of Justice, Hon. Given Lubinda, in cooperation with the Minister of Home Affairs, Hon. Steven Kampyongo, undertook visits to a total of thirteen Correctional Facilities in three Provinces of Zambia between the 31st of July and 24th of August 2017. The findings of the visits formed the pre-requisite to discuss the challenges of overcrowding in Zambian correctional facilities during a national symposium. During this Symposium on Legal and Administrative Reforms to address Congestion in Correctional Facilities, experts from the Zambian justice sector, national and international academia discussed how to address the underlying causes of the overcrowding in Zambian correctional facilities.

The Symposium took place on 13th and 14th of September 2017 at Sandy's Creations Conference Centre with an official opening reception on 12th of September at the Taj Pamodzi Hotel. The Symposium was organized by the Ministry of Justice, the Zambia Correctional Service and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. It was funded by the European Union and the Federal Republic of Germany through GIZ under the Programme for Legal Empowerment and Enhanced Justice Delivery (PLEED).

During the first two days of the symposium, experts elaborated on selected topics and made specific recommendations on how to address identified causes for overcrowding in Zambian Correctional Facilities. On the last day of the symposium, participants were encouraged to develop a roadmap on reform measures for each of the key stakeholders in the justice sector. The following report outlines the summary of the expert presentations including recommendations and main findings from the panel discussions. The roadmap and symposium agenda are annexed to the report.

¹ Statistics are provided by Zambia Correctional Service.

² Number of inmates per 100,000 population

II. THE NEW MANDATE OF ZAMBIA CORRECTIONAL SERVICE³

Commissioner General of Zambia Correctional Service, Mr. Percy K. Chato

The first expert input was given by the Commissioner General of Correctional Service who held a presentation on the new mandate of the Zambia Correctional Service (ZCS) marking a paradigm shift from retribution to rehabilitation of prisoners. In the past, the mandate of the Zambia Prison Service was to ensure that all inmates are in safe and lawful custody until the expiration of their sentences and to punish them for the wrongs they committed. With the amendment of the Prisons Act in 2000 and 2004, the Zambia Prison Service assumed additional responsibilities such as community sentencing, offender management and parole. The renaming of Zambia Prison Service to Zambia Correctional Service in the amended Constitution reflects the widened mandate of the Service which includes now – amongst others – the facilitation of rehabilitation, community re-entry and the support to re-integration of inmates into their communities. The Commissioner General concluded his presentation by stating that – in line with its new mandate – the ZCS has to strike a fair balance between security and correcting offending behavior.

III. FINDINGS FROM THE VISITS TO CORRECTIONAL FACILITIES IN ZAMBIA

Daniel S. Libati

To familiarize the participants with the conditions in Zambian correctional facilities, Mr. Libati held a presentation on the visits to all correctional facilities⁴ and shared the main findings from the tour with the audience. The visits were conducted between 31st of July and 24th of August 2017 by a delegation led by the Ministers of Justice and Home Affairs, comprising of the Minister of National Guidance and Religious Affairs, the high command of the Zambia Correctional Service, representatives from the European Union Delegation to Zambia and the Embassy of the Federal Republic of Germany to Zambia as well as representatives from government departments, institutions, church and civil society organisations.

The main challenges found in the visited facilities were outlined as follows:

- The overall capacity of all facilities in Zambia is about 8,500 inmates. However, they are catering for more than 21,000 inmates, the result of which is

³ For full presentations, kindly refer to the annex of this report

⁴ Katombora Reformatory School, Livingstone Central, Choma, Monze, Mazabuka, Kamfinsa, Kansenshi, Chondwe Open Air Farm, Mwembeshi Maximum, Mwembeshi Open Air Farm, Chainama East Correctional Hospital, Kamwala Remand, and Lusaka Central.

overcrowding. In all facilities visited, mattresses, beddings and space for sleeping were inappropriate or in short supply.

- In almost all facilities visited, it was witnessed that remandees, convicts and juveniles were mixed. It was also found that in some facilities juveniles had been there for as long as three years awaiting the confirmation of their sentences or transport to approved or reformatory schools.
- In almost all correctional facilities with female sections, it was found that circumstantial children were detained together with their mothers. None of these facilities had adequate facilities (schools, playgrounds, toys, etc.) for children.
- Almost all facilities indicated challenges with transport for inmates to hospitals or for remandees to court. Transport is also a challenge for moving juveniles to approved or reformatory schools.
- A low Officer-Inmate-Ratio of up to 12 inmates per officer in facilities such as Lusaka Central.
- Because of the large numbers of inmates in facilities that were not meant to cater for such large numbers, sanitary facilities were found to be highly inadequate
- In many facilities inadequate cooking facilities were found. In some facilities domestic stoves were used instead of industrial cookers, in others inmates had to cook on firewood. In some facilities (e.g. Monze) inmates also complained about a poor and unbalanced diet.
- Some facilities didn't offer any vocational training to inmates. In others the choice was very limited. Challenges were also witnessed with regards to exam fees as inmates had been denied the opportunity to write exams on account of such examination fees not having been paid. Another challenge was that upon release inmates were not given any tools to work in the professions they were trained in.
- In many facilities there was a request for recreational activities (e.g. footballs and games).

With regards to causes for overcrowding, Mr. Libati identified the following underlying factors in his report:

- Delayed confirmation of sentences at High Court and in the listing of appeal cases
- Especially in rural areas, the distance to Legal Aid Board (LAB) offices was too far for people to access them
- Long remand periods due to delays in case flow within the justice system
- Low numbers of inmates granted parole

In presenting some statistics on the prison population in Zambia, Germany and South Africa, Mr. Libati concluded his presentation by summarizing that overcrowding is not only a problem of lack of infrastructure but also caused by broader challenges in the

justice system relating to case-flow management, administrative procedures (e.g. bond and bail, duration of remand, social welfare reports), institutional mandates and the legal framework (e.g. on minimum sentences). The data also showed that there is quite some reliance on custodial sentences and rather long sentences in Zambia.

IV. SUMMARY OF PRESENTATIONS AND RECOMMENDATIONS

1. The Socio-Economic Impact of Pre-Trial Detention in Zambia

Prof. Lukas Muntingh (Africa Criminal Justice Reform)

Prof. Muntingh from a South Africa based think tank on justice reforms, the Africa Criminal Justice Reform (ACJR), presented findings from a study conducted in 2015 on the impact of pre-trial detention. The researchers from ACJR interviewed 148 male and female inmates from Kalomo State and Lusaka Central Correctional Facilities and 138 affected families on the socio-economic impact on the families of the accused persons. The study found that the vast majority of the detainees interviewed were economically active and contributed most or all of their household income. The majority of the detainees used to be the household heads, were married and had on average two children and three additional dependants they provided for. In line with these statistics, the study found that 94% of the affected households reported a loss of income due to the pre-trial detention. Even worse, most of the affected households reported even additional costs due to the pre-trial detention such as visiting costs, costs for items brought to the detainee (such as food, soap, clothing, blankets, sanitary products and cash), costs for legal assistance and loss of income due to time spent on visits. On average, a family spent about ZMW 220 per visit to the detainee. More than half of the affected households had to sell assets (livestock, household goods, food and farming assets or land) and more than a third had to borrow money from family or friends (on average about ZMW 1,500).

About three quarters of the affected families also reported that their social standing was negatively affected; especially children often had to live elsewhere, suffered trauma or could no longer go to school. The study also revealed that about 25% of the detainees became ill in detention and only 28% of those who became ill received any treatment while in detention.

In conclusion, the study presented by Prof. Muntingh showed that the impact of pre-trial detention goes far beyond the accused persons by affecting their families as well. Prof. Muntingh therefore recommended that detention of an accused should only occur when absolutely necessary and for the shortest possible duration.

2. Discretionary Powers of the National Prosecution Authority and Orientation of Prosecutors and State Advocates

Hon. Justice Chalwe Mchenga

In his presentation, Hon. Justice Mchenga outlined that the current legal framework restricts the National Prosecution Authority (NPA) in its discretion how to handle cases. For instance, the NPA cannot divert a case from the courts; the discretion of NPA is limited to either prosecuting or not prosecuting. Furthermore, the admission of guilt procedure is limited to a few minor offenses. An administrative challenge mentioned by Justice Mchenga was the absence of guidelines on drawing up charges. According to his assessment this absence of guidelines has prevented the NPA to fully and systematically use the discretionary power it already has.

Justice Mchenga therefore made the following recommendations:

- **Diversion before Prosecution:** Enactment of legislation to divert juveniles and persons who commit petty offences from the court process will ease the courts' case load and ensure the speedy trial of the remaining cases.
- **Expansion of the scope of Admission of Guilt Procedure:** The scope of the procedure should be broadened to cover groups like juveniles and more petty offences.
- **Review of Plea Negotiations and Agreements Act:** The use of the Plea Negotiations and Agreements Act has been limited because it is limited to the charge but the sentences are not predictable. If amended, the Plea Negotiations and Agreements Act could contribute to cutting down on lengthy trials and consequential detentions.
- **Review of Legislation limiting Bail:** The broadening of offences amenable to bail can contribute to managing the population in correctional facilities.
- **Developing Guidelines on the drawing up of Charges:** Guidelines will ensure that only meritorious cases are prosecuted. With fewer cases in court, the trials of detained persons will be expedited.

In response to the recommendations by Justice Mchenga, the Director of Public Prosecutions (DPP), Lillian Siyuni, explained that another factor limiting the use of the Plea Negotiations and Agreements Act is the limited willingness of prosecutors and state advocates to use the Act because of a lack of orientation. Another recommendation from the DPP was to expand the use of the Plea Negotiations and Agreements Act to include felonies. The DPP also mentioned the training needs in her institution, especially with regards to drawing up charges, code of ethics for prosecutors in case handling and juvenile cases. With regards to the development of guidelines on drawing up charges, the DPP added that it would be important to also include time

frames that regulate how fast cases should be handled depending on the offense. With regards to diversion it was recommended to give the Zambia Police Service and the NPA powers to settle some matters outside of court. Finally, the DPP stated the need for more District Attorneys to facilitate the further decentralization process of NPA.

3. The Legal Aid System in Zambia

Director Legal Aid, Anderson Ngulube

In his presentation, the Director Legal Aid, Mr. Ngulube, outlined the limits of the current legal aid system in Zambia. He stated that the Legal Aid (Amendment) Act of 2005 establishes the Legal Aid Board (LAB), regulates the provision of legal aid based on the 'means test' and the 'interest of justice' principle and defines legal aid relatively restrictive by limiting it to legal assistance and representation in court.

As one of the main challenges in the sector, the Director Legal Aid identified the low number of legal practitioners in the country not being able to adequately cater for the needs of the population. Additionally, he mentioned that the services provided by paralegals in the country are – similar to the paralegals themselves – neither recognized nor regulated. Subsequently paralegals operate without structured support. Mr. Ngulube highlighted – amongst others – the following benefits of an effective legal aid system: elimination of unnecessary detention, speedy processing of cases and fair and impartial trials, leading to a reduction in the prison population and a lower appeal rate.

In order to address some of the identified challenges and to enhance the effectiveness of the Zambian legal aid system, the Legal Aid Board (LAB) is currently developing a National Legal Aid Policy (NLAP). The draft NLAP foresees to widen the scope of legal aid in order to establish complementary legal aid service delivery models such as Legal Service Units (LSU)⁵, recognize and regulate other Legal Aid Service Providers than the Legal Aid Board and to recognize and regulate the role of paralegals in the Zambian legal aid system.

Mr. Ngulube made the following recommendations:

- Amendment of the Legal Aid Act for a supportive and effective regulatory framework in accordance with the National Legal Aid Policy
- Strengthening and decentralization of the operation of LAB
- Establishment of additional LSUs and correctional facility paralegal desks
- Use of complementary outreach strategies with mobile legal aid clinics to correctional facilities without permanent desk and the use of paralegal desk at police station level

⁵ An LSU is a cooperation between the Judiciary hosting the unit at a court, the Legal Aid Board being responsible for the management, oversight and the placement of Legal Aid Assistants in the unit and a paralegal organisation contributing paralegals to the unit.

Adding to the Director's recommendations, Mrs. Pamela Mumbi from the Law Association of Zambia (LAZ) called for effective pro-bono services by legal practitioners. And responding to a suggestion from the plenary to give paralegals audience in court, she opposed this view by stating that only legal practitioners who have been admitted to the bar have the qualifications to have audience at the courts.

4. Provision of Police Bond and Court Bail in Zambia

Kristen Petersen (Africa Criminal Justice Reform)

Ms. Petersen from the Africa Criminal Justice Reform think tank presented her analysis of the Zambian bail system. Generally she found that most legal provisions in the Criminal Procedure Code (CPC) on the bail system in Zambia are in line with international best practices. However, the CPC provides for a number of non-bailable offences which is in contradiction to the presumption of innocence until proven guilty. Furthermore, the CPC contains no mandatory legislative time limit provisions for pre-trial detention.

Ms. Petersen outlined that although the Zambian legal framework is generally in line with international standards, practices often differ significantly from the legal provisions. In many cases there is non-adherence to the 24 hour rule within which an accused must be brought to court. Also, despite provisions for police bond, in practice, it seems that bail is generally granted by courts. Furthermore, regardless of legislation requiring that bond/bail amounts fixed not to be excessive, there seems to be a problem in respect of the required sureties that are being invoked by police authorities; in most cases, requiring two working sureties, preferably civil servants. And finally, even though there are provisions in the constitution on constitutional bail in cases of inordinate delays, the term inordinate delay is not further defined and in practice the constitutional bail provisions are not used.

In order to address the identified shortcomings, Ms. Petersen recommended the following measures:

- Repeal all provisions on non-bailable offences.
- Train police officers and magistrates on objectives of bail and bond to ensure wider use of the provisions.
- Ensure compliance of the Zambia Police Service with the 24 hour rule.
- Review police practice requiring work sureties (of civil servants), e.g. through a clear directive or policy.
- Consider periodic review of bail conditions in order to allow judicial officers to revise the bail amount in case they are not met by the offender.
- Strengthen constitutional bail provisions (in cases of inordinate delays).

The experts on the panel reacted as follows to Ms. Petersen's recommendations: With regards to the 24 hours rule, Mr. Daka from the Legal Department of the Zambia Police Service (ZPS) acknowledged that the Police often faced logistical challenges in complying with that rule. Ms. Mukulwamutiyo from the Legal Aid Board, Hon. Kafunda and Justice Mchenga from the Judiciary emphasized on the need to align practices on bond/bail conditions to the legal provisions and to judge each case on its own merits. Hon. Kafunda also proposed to sensitize detainees on their right to appeal their bail conditions. Finally, Ms. Mukulwamutiyo (LAB) concretized that in order to strengthen the constitutional bail provision, it must be specified by the law what constitutes an inordinate delay.

5. Sexual Offenses, ZAWA Act and Narcotic Drugs and Psychotropic Substances Act – The Impact of Harsh Minimum Sentences

Director Zambia Law Development Commission (ZLDC), Hope Ndhlovu-Chanda

The Director of the Zambia Law Development Commission (ZLDC) looked in her presentation into the impact of minimum sentences prescribed by the law. She specifically analysed some of the sentences provided for under the Penal Code for offenses against morality such as defilement but also provisions under the Zambia Wildlife Authority Act and the Narcotic Drugs and Psychotropic Substances Act. The (minimum) sentences on the following offenses were – amongst others – identified by Mrs. Ndhlovu-Chanda as particularly problematic with regards to overcrowding of correctional facilities as these offenses carry rather long (minimum) sentences leaving very limited or no discretion to magistrates and judges in sentencing:

- Defilement of a girl under 16 years
- Hunting, disturbing or removing wild animals in a national park
- Being in possession of game or protected animal
- Trafficking in narcotic drugs
- Imports or exports of any narcotic drug or psychotropic substance
- Possession, control or manufacture of any narcotic drug or psychotropic substance
- Cultivation of any plant which can be used or consumed as a narcotic drug or psychotropic substance

Mrs. Ndhlovu-Chanda made the following recommendations to revise the Penal Code:

- Provision of shorter terms of imprisonment for selected offences.
- Introduce alternatives to imprisonment such as house arrest, fines and community service.
- Leaving more discretionary leverage to Magistrates and Judges

The experts on the panel, Mr. Akapelwa from the Drug Enforcement Commission (DEC), Mrs. Ngulube-Shipanuka from the Zambia Wildlife Authority (ZAWA) and Mr. Mulobela from the NGO Coordinating Council (NGOCC) generally agreed with Mrs. Ndhlovu-Chanda's assessment. Mr. Akapelwa indicated that the Narcotic Drugs and Psychotropic Substances Act has recently been reviewed by DEC to strengthen the prevention provisions. Mrs. Ngulube-Shipanuka from ZAWA acknowledged that fines and penalties under the ZAWA Act are often too high for people in rural areas and therefore many have to serve custodial sentences for the possession of game meat. Furthermore, she stated that the admission of guilt procedure under ZAWA has not been fully utilized due to the lack of guidelines. Mr. Mulobela from NGOCC acknowledged that some of the sexual offenses are not bailable and contribute to the overcrowding of correctional facilities, he, however, maintained the view that sexual offenders deserved serving long sentences in correctional facilities.

6. Principles of Sentencing, Confirmation of Sentencing and Orientation of Magistrates and Judges

Dr. O'Brien Kaaba (University of Zambia) and Hon. Twaambo Shalwindi-Musonda

Dr. Kaaba and Hon. Shalwindi-Musonda from the Judiciary held a presentation on the Judiciary in the criminal justice system and how certain legal provisions, administrative procedures and the sentencing jurisprudence contribute to overcrowding in correctional facilities.

With regards to legal provisions, Dr. Kaaba and Hon. Shalwindi-Musonda identified non-bailable offenses, long mandatory minimum sentences and making imprisonment the default sentence for persons who cannot afford paying fines as contributors to overcrowding of correctional facilities. On the topic of procedures they mentioned the requirement of confirmation of certain Subordinate Court decisions by a High Court. They specifically cited cases which are tried by subordinate courts but where the minimum mandatory sentence exceeds sentencing limit of the highest ranking magistrates. Another challenge identified by the presenters was the lack of appropriate supervisory mechanisms for non-custodial sentences inclining adjudicators to custodial sentences. Finally, they stated that up to date the sentencing jurisprudence is predominantly retributive which reflects widely public opinion.

In order to address the identified challenges, Dr. Kaaba and Hon. Shalwindi-Musonda proposed the following measures:

- Agree among Judiciary, ZCS and Social Welfare Department on how to oversee community sentences

- Judiciary to develop sentencing guidelines to enhance transparency, uniformity and consistency in sentencing
- Training of new and serving adjudicators in sentencing
- Revise the law requiring confirmation orders for Subordinate Court cases and/or align sentencing powers of Subordinate Courts with the cases in their jurisdiction
- Review provisions on non-bailable offences
- Review parole legislation to make it less restrictive
- Imprisonment should not be the automatic default sentence for defaulting to pay a fine
- Review Penal Code and CPC in order to enforce non-custodial sentences
- Align legislation to constitutional provisions which support restorative approaches to sentencing

In response to the recommendations on training of adjudicators in sentencing, the Director of the Zambia Institute for Advanced Legal Education (ZIALE), Mrs. Malata-Ononjuju, indicated that ZIALE could play an important role in this regard. With regards to mandatory minimum sentences, Justice Mchenga pointed out that there is a need to relook at the law regulating mandatory minimum sentences, especially regarding sexual offenses. He also emphasized the need to reform the principles regarding community service and parole.

7. The Coordination of the Criminal Justice Process

Hon. Mbololwa Mukela (Judiciary; CCCI Chapter Livingstone) and Lawrence Mudenda (NPA; CCCI Chapter Choma)

Hon. Mukela and Mr. Mudenda presented the Communication, Cooperation and Coordination Initiative (CCCI). The CCCI is an initiative under the Ministry of Justice that brings together the key stakeholders in the criminal justice sector⁶ at provincial or district level. The main aim of the initiative is to improve coordination and cooperation in the sector in order to enhance case-flow management among all justice institutions.

In their presentation, Hon. Mukela and Mr. Mudenda outlined how the Zambian CCCI initiative and other similar initiatives from around the world contribute to the decongestion of correctional facilities. The presenters highlighted some of the achievements of the CCCI chapters Livingstone and Choma and showed the relevance of the initiative with regards to speeding up trials, ensuring attendance of witnesses, prosecutors, defence lawyers, accused and translators at court dates, and reducing the overcrowding of correctional facilities:

⁶ The Judiciary, National Prosecution Authority, Zambia Police Service, Zambia Correctional Service and the Legal Aid Board as well as other relevant government departments and civil society.

- Cause lists are prepared and submitted to court and other stakeholders in time (Choma).
- As of 24th August 2017 there was no male juvenile at Choma Correctional Facility.
- A sub-committee of the CCCI chapter is tackling prolonged detention periods in Livingstone Correctional Facility – meeting with High Court Judge yielded positive results.
- Total inmate population at Choma Correctional Facility dropped from approximately 400 to 350 due to CCCI interventions in 2017.

These successes were secured through monthly meetings of the chapters during which the chapter members discuss challenges bordering on communication, cooperation and coordination among their institutions. In order to make the initiative even more effective, the presenters made the following suggestions:

- The CCCI should be established as formal platforms in the justice sector by a statute or a policy.
- CCCI representatives should comprise of the decision-making, senior officials in respective authorities.
- Revision of the overall MoU/Access to Justice Strategy which establishes the CCCI initiative.
- Development of clear terms of reference at chapter level in order to strengthen the initiative.
- Setting standards on case-flow within the justice system in terms of standardized processes and timelines.
- Subordinate Courts, Police and NPA to have a legal time frame in which criminal and civil proceedings should be heard and determined.

In reaction to the presentation, Mr. Chikalanga from the Governance Department of Ministry of Justice proposed that every time CCCIs meet they should have a list from correctional facilities indicating inmates who have overstayed. He also recommended that CCCI chapters should have reasonable amount of funding to be in a position to operate effectively. However, Ms. Sprenger, GIZ Advisor in Southern Province, working with the Livingstone and Choma chapters emphasized that funding is not the basis for the CCCI and that the two chapters in Southern Province have been meeting successfully without funding.

8. Juvenile Justice: Enhanced Use of Diversion in Juvenile Cases and the Issuing of Social Welfare Reports

Sara Larios and Kelly Kapianga (both Undikumbukire Project Zambia)

The Undikumbukire Project Zambia (UP Zambia), represented by Ms. Larios and Mr. Kapianga, identified three main areas of concern with regards to juvenile justice, namely; (1) the lack of pre-court diversion, (2) delays in social welfare reports and (3) delays in the confirmation process for custodial orders. Despite several provisions on diversion in the Zambian laws⁷, according to UP Zambia, diversion is rarely used in juvenile cases.

In order to enhance the use of these provisions, UP Zambia made the following recommendations:

- Enhance the use of customary law as a diversion measure (in line with Section 1(2) of the Juveniles Act)
- Amend Plea Negotiation Act to enhance its use to juvenile cases
- Train social welfare officers and adjudicators in the use of diversion
- Encourage reconciliation in cases of minor offences (in line with Section 8 CPC and/or several sections of the Penal Code)

Social welfare reports are reports prepared by the Social Welfare Department under the Ministry of Community Development and Social Services (MCDSS). They shall provide background information on a juvenile offender to assist the court to make a decision in the juvenile's best interest. UP Zambia raised concerns about the current practice of how social welfare reports are being prepared and which information they contain. For instance, many reports are delayed due to the high work load of the probation officers under MCDSS, the poor coordination with the juvenile courts and a lack of participation from parents in the report process. Furthermore, the reports often go beyond the information required by the law and contain recommendations on what order the court should make, hence overstepping the mandate of the probation officers.

Ms. Larios and Mr. Kapianga recommended the following measures to address the challenges:

- Courts should **feel free to obtain the required information through any practical means**, rather than continuing to keep a juvenile in detention due to delays in obtaining a social welfare report.
- This can be done by obtaining the information required in the **most efficient** and **expeditious** way possible :
 - Through a written social welfare report if readily available; or
 - Through an oral report from the probation officer where a written report has not yet been prepared; or

⁷ E.g. Section 1(2) of the Juveniles Act, the Plea Negotiations and Agreement Act, Section 8 of the CPC, Section 73 of the Juveniles Act and the Penal Code.

- Through direct questioning or testimony of the parents/guardians, the juvenile, or any other person who possesses the required information
- Reports and testimony should be limited to the required information only and **not venture into what order should be made by the Court.**

The Juveniles Act requires the High Court to confirm any custodial order in juvenile cases. Theoretically, subordinate courts could grant the juveniles bail pending confirmation of their sentence. In practice, however, juvenile courts rarely issue bail pending confirmation. Furthermore, contrary to the Juveniles Act, juvenile courts are issuing open-ended detention orders pending confirmation and statutory timelines for the confirmation process are often ignored. Delays in the confirmation process are further caused by not prioritizing the preparation of juvenile court records at the subordinate court, delays in the transmission of juvenile court records from the districts to the High Court and delays at the High Court in confirming sentences once the records are transmitted.

To speed up the confirmation process UP Zambia made the following recommendations:

- Consider bail pending confirmation of sentences and if the statutory timelines expire before a confirmation hearing is scheduled, bail pending confirmation should be mandatory.
- Develop guidelines for confirmation by High Court.
- If the confirmation process cannot be improved so that it adds substantive value to the juvenile court processes, the confirmation process should be removed.

The panelists responded to the recommendations as follows: Mr. Goma from the Social Welfare Department proposed that more probation officers should be hired to attend to social welfare reports. Ho. Mikalile from the juvenile court in Lusaka proposed that all juveniles should be represented by the Legal Aid Board. He also emphasized that the social welfare reports are relevant and are helping the courts in arriving at their conclusions. Mr. Hikalinda from the Victim Support Unit of the Zambia Police Service, mentioned the need for more reformatory schools and Ms. Mulenga from the Zambia Civic Education Association suggested with regards to the confirmation orders that instead of waiting for the High Court to confirm reformatory orders, this task could be given to the Subordinate Court to speed up the process.

9. The Granting of Parole as a Means to Reduce Overcrowding in Zambian Correctional Facilities?!

Commissioner Tobius Mwanza (Zambia Correctional Service) and Prof. Lukas Muntingh (Africa Criminal Justice Reform)

In the first part of this session, Assistant Commissioner Ngoma-Sinkamba on behalf of Commissioner Mwanza presented on the mandate of the National Parole Board and the legal framework governing parole in Zambia. Parole is the conditional release of an inmate to serve the remainder of his/her sentence in the community, before the expiry of the sentence under the supervision of the state.

Parole is governed by the Prisons (Amendment) Act and the Parole Rules. Convicts who have served at least 2 years remaining with 6 months before the expiry of sentence are generally eligible to be considered for parole. The National Parole Board is – upon receipt of a Reception and Discharge Committee (RDC) report/ recommendation – responsible for conducting a parole hearing to make a recommendation to the Commissioner General for granting of parole or not. Parole has a positive impact on inmates as well as on the society as it allows for community corrections, fosters family and community reintegration and resettlement, reduces reoffending and recidivism, decongests correctional facilities and is cost effective.

Challenges identified by Commissioner Mwanza were the rather restrictive and prescriptive legal framework, the highly centralized system and the non-autonomous operational structure of the National Parole Board. In order to address these challenges, Commissioner Mwanza proposed the following measures:

- Enhance the eligibility for parole to offenders also serving shorter sentences than at least two years and increasing the parole period to more than 6 months.
- Decentralize the parole system to the district and provincial level.
- Make the National Parole Board an autonomous institution.

In the second part of this session, Prof. Muntingh highlighted some lessons learned from the South African parole system. The South African system is established under the Correctional Services Act of 2004. Inmates are eligible to be considered for parole once they have served 50% of their sentence. A so called Case Management Committee is responsible for the information collection on eligible parole cases (case record, sentencing remarks, criminal record, disciplinary record, etc.) and depending on the length of the sentence for forwarding the information on the case and their recommendation for decision making as follows to:

- the Head of Centre (Correctional Facility) in cases of less than 2 years.
- the responsible Parole Board (decentralized to 48 locations) in cases of more than 2 years up to life.
- the Minister of Justice and Correctional Services in cases of life sentences.
- the Medical Parole and Review Board in cases of medical parole.

According to Prof. Muntingh the compliance rate in South African is very high (98%) and the costs of the parole system compared to the costs of detaining the convicts in correctional facilities are relatively low.

The panelist reacted to the two presentations as follows: Mr. Miti from the Ministry of Justice voiced concerns about the transparency of decisions if the National Parole Board (NPB) was decentralized to provincial and district level. He also mentioned that there was a general need to strengthen systems and not only to increase funding to the NPB. Mrs. Nyambe from United Nations Office on Drugs and Organized Crime (UNDOC) emphasized the need for community sensitization on parole in order to enhance the acceptance. Mrs. Ngoma-Sinkamba outlined that also in Zambia the compliance with parole conditions was extremely high and that the NPB so far only had to call back five out of more than 1,500 parolees. Mr. Mayamba from the Prisoners Future Foundation reiterated the point that the NPB should be made a standalone entity under the Ministry of Home Affairs.

10. Setting Standards for Maximum Duration of Remand

Ellah Siang'andu (University of Zambia)

In her presentation Ms. Siang'andu looked into international best practices with regard to standards for a maximum duration of remand. International conventions such as the International Covenant on Civil and Political Rights (ICCPR) or the African Charter on Human and Peoples Rights (ACHPR) emphasize the right to be promptly brought before a judge and being tried within a reasonable time respectively. However, both instruments are silent in terms of what ought to be a maximum duration for remand.

There are examples of countries which have defined a reasonable time for trials to commence; e.g. Nigeria has defined that period in its constitution⁸ as follows:

- a) two months from the date of arrest in cases the accused is in custody or not entitled to bail; and
- b) three months from the date of arrest in cases the accused has been released on bail.

⁸ Article 35(4) of the Constitution of Nigeria.

Another example is England and Wales which introduced time limits for the duration of remand in their Prosecution of Offences Act of 1985 of a maximum remand duration of between 56 and 252 days depending on the severity of the charge. England and Wales also introduced bail as the default option over remand in the Bail Act of 1976.

In conclusion, Ms. Siang'andu made the following recommendations for Zambia:

- Setting standards for maximum duration of remand by further defining the term 'reasonable time' in the constitution through:
 - subsidiary legislation (e.g. England and Wales), or
 - in the constitution (e.g. Nigeria), or
 - judicial precedence.
- The Judiciary must be encouraged to use alternative measures to pre-trial detention more often (bail).

The three panelists, Mrs. Takusanika from the Human Rights Commission (HRC), Mr. Daka from the Zambia Police Service and Hon. Kafunda from the Judiciary, added that it would be important to strengthen justice institutions in order to speed up investigation, prosecution and trials so that the justice system could comply with any newly introduced standards and to strengthen oversight institutions such as the Judiciary or HRC in order to enhance compliance.

11. Community Sentencing Orders

Director of Prisons, Uganda Prisons Service, Moses Kakungulu Wagabaza

Mr. Wagabaza from the Uganda Prisons Service analyzed the Zambian Community Sentencing framework and presented some lessons learned from the Ugandan system. He started his presentation by defining community sentencing as a collective name for alternative, non-custodial sentences served in the community instead of serving a prison term. According to Mr. Wagabaza, objectives of community sentencing are the reduction of crime through community based rehabilitation, the reduction of recidivism by avoiding mixing petty offenders with hard core criminals and the promotion of reconciliation amongst others. The most widely used forms of community sentences in Africa are Community Service Orders (CSO) and probation.

A CSO sentences a person who committed a minor offence to perform unpaid work in the community where he or she resides instead of being sent to prison. In Zambia, CSO are governed by three different laws⁹ which creates challenges as some of these laws contradict each other and they overall lack clear guidelines, regulations, administrative structures, supervisors, and placement institutions.

⁹ The Penal Code (Amendment) Act of 2000, the Criminal Procedure Code (Amendment) Act of 2000, and the Prison (Amendment) Act of 2000

With regards to probation, the Zambian law¹⁰ only provides for post-conviction probation while other jurisdictions (e.g. Kenya) also provide for pre-conviction probation. Furthermore, according to Mr. Wagabaza it seems that the courts in Zambia make only limited use of probation. Zambia's relatively high prison population rate seems to confirm this assessment as there seems to be a bias towards custodial sentences.

Based on his assessment of the Zambian system, Mr. Wagabaza made the following recommendations:

- Develop clear instructions, categories, institutions mandated to handle offenders and which persons qualify for Community Sentences (e.g. in the CPC).
- Develop clear guidelines on which offenses are eligible, and which tools for monitoring and evaluation have to be put in place (e.g. in the CPC).
- Harmonize legislation on community sentencing orders by enacting a comprehensive law on community sentencing orders.
- Either make Community Service an independent institution established by an Act of Parliament or let it be part of the Correctional Service.
- Judiciary to develop sentencing guidelines to enhance the use of community sentencing.

In response to these recommendations, Mr. Hakasenke from the Social Welfare Department under MCDSS stated that there is a need to appoint more probation officers countrywide. Mrs. Nkumbula from the Ministry of National Guidance and Religious Affairs stated that her ministry could also play an important role in the rehabilitation of convicts. Mr. Chishimba from the Zambia Correctional Service mentioned that some of the clear guidelines on CSO will be provided for in the Zambia Correctional Service Bill which has been developed recently and that the Bill would contribute to harmonizing some of the laws on CSO. Mr. Sakwiba from the Ministry of Chiefs and Traditional Affairs stated the general need for more non-custodial sentences and Mrs. Ndhlovu-Chanda from ZLDC advised that administrative structures must be put in place to ensure that institutional mandates do not overlap with mandates of existing institutions.

12. The Criminal Procedures Code and Penal Code – Overview on the Reform Efforts by ZLDC

Director Zambia Law Development Commission, Hope Ndhlovu-Chanda

The final presentation of the symposium was held by Mrs. Ndhlovu-Chanda from the Zambia Law Development Commission (ZLDC) on the current efforts by ZLDC to review the Penal Code (PC) and the Criminal Procedures Code (CPC). Mrs. Ndhlovu-Chanda

¹⁰ Probation of Offenders (Amendment) Act.

mentioned in the introduction of her presentation that sentences and the sentencing system as outlined – amongst others – under the PC and CPC are one of the major factors contributing to the overcrowding of correctional facilities. Of specific relevance are the following sections of the CPC:

- Sentencing powers of Subordinate Courts and confirmation by High Court (Sec 7 and 9);
- Provision of bail pending confirmation (Sec 13);
- Suspended sentences (Sec 16); and the
- Flexibility for payment of fines – time – distress – imprisonment (Sec 310).

Mrs. Ndhlovu-Chanda outlined that the ZLDC embarked on its review process of the PC and CPC in 2010 with the objectives to remedy identified challenges with the two codes, making the codes more responsive to the needs of the Zambian society and harmonizing the administration of criminal law. After desk research, stakeholder consultations, a study tour and several workshops, ZLDC is now embarking on drafting amendments to the codes (expected completion date December, 2017).

Mrs. Ndhlovu-Chanda informed the audience on some of the proposed amendments:

- The need for sentencing guidelines or sentencing legislation;
- Reduction in some sentences, increase in others, removal of fines in some cases;
- The need to harmonize criminal legislation and group similar offences together and have uniform penalties and procedures;
- All criminal offences to be placed in the Penal Code and Regulatory offences to be placed (remain) in the specialized legislation;
- Harmonization of provisions such as those relating to the age of a child; and
- Making provisions for new developments in the area of criminal law.

Mrs. Ndhlovu-Chanda made the following additional recommendations on law reforms:

- Legislation making a clear distinction between the different actors and different levels of participation in criminal activities and imposing punishments accordingly.
- The Penal Code and Criminal Procedure Code review process does not tackle the question of sentences – minimum or maximum – a separate process needs to be initiated for this.
- Make provisions for alternatives to imprisonment including adequate institutional and coordinating mechanisms.
- Make provisions for diversion programmes for offenders such as juveniles or adult offenders who commit petty offences or other offences that can be remedied at community level and/or restorative justice programmes.



- Legislation can make provision for compassionate release and national pardoning mechanisms.
- To provide for the imprisonment of children as a last resort.
- To provide for non-state legal aid providers.
- Transfer the correctional service approach not only to the Zambia Corrections Service but to all other law enforcement agencies in the criminal justice system (changes in attitudes and perceptions).
- Undertake holistic legal reforms in the sector as opposed to fragmented reforms.

Finally, Mrs. Ndhlovu-Chanda briefly informed the participants that ZLDC is currently also reviewing the Prisons Act and allied legislation¹¹.

¹¹ Particulars on this review process can be found in her attached presentation.

V. REFORMS ROADMAP – OUTCOME OF GROUP WORK

After the presentations, all participants were split up into five working groups. The groups had the main task to identify milestones that were needed in order to implement the reform proposals made by the presenters and panelists during the symposium. This was done in form of a road map as a main output. The working groups were also asked to identify a target timeline for the completion of milestones and relevant institutions (lead institutions and participating institutions) for the implementation of identified activities. Finally, the working groups were given the task to make proposals on how activities could be clustered under Technical Working Groups (TWGs) and to whom these TWGs should report to. The following Technical Working Groups were identified:

1. Technical Working Group on the *Legal Aid Policy*
2. Technical Working Group on the *National Prosecution Authority*
3. Technical Working Group on *Police Bond and Court Bail*
4. Technical Working Group on the *Reform of the Penal and Criminal Procedures Code*
5. Technical Working Group on *Trainings of Justice Stakeholders*
6. Technical Working Group on the *Paralegal Training Scheme*
7. Technical Working Group on *Diversion (Sub-Committee under the Child Justice Forum)*
8. Technical Working Group on *Community Sentencing*

One of the five working groups, on standards of procedures, did not propose any Technical Working Groups. However, the topics are thematically structured.

Each road map is outlined under the respective proposed Technical Working Group.

1. Technical Working Group on the *Legal Aid Policy*

Lead Institution: LAB, Secretariat: GIZ/DIHR
Participating members: LAB, MoJ, LAZ, Paralegal CSOs
Reporting: Every month to the MoJ

Milestones	Target Timeline	Institution
Finalization of Legal Aid Policy drafting process	12/2017	LAB (lead institution), LAZ, Paralegal CSOs, MoJ and Cabinet Office
Amendment of Legal Aid Act to implement provisions of Legal Aid Policy	06/2018	LAB, MoJ (lead), ZLDC, LAZ, Paralegal CSOs
Decentralization of LAB	2018: 1 additional provincial LAB office (in all provinces), 2022: 6 LAB district offices will be established	LAB
Recognition of paralegals and establishment of quality assurance framework (e.g. on training)	06/2018 (see amended Legal Aid Act)	LAB (lead institution), Paralegal CSOs, Paralegal standing committee at LAB
Establishment of additional LSUs and paralegal desks (13 additional LSUs and 6 additional desks in correctional facilities/ police stations)	01/2022	LAB (lead institution), Paralegal CSOs, Judiciary, ZCS, ZPS
Development of comprehensive pro-bono framework for legal practitioners	2018: Start, 2019: Adoption	LAZ (lead institution), LAB

2. Technical Working Group on the *National Prosecution Authority*

Lead Institution: National Prosecution Authority (NPA), Secretariat: GIZ/DIHR
 Participating members: MoJ, Judiciary, NPA, LAZ, LAB, ZLDC & CSOs
 Reporting: Every month to the Ministry of Justice

Milestones	Target Timeline	Institution
Development of guidelines for NPA on drawing up charges (including timelines)	01/2018	MoJ, ZLDC (lead institutions), Law Enforcement Agencies and NPA
TWG to outline reform proposals for the following legislations: <ul style="list-style-type: none"> ➤ Review of NPA Act and relevant statutory instruments in order to allow for enhanced use of diversion by NPA and NPA internal guidelines on diversion ➤ Plea Negotiation and Agreement Act ➤ Admission of Guilt Procedures under CPC (widen its scope and make it available to juveniles) 	12/2018 reform proposals to be produced	MoJ (lead institution), Judiciary, NPA, LAZ, LAB, ZLDC & CSOs

3. Technical Working Group on *Police Bond and Court Bail*

Lead Institution: ZLDC, Secretariat: GIZ/DIHR
Participating members: MoJ, ZLDC, Judiciary, NPA, Law Enforcement Agencies, HRC, LAB & LAZ
Reporting: Every month to the MoJ

Milestones	Target Timeline	Institution
<p>Review of bail and bond practices with regard to sureties, traceable addresses, bail practices considering foreigners, government workers as sureties etc. ➤ Develop internal institutional guidelines</p>	04/2018	MoJ (lead institution), Judiciary, NPA, LAZ, LAB, ZLDC, CSOs, Law Enforcement Agencies
Review of legislation on bail process (CPC) (including the review / repeal of non-bailable offences)	04/2018	MoJ / ZLDC (lead institution), Law Enforcement Agencies, HRC, CSOs, LAB & Judiciary
<p>Definition of 'unreasonable delay' (constitutional bail) through an Act of Parliament, Statutory Instrument or judicial precedence → Submission to MoJ for inclusion in the current constitutional review process or inclusion to the CPC review on bail provisions</p>		MoJ / ZLDC (lead institution), Judiciary, Law Enforcement Agencies, HRC, LAB, LAZ & NPA

4. Technical Working Group on Reform of the *Penal Code and Criminal Procedures Code*

Lead Institution: Judiciary, chaired by Hon. Justice Chalwe Mchenga SC: The Technical Working Group is already in existence since 2010. The mandate is to review the Penal Code including AGBV, ZAWA Act and the Criminal Procedure Code

Participating members:

Reporting:

Milestones	Target Timeline	Institution
Introduction of diversion before prosecution	N.a.	ZLDC (lead institution), MoJ (Process is on-going)
Expansion of the scope of the admission of guilt	N.a.	ZLDC (lead institution), Ministry of Justice & the Judiciary
Review of sentencing powers of Subordinate Courts	N.a.	ZLDC (lead institution), MoJ
Review law requiring confirmation orders for Juveniles	N.a.	ZLDC (lead institution), MoJ
Development of guidelines for confirmation by the High Court	N.a.	Judiciary (lead institution)
Introduction of bail pending approval of reformatory school orders	N.a.	ZLDC (lead institution), MoJ
Explore other forms of punishment other than imprisonment	N.a.	ZLDC (lead institution), MoJ
Review of mandatory minimum sentences	N.a.	ZLDC (lead institution), MoJ
Review of law relating to reconciliation in criminal cases	N.a.	ZLDC (lead institution), MoJ
Finalize process of research on community sentencing in conjunction with TWG on community sentencing	N.a.	ZLDC (lead institution), Judiciary

5. Technical Working Group on *Training of Justice Stakeholders*

Lead Institution: ZIALE
 Participating members: ZIALE, MoJ, NIPA, Zambia Police College, NPA, Judiciary, ZLDC, MCDSS, *potential additional members*: ZPS, ACC, DEC, ZICTA, ZAMRA, Department of Wildlife, Immigration, ZCS, other Law Enforcement Agencies, TEVETA, UNZA, ZAQA, HEA
 Reporting: Every month to MoJ

Milestones	Target Timeline	Institutions
1. Trainings for Law Enforcement Agencies		
Inclusion of mental health issues in training of law enforcement officers	06/2018	Ministry of Health/ Chainama (lead institution), Judiciary, Law Enforcement Agencies, LAB, NPA, ZCS, Ministry of Education, ZPS, CSOs
Development of training programme for law enforcement institutions on enhanced juvenile diversion: ➤ Encourage the use of the Plea Negotiations Act in juvenile cases ➤ Encourage reconciliation in minor offences according to Section 8 of the Criminal Procedure Code	12/2018	MoJ, Child Justice Forum (lead institutions), CSOs, Social Welfare, Law enforcement institutions
Training in law (Minimum Diploma)	12/2017	NIPA, ZIALE, Zambia Police College (lead institutions), ZPS, ACC, DEC, ZICTA, ZAMRA, Department of Wildlife, Immigration, Judiciary, ZCS
2. Trainings for Prosecutors		
Set up technical working group	12/2017	ZIALE, NIPA (lead institutions), Judiciary, NPA, Law Enforcement Agencies, TEVETA, NIPA, UNZA
Develop standard prosecutors manual	06/2018	
Develop standard curriculum	12/2018	
Periodic trainings on juvenile justice	12/2018	Child Justice Forum (lead institution), NPA, Judiciary, ZCS, ZPS
3. Trainings for Magistrates and Judges		
Review of Magistrates' Handbook	12/2017	ZIALE, Judiciary (lead institutions), Law Enforcement Agencies, NPA, MoJ, Higher Learning Institutions Judiciary (lead institution), Social
Develop Judges' Handbook		
Develop Sentencing Guidelines including provisions on community sentencing		

5. Technical Working Group on *Training of Justice Stakeholders*

Lead Institution: ZIALE
 Participating members: ZIALE, MoJ, NIPA, Zambia Police College, NPA, Judiciary, ZLDC, MCDSS, *potential additional members*: ZPS, ACC, DEC, ZICTA, ZAMRA, Department of Wildlife, Immigration, ZCS, other Law Enforcement Agencies, TEVETA, UNZA, ZAQA, HEA
 Reporting: Every month to MoJ

Milestones	Target Timeline	Institutions
Develop a continuous training scheme for Magistrates & Judges to sensitize them on changes and developments in legislation		Welfare, CSOs, Education Stakeholders
Sensitization of magistrates at Juvenile Courts (on types of orders)		
4. ZIALE		
Review Curriculum	10/2018	ZIALE (lead institution), TEVETA, ZAQA, HEA, Universities with Schools of Law, LAZ, Curriculum Development Centre
Review Syllabus	10/2018	
5. Trainings for Social Welfare Department		
Training on Juvenile Justice	12/2017	MCDSS (lead institution), Judiciary, ZPS, ZCS, UNZA, Mulungushi University, ZIALE, NPA
Review of Social Welfare Curriculum	12/2017	
Training on legal process	12/2017	
Review of Induction Process	12/2017	

6. Technical Working Group on Paralegal Training Scheme

Lead Institution: Legal Aid Board (LAB), Secretariat: DIHR/GIZ → *already in existence*
 Participating members: LAZ, paralegal CSOs, MoJ, Ministry of General Education, TEVETA, ZIALE, UNZA, NIPA
 Reporting: Every month to MoJ

Milestones	Target Timeline	Institutions
Finalize Paralegal Curriculum and Syllabus for all three levels of paralegal studies	10/2017	LAB (lead institution)
Submission of all documents to TEVETA for approval	11/2017	LAB
Accreditation of training providers through TEVETA	05/2018	TEVETA
Training of paralegals according to approved training scheme	07/2018	Accredited Training Providers
Certification of paralegal qualification after completion of their training by ZAQA	12/2018	ZAQA

7. Technical Working Group on Juvenile Justice		
Lead Institution:	Judiciary, Secretariat: Childcare Foundation	
Participating members:	<i>Existing members:</i> Social Welfare Department, ZPS, Judiciary, DEC, ZCS, CSOs, <i>additional members for sub-committee:</i> House of chiefs, Ministry of National Guidance and Religious Affairs, I-NGOs	
Reporting:	Every month to the Judiciary	
Milestones	Target Timeline	Institutions
1. Enhanced use of Customary Law in Juvenile Cases		
Study on which offences can be dealt with by headmen of the community	03/2018	Social Welfare Department (lead institution), Ministry of chiefs and traditional affairs, ZPS
Comprehensive study on customary law and which cases are handled under customary law)	03/2018	ZLDC (lead institution), Ministry of Chiefs and Traditional Affairs
Development of policy which guides on the offences that shall be handled under customary law	10/2018	ZLDC (lead institution), Ministry of Chiefs and Traditional Affairs
2. Enhanced utilization of existing laws with provisions on diversion		
Development of training programme (in conjunction with TWG on training) for law enforcement institutions on enhanced juvenile diversion: ➤ Encourage the use of the Plea Negotiations Act in juvenile cases ➤ Encourage reconciliation in minor offences according to Section 8 of the Criminal Procedure Code	12/2018	MoJ, Child Justice Forum (lead institutions), CSOs, Social Welfare, Law enforcement institutions
3. Juveniles / Juvenile Justice Proceedings		
Facilitate discussion between courts (Juvenile) and SWD on SWRs	12/2017	Judiciary (lead institution), Social Welfare, CSOs, Education Stakeholders
Discussion on standardization of confirmation procedures (Judiciary, other stakeholders)		
Form “monthly status” meetings for juvenile confirmations and committals	03/2018	Judiciary (lead institution), MoJ, ZPS, CSOs, various Government Departments
Discuss merits of allowing sub-ordinate courts to confirm sentences or other orders that require confirmation		
Establish other possibilities for juveniles to access legal representation		LAB

8. Technical Working Group on Community Sentencing

Lead Institution: ZCS, Secretariat: ZCS
 Participating members: ZLDC, Social Welfare Department, ZPS, Judiciary, CSOs, NPA, Ministry of National Guidance and Religious Affairs
 Reporting: Every month to the MoHA

Milestones	Target Timeline	Institutions
Development of correctional policy on community sentencing	06/2018	ZCS (lead institution), ZPS, Judiciary, CSOs
Introduction of new legislation on community sentencing	12/2017	ZCS and MoJ (lead institution)
Establishment of operating structures/re-structuring ZCS based on new legislation	After enactment of law	Public Service Management Division (Cabinet Office) (lead institution)
Sensitization of all stakeholders on the new provisions in the law		By established structure
Amendment of the Penal Code (with reference to felonies)	12/2017	ZLDC (lead institution), Judiciary, ZCS

Lead Institution: No Technical Working Group identified yet.		
Participating members:		
Reporting:		
Milestones	Target Timeline	Institutions
1. Circumstantial Children		
Develop a provision and mandate for care of circumstantial children	06/2018	Social Welfare Department, ZCS, MoJ, MoH, HRC, ZPS, CSOs
2. Standards for Duration of Remand		
Conduct survey in countries that have standards for the maximum duration of remand and assess the applicability of their systems to Zambia	06/2018	MoJ (lead institution), NPA, ZPS, ZCS, LAB, LAZ, HRC
Develop list with bottlenecks/gaps relating to remandees in Zambia and develop action plans		
Develop legislative framework that establishes maximum remand duration		
3. Parole		
Review the parole rules regarding eligibility	03/2018	MoHA (lead institution), ZCS, Judiciary, Ministry of National Guidance and Religious Affairs, Social Welfare Department, LAB, ZPS, CSOs, NPA
Decentralize the National Parole Board to the Provinces		
Enhance the independence of the National Parole Board		
4. Rehabilitation of inmates		
Fee exemption for inmates attaining education	03/2018	Ministry of Education (lead institution), ZCS, CSOs, Social Welfare Department
Review Earning Scheme		
5. Enhanced Communication, Cooperation and Coordination in the Justice Sector		
MoJ to formulate policy to formalize CCCIs	03/2018	MoJ (lead institution), ZPS, ZCS, NPA, Judiciary, LAB, CSOs
Enhanced coordination amongst justice stakeholders to facilitate e.g. the transportation of mental health patients in correctional facilities	12/2017	ZCS and ZPS (lead institution), Judiciary, CSOs



VI. SYMPOSIUM AGENDA

Day 1 – 12.09.2017 – Taj Pamodzi Hotel

16:00 – 16:30 **REGISTRATION OF PARTICIPANTS at Taj Pamodzi Hotel**

16:30 – 16:45 **WELCOME REMARKS**

16:45 – 17:45 **WELCOMING SPEECHES**

European Union
German Embassy
Ministry of Health
Minister of Home Affairs
Chief Justice
Minister of Justice

17:45 – 18:00 **VEHICLE HANDOVER CEREMONY**

18:00 – 18:45 **THE NEW MANDATE OF ZAMBIA CORRECTIONAL SERVICE**

Zambia Correctional Services: Commissioner General – Mr. Percy Chato

18:45 – 21:00 **DINNER AND MUSIC PERFORMANCE**



Day 2 – 13.09.2017 – Sandy’s Creation Conference Centre

08:00 – 08:30	REGISTRATION DAY 2 at Sandy’s Creation Conference Centre	
08:30 – 08:45	WELCOME REMARKS	
08:45 – 10:00	FINDINGS FROM THE VISITS TO CORRECTIONAL FACILITIES IN ZAMBIA AND PRESENTATION OF AGENDA Daniel Libati	
10:00 – 10:30	TEA BREAK	
10:30 – 11:00	THE SOCIO-ECONOMIC IMPACT OF PRE-TRIAL DETENTION IN ZAMBIA Africa Criminal Justice Reform (ACJR): Lukas Muntingh	
11:00 – 12:00	Panel Discussion 1: DISCRETIONARY POWERS OF NPA AND ORIENTATION OF PROSECUTORS AND STATE ADVOCATES <i>Legislative, Administrative and Institutional Reforms of the National Prosecution Authority</i> Judiciary: Hon. Justice Chalwe Mchenga	Panel Discussion 2: THE LEGAL AID SYSTEM IN ZAMBIA <i>How paralegals and the establishment of Legal Service Units and paralegal help desks counteracts the overcrowding in Zambian Correctional Facilities?</i> Legal Aid Board: Anderson Ngulube
12:00 – 13:00	Panel Discussion 1: THE ENHANCED PROVISION OF POLICE BOND AND COURT BAIL IN ZAMBIA <i>A means to reduce the number of suspects being on pre-trial detention?!</i> Africa Criminal Justice Reform (ACJR): Kristen Petersen	Panel Discussion 2: AGBV, ZAWA AND NARCOTICS AND PSYCHOTROPIC SUBSTANCES ACT <i>How can a review of the provided minimum sentences address the overcrowding in Zambian Correctional Facilities?</i> Zambia Law Development Commission: Hope Ndhlovu-Chanda
13:00 – 14:00	LUNCH BREAK	

<p>14:00 – 15:00</p>	<p>Panel Discussion 1:</p> <p>PRINCIPLES OF SENTENCING, CONFIRMATION OF SENTENCING AND ORIENTATION OF MAGISTRATES AND JUDGES</p> <p><i>Administrative and Institutional Reforms of the Judiciary</i></p> <p>University of Zambia: O'Brien Kaaba Judiciary: Twaambo S. Musonda</p>	<p>Panel Discussion 2:</p> <p>THE COORDINATION OF THE CRIMINAL JUSTICE PROCESS</p> <p><i>Increased Cooperation among Criminal Justice Institutions as a Means to Reduce the Overcrowding of Zambian Correctional Facilities?!</i></p> <p>CCCI Chapters Livingstone and Choma: Hon. Mbololwa Mukela and Mr. Lawrence Mudenda</p>
<p>15:00 – 15:30 TEA BREAK</p>		
<p>15:30 – 17:00</p>	<p>Panel Discussion 1:</p> <p>JUVENILE JUSTICE: ENHANCED USE OF DIVERSION IN JUVENILE CASES AND THE ISSUING OF SOCIAL WELFARE REPORTS</p> <p><i>Legal and administrative reforms of juvenile confirmation orders and administrative Reforms within the Social Welfare Department</i></p> <p>Undikumbukire Project Zambia (UP Zambia): Sara Larios and Kelly Kapianga</p>	<p>Panel Discussion 2:</p> <p>THE GRANTING OF PAROLE AS A MEANS TO REDUCE OVERCROWDING IN ZAMBIAN CORRECTIONAL FACILITIES?!</p> <p><i>Challenges and recommendations considering administrative reforms for parole</i></p> <p>Zambia Correctional Service (ZCS): Tobias Mwanza Africa Criminal Justice Reform (ACJR): Lukas Muntingh</p>
<p>17:00 – 18:00</p>	<p>Panel Discussion 1:</p> <p>SETTING STANDARDS FOR MAXIMUM DURATION OF REMAND</p> <p><i>How a maximum allowed duration for remand would contribute to reducing the overcrowding in Zambian Correctional Facilities. International Examples.</i></p> <p>University of Zambia: Ellah Siang'andu</p>	<p>Panel Discussion 2:</p> <p>COMMUNITY SENTENCING ORDERS IN ZAMBIA</p> <p><i>A way to address the overcrowding in Zambian Correctional Facilities?</i></p> <p>Uganda Prison Headquarters, Director of Prisons: Moses Kakungulu Wagabaza</p>
<p>18:00 – 18:15 CLOSING REMARKS BY THE MINISTER OF JUSTICE</p>		

Day 3 – 14.09.2017 - Sandy’s Creation Conference Centre

08:00 – 08:30 **REGISTRATION DAY 3 at Sandy’s Creation Conference Centre**

08:30 – 08:45 **WELCOME REMARKS**

08:45 – 10:00 **THE CRIMINAL PROCEDURES CODE AND PENAL CODE - OVERVIEW ON THE REFORM EFFORTS BY ZLDC**

*How can legislative reforms in the criminal justice sector address the overcrowding in
Zambian Correctional Facilities?*

Zambia Law Development Commission: Hope Ndhlovu-Chanda

10:00 – 10:45 **SUMMARY OF THE SYMPOSIUM: PRESENTATION OF MAIN FINDINGS AND RECOMMENDATIONS**

10:45 – 11:15 **TEA BREAK**

11:15 – 11:30 **INTRODUCTION TO GROUP WORK**

11:30 – 13:00 **GROUP WORK**

Group 1 Pre-Trial Stage	Group 2 Alternative Sentencing	Group 3 Standards of Procedures	Group 4 Reform of Penal Code	Group 5 Trainings
<i>Legal Aid System, Powers of NPA, Police Bond/Court Bail</i>	<i>Juvenile Diversion, Community Sentencing, Principles of Sentencing (fines & suspended sentences</i>	<i>Case Flow Management, Parole, Time for Remand, Social Welfare Reports</i>	<i>AGBV, ZAWA Act, Criminal Procedures Code</i>	<i>Orientation of State Advocates Magistrates and Judges, ZIALE</i>

13:00 – 14:00 **LUNCH BREAK**

14:00 – 15:00 **GROUP WORK CONTINUED**

15:00 – 15:30 **TEA BREAK**

15:30 – 17:00 **PRESENTATION OF ACTION PLANS AND ESTABLISHMENT OF TECHNICAL WORKING GROUPS**

17:00 – 17:30 **CLOSING REMARKS BY THE MINISTER OF JUSTICE**



VII. ANNEX: FULL PRESENTATIONS



THE NEW MANDATE OF ZAMBIA CORRECTIONAL SERVICE

by
Percy Kangwa Chato
Commissioner General of Correctional Service
At

THE OPENING COCKTAIL RECEPTION OF THE SYMPOSIUM ON LEGAL
AND ADMINISTRATIVE REFORMS TO ADDRESS CONGESTION IN
CORRECTIONAL FACILITIES.

ON 12TH SEPTEMBER 2017 AT TAJ PAMODZI HOTEL, LUSAKA

02/10/2017

1

Presentation Layout

- ▶ Introduction
- ▶ Legal framework
- ▶ Zambia Correctional Service policies
- ▶ New mandate of the Zambia Correctional Service.
- ▶ Conclusion
- ▶
- ▶

02/10/2017

2

Introduction

- ▶ The traditional mandate of the former Zambia Prison Service was to ensure that all inmates are safe and in lawful custody until the expiration of their sentences and to punish offenders for the wrongs they committed whilst in society.
- ▶ Following the paradigm shift in recent years, from retribution to rehabilitation of prisoners it became necessary to transform the Prisons Service into a correctional institution

02/10/2017

3

Introduction

15TH JULY 2015 SWEARING IN CEREMONY

His Excellency Mr Edgar Chagwa Lungu, President of the Republic of Zambia directed that the Prisons Services should move away from being mere punitive institutions to correctional services. He also said radical transformation was critical to the improvement of prison services because of its dynamic nature.



02/10/2017

4

Introduction

- ▶ 5th January, 2016
- ▶ President Lungu assented to a people-driven Constitution at the National Heroes Stadium on in Lusaka that renamed the Zambia Prisons Service to Zambia Correctional Service.



02/10/2017

5

Legal framework

- ▶ Article 193 (4) of the Constitution outlines the Zambia Correctional Service shall:
- ▶ Manage, regulate and ensure the security of prisons and correctional centers; and
- ▶ Perform other functions as prescribed”.

02/10/2017

6

Legal framework

- ▶ **Section 8 of Prisons Act:**
- ▶ *"There is hereby established a police force to be known as the Zambia Prison Service for the management and control of prisons and prisoners lodged therein."*
- ▶ In 2000 and 2004, the Prisons Act amended and this brought in new dimensions such as community sentencing, Offender Management, establishment of a Medical Directorate, and the introduction of Parole.

02/10/2017

7

Legal framework

1. Section 95 of the Juveniles Act
2. " All reformatories shall be under the supervision of the Chief Inspector of Reformatories who shall be the person for the time being holding the office of Commissioner of Prisons."

02/10/2017

8

Zambia Correctional Service Policies

- ▶ mandatory rules that govern the management of the Service, including the operation of its programs and activities.
- ▶ **Commissioner's Standing Orders (CSOs)** are considered operational policies, which are developed subject to Section 11 of CAP 97.
- ▶ **CSO 664 HIV testing in prisons:**
- ▶ preventive measures, management of HIV infected prisoners, confidentiality, care and support of HIV infected prisoners and compassionate early release of terminally ill prisoners

02/10/2017

9

Zambia Correctional Service Policies

- ▶ CSOs bind all Corrections Officers to ensure strict observance in order to realize the vision, service mission statement that were contained in the ZPS Strategic plan for 2013 to 2016
- ▶ **Vision:** "A proactive Zambia Prisons Service, the offers quality correctional service and humane custodial services."
- ▶ **Mission Statement:** "To provide humane custody and quality correctional services in order to promote public safety and contribute to socio-economic development of the country."

02/10/2017

10

THE NEW MANDATE OF THE ZAMBIA CORRECTIONAL SERVICE

- ▶ ensure that every inmate is kept in secure, humane and safe custody, and produced in court when required, until lawfully discharged or removed from a Prison or Correctional Centre;
- ▶ facilitate the social rehabilitation of inmates through specific treatment programmes;
- ▶ facilitate the rehabilitation, community re-entry and support re-integration of inmates into their communities;
- ▶ may assign to the Service.

02/10/2017

11

THE NEW MANDATE OF THE ZAMBIA CORRECTIONAL SERVICE

- ▶ ensure that inmates do work that is reasonably necessary for the effective management of Prisons or Correctional Centres; and
- ▶ Perform such other functions as the Minister, in consultation with the Commissioner General, may assign to the Service.

02/10/2017

12

THE NEW MANDATE OF THE ZAMBIA CORRECTIONAL SERVICE

- ▶ **steps to take:**
- ▶ professionalise and develop its staff;
- ▶ ensure meaningful and adequate remuneration to its staff;
- ▶ ensure proper living conditions for staff and the inmates
- ▶ engage in activities to secure adequate funding, generate income from its assets,
- ▶ empower staff and
- ▶ undertake activities to promote good governance, peace and security in Correctional Centres

02/10/2017

13

Conclusion

- ▶ As we embrace the paradigm the correctional service should strike a fair balance between security and correcting offending behavior.
- ▶ A proper balance should be maintained between the physical, procedural and dynamic security in the case of all inmates and to prepare inmates for a successful return to the community as law-abiding citizens. This strategy will contribute to long-term public safety.

02/10/2017

14

Conclusion

“Secure prisons are essential to making our justice system an effective weapon against crime. When prisoners—convicted or awaiting trial—are entrusted to your care, they must know and the public must know that they will remain there until they are legally discharged

The full contribution which our prisons can make towards a permanent reduction in the country's crime-rate lies also in the way in which they treat prisoners. We cannot emphasise enough the importance of both professionalism and respect for human rights.”

— NELSON R. MANDELA (SPEAKING TO THE SOUTH AFRICAN DEPARTMENT OF CORRECTIONAL SERVICES, 1998)



**Field Visits to Zambia Correctional
Services Facilities**

By

Daniel S. Libati, *Esq.* LLB (UNZA),

AHCZ

Human Rights Consultant

13th September, 2017

The Field Visits

The Delegation

The visits were conducted by:

- The Minister of Home Affairs - Hon. Mr. Stephen Kampyongo, M.P.;
- The Minister of Justice - Hon. Mr. Given Lubinda, M.P.;
- The Minister of National Guidance and Religious Affairs - Hon. Rev. Godfridah Sumaili, M.P.;
- The high Command of the Zambia Correctional Service led by the Commissioner General Mr. Percy Chato;
- Representatives from the European Union Delegation to Zambia;
- Representatives from the Embassy of the Federal Republic of Germany to Zambia;
- Representatives from GIZ country and programme offices; and
- Representatives from government departments, institutions, church and civil society organisations.

Correctional Facilities Visited

- Katombora Reformatory School;
- Livingstone Central;
- Choma;
- Monze;
- Mazabuka;
- Kamfinsa;
- Kansenshi;
- Chondwe Open Air Farm;
- Mwembeshi Maximum;
- Mwembeshi Open Air Farm;
- Chainama;
- Kamwala Remand; and
- Lusaka Central

Methodology Employed

- In each province the Delegation held at least one briefing to representatives from participating government departments, institutions and organisations;
- At each facility, the Officer in Charge of the facility, or his or her delegated representative, was on hand to brief the Delegation on the situation at the facility on the day of the visit and the period immediately preceding the visit.
- Once briefed, the Officer in Charge was asked questions bordering, mostly, on clarifications.
- After briefing the Delegation, each Officer in Charge invited the Delegation to tour the facility and see for themselves what was actually pertaining there.
- The Delegation was also given an opportunity, at each and every facility, to meet with inmates, interact with the inmates and hear for themselves the challenges faced by the inmates.

Livingstone Briefing



Touring of Mwembeshi Maximum Facility by the Delegation



Findings

Challenges in Correctional Facilities

Overcrowding (Lack of beddings, not enough uniforms, etc.)

- The overall capacity of all facilities in Zambia is about 8,500 inmates. However, they are catering for in excess of 19,500 inmates, the result of which is overcrowding.
- In all facilities visited, mattresses and beddings for sleeping are in short supply.
- In most facilities, the infrastructure of the dormitories is old and inadequate for catering for the large number of inmates.

A dormitory at Choma Facility



A dormitory at Mwembeshi Open Air Facility



Mixing of remandees, convicts and juveniles

- In almost all facilities visited, it was witnessed that remandees, convicts and juveniles were mixed.
- Exceptions included: Kamwala Remand which has a juvenile section and Chainama East Correctional Hospital which had no juveniles.
- It was also found that in some facilities juveniles had been there for as long as three years awaiting the confirmation of their sentences or transport to approved or reformatory schools.

Circumstantial children being incarcerated with their mothers

- In almost all correctional facilities with female sections, it was found that circumstantial children were detained together with their mothers.
- None of these facilities had adequate facilities (schools, playgrounds, toys, etc.) for children.
- Inmates with children expressed their fear that these conditions would impact negatively on the growth of their children.

Lack of transport

- Almost all facilities indicated challenges with transport for inmates to hospitals or for remandees to court.
- Transport is also a challenge for moving juveniles to approved or reformatory schools.

Low Officer-Inmate-Ratio

A few examples:

- At Katombora, at the time of the visit, the facility had an officer to inmate ratio of 1:6.
- At Livingstone Central, at the time of the visit, the facility had an officer to inmate ratio of 1:7.
- At Lusaka Central, at the time of the visit, the facility had an officer to inmate ratio of 1:12.

Inadequate sanitary facilities

- Because of the large numbers of inmates in facilities that were not meant to cater for such large numbers, sanitary facilities were found to be highly inadequate in all the facilities visited.

A toilet at Chondwe Facility



A toilet at Lusaka Central Facility



Inadequate cooking facilities and poor diet

- In many facilities inadequate cooking facilities were found (Livingstone Female Section, Mazabuka, Chondwe, Mwembeshi Open Air, Chainama East).
- In some facilities domestic stoves were used instead of industrial cookers in others inmates had to cook on firewood.
- In many facilities there was a lack of proper cooking pots.
- In some facilities (e.g. Monze) inmates complained about a poor and unbalanced diet.

Kitchen at Chondwe Open Air Facility



Vocational training and recreational activities

- Most facilities visited had only a limited variety of educational materials. Many facilities did not even have a library.
- Some facilities didn't offer any vocational training to inmates. In others the choice was very limited. Positive exceptions included Katombora Reformatory School and Lusaka Central facility.
- In some facilities challenges with regards to exam fees were witnessed as inmates had been denied the opportunity to write exams on account of such examination fees not having been paid.

Vocational training and recreational activities cont.

- Another challenge was that upon release inmates were not given any tools to work in the professions they were trained in.
- Inmates working at workshops in the facilities also complained about the little money they earned.
- In some of the facilities with gardens or farms, there was a shortage of farming inputs like maize seeds, tomatoes and vegetable seeds.
- In many facilities there was a request for recreational activities in the form of balls and games.

Balls donated by the European Union – Mwembeshi Maximum



Some Identified Causes for Overcrowding

Delayed confirmation of sentences at High Court, listing of appeal cases

- In many cases inmates complained about delays in confirmation of sentences as well as in hearing appeal cases.
- In rural areas, there was a challenge witnessed relating to the distance to Legal Aid Board Offices. In many cases, Legal Aid Counsels only came to meet accused persons on the day that they were to appear in Court.
- According to the inmates, at times this led to some inmates pleading guilty when in fact they did have proper defences for cases that they faced.

Long remand periods due to delays in case flow within the justice system

- In almost all the facilities visited, there were several cases in which trial took very long to commence (several months to sometimes years) and complaints about judgments taking as long as six months to be prepared.

Low numbers of inmates granted parole

- In almost all facilities visited, there were requests lodged for government to look into making inmates eligible for parole at an earlier stage, even as much as two or three years before completing their sentences.
- Others requested for the reduction of their sentences by way of commutation to continue.

The Delegation's responses to inmates

- The Delegation promised the inmates that their issues would be looked into.
- A promise was made that community sentences will be considered.
- It was stressed that remandees should not stay longer than necessary
- The Minister of Justice indicated that he would initiate a review of the bail system as a person was assumed to be innocent until proven guilty.

Hon. Kampyongo responding to inmates' concerns at Kamfinsa



Focus of the Symposium

- As shown in the findings of the visits to correctional facilities, the problem of congestion is multi-faceted and caused by a multiplicity of factors.
- Congestion is not only a problem of lack of infrastructure but also caused by broader challenges in the justice system bordering on case flow, administrative procedures (e.g. bond and bail, duration of remand, social welfare reports), institutional mandates and the legal framework (e.g. on minimum sentences).

Some Comparative Data

	Zambia	Germany	South Africa
Number of inmates	21,000	64,200	162,000
Official capacity	8,500	73,400	120,000
Occupancy level	247.1%	87.4%	132.7%
Prison population rate*	124	76	288
Remand Prisoners	23.2%	21.6%	27.9%

* Number of inmates / 100,000 population

- This data shows that there is quite some reliance in Zambia (and even more so in South Africa) on custodial sentences and rather long sentences.
- The number of remandees is not as much an issue as often believed.

Agenda – Day 1

10:00 – 10:30:	Tea Break
10:30 – 11:00:	The Socio-Economic Impact of Pre-Trial Detention in Zambia
11:00 – 12:00:	Discretionary Powers of NPA and Orientation of Prosecutors and State Advocates
	The Legal Aid System in Zambia
12:00 – 13:00:	The Enhanced Provision of Police Bond and Court Bail in Zambia
	AGBV, ZAWA and Narcotics and Psychotropic Substances Act
13:00 – 14:00:	Lunch

Agenda – Day 1

14:00 – 15:00:	Principles of Sentencing, Confirmation of Sentencing and Orientation of Magistrates and Judges
	The Coordination of the Criminal Justice Process
15:00 – 15:30:	Tea Break
15:30 – 17:00:	Juvenile Justice: Enhanced Use of Diversion in Juvenile Cases and the Issuing of Social Welfare Reports
	The Granting of Parole as a Means to Reduce Overcrowding in Zambian Correctional Facilities?!

Agenda – Day 1

17:00 – 18:00:	Setting Standards for Maximum Duration of Remand
	Community Sentencing Orders in Zambia
18:00 – 18:15:	Closing Remarks by the Minister of Justice

Agenda – Day 2

08:30 – 08:45:	Welcome Remarks
08:45 – 10:00:	The Criminal Procedures Code and Penal Code - Overview on the Reform Efforts by ZLDC
10:00 – 10:45:	Summary of the Symposium: Presentation of Main Findings and Recommendations
10:45 – 11:15:	Tea Break
11:15 – 11:30:	Introduction to Group Work
11:30 – 13:00:	Group Work
13:00 – 14:00:	Lunch
14:00 – 15:00:	Group Work cont.

Agenda – Day 2

<u>15:00 – 15:30:</u>	<u>Tea Break</u>
<u>15:30 – 17:00:</u>	<u>Presentation of Action Plans and Establishment of Technical Working Groups</u>
<u>17:00 – 17:30:</u>	<u>Closing Remark by the Minister of Justice</u>

The End!!!

**Thank you very much for your
attention!!!**

The socio-economic impact of pre-trial detention in Lusaka, Zambia

September 2017



www.acjr.org.za

1

Acknowledgements

- Thanks are due to the following for their assistance (titles as at the time of the research):
 - Commissioner of Prisons, Mr. Percy Chato,
 - Assistant Commissioner Mr. Chrispin Kaonga, Lusaka
 - Province Regional Commanding officer, Mr. Christopher Kajimbala,
 - Southern Province Regional Commanding Officer, Mr. Richard Phiri
 - Officer in Charge, Lusaka Central Prison, Mr. Oliver Liseba,
 - Officer in Charge, Kalomo State Prison, Mr. Mulenga Nyambe,
 - The Prison Secretary, Mr. Micheal Sakala
- Thanks to researchers who carried out the research:
 - Field workers: Rumbidzai Mutasa, Chembo Dioma, Leah Mulenga, Salome Zulu, Cecily Nakazwe, Makasa Mwenya, Mapalo Mushanga, Twataizya Kasanda
 - Data Capturer: Sarah Muyunda
- Thanks to co-hosts of the launch (June 2017)
 - Legal Resources Foundation Zambia, in particular Androphina Bubala
 - Paralegal Alliance Network (PAN) Zambia
- Thanks to donors
 - OSISA, OSJI, OSIEA, UNDP

Pre-trial detention

- In many countries the law says a person can be detained, without being convicted, before trial, usually to make sure the person attends trial.
- However this is often a legal fiction and many people are detained in police cells or prisons without ever standing trial.
- This project sought to understand the social and economic impact of detention before trial on people being detained and their families and dependents.
- The project was carried out in Kenya, Mozambique and Zambia

Methodology

- The project involved:
 - Interviews with detainees
 - Interviews with visitors to detainees
 - Collection of data from official prison registers
- In Zambia the research was carried out as follows:
 - 118 interviews with male detainees at Lusaka Central and Kalomo State Prison
 - 30 interviews with female detainees at Lusaka Central
 - 138 interviews with affected families
 - 92 with visitors to prisons
 - 46 with traced persons
 - Supplemented with register data
 - The report is thus representative of detentions in greater Lusaka

Detainee profile

- Income-earning age:
 - Males 17 to 54, median 32
 - Females 18 to 50, median 32
- Education profile:
 - Men median Grade 9 (48% of Zambians have Grade 9)
 - Women median Grade 7
- Most (94%) economically active
 - Men farmer (23%); business (21%); driver (8%)
 - Women business (25%); farmer (22%); domestic worker (19%);
 - Earned (2012/13) between ZK150 - ZK 16 200p.m; median ZK 1 650
 - Women median ZK600
 - Zambia minimum wage 2012 was ZK 522.
- Marital status
 - 75% males married, 52% females married
 - Compared to Census, male detainees more likely to be married
 - Some 13% male detainees in polygamous unions (double the rate for Zambia)

Affected households

- Some 98% of detainees live in “fixed abode”
- Median household size 6 (range 1 to 13)
 - Zambia Census average 5.2
- More than half of affected households, detainee did not live in permanently
- Majority detainees household heads
 - (90% males, 41% females)
- For more than half of detainee households and affected households, detainee contribution comprised most or all of income
- Median household income close to minimum wage

Children and dependents

- Most (83%) men had children (1-12, median 2)
- Most (71%) women had children (1-10, median 2)
- Most (55%) men had other dependents (median 3)
- Most (42%) women had other dependants (median 2)
- Some 5% of men and 9% women had a dependant with a disability

Economic impact of detention

- 94% affected households reported loss of income
 - Loss of detainee income to household
 - Money spent on visiting and providing food and other costs of detention
 - Cost of finding and paying legal assistance
 - Loss of work opportunities due to visits
 - Borrowing and debt to make up shortfall
 - Selling of assets to make up shortfall
 - Assets negatively affected

“I have lost so much I cannot even account” – affected respondent

Quotes on lost income

- He was good at saving money. Now all the savings have finished we cannot watch him starve and suffer in prison. Plus also income from his job which no longer comes in.
- The family has lost his contribution for 8 months now. I have also spent a lot of money visiting and feeding him.
- I have been looking after him for the last 8 years, visiting him and providing food and other things. The family also lost the detainee's income which was used to educate a lot of his siblings.
- First the family lost detainee's income for its up keep. Also in the last 3 years once a month I have been visiting the detainee and bringing him food.
- Because my husband ran away from me and the detainee is the one who was helping me to look after the orphans we have in the family.
- The detainee used to buy me food and even kept my mother. He used to help me with money for food.
- Because I have to support his family as well. He used to contribute some money to my mother's welfare but now I give her money alone.
- For over a year, the family has not been getting the money that was being brought by the husband. The family has also spent money in travelling to see him.

Visiting Costs

- 83% visited at least once
- Visit costs very high
- Brought cash, food, clothing, soap, lotion, toilet paper, toothpaste, blankets, sanitary products
 - Cost of food per visit ZK 75
 - Other items monthly cost ZK 24
- Transport costs median ZK 120
- Most common journey time 90 minutes; 50km

Quotes on visits

- Both me and my sister-in-law have lost a lot of income. I have lost all my savings. There are travelling costs, costs for food, as no food is given to suspects in police cells, and telephone costs
- Especially in police detention we struggled. We have also lost the income from the chicken business.
- Instead of saving the little that we make, we end up spending it on food and transport to visit
- Buying food for detainee and transport. I have also taken three of her children and am buying for them
- I have to bring my sister lunch three times a week just to keep her spirits high

Making up shortfall

- Some 36% said they had to borrow money
 - Median amount ZK1500
 - Most borrowed from family/friends
- Some 53% sold an asset
 - Livestock (22%), household goods (15%), food and farming assets (5%), land (4%)

Social impact

- Social standing 74% negatively affected
- Some 3% deserted by spouses; 12% spouse only relationship left; most had been close to their extended family prior to detention.
- Children affected
 - Children had to live elsewhere
 - Children missed care of detainee / suffered trauma
 - Children no longer go to school
 - Children more vulnerable

Health impact

- Some 18% ill at time of arrest
- Some 25% became ill in detention
 - Malaria, ulcers; stomach pains; HIV; back pains, bilharzia; diarrhoea; herpes
 - Only 28% of those who became ill received treatment

Experience of CJS

- Some 98% held on one charge only
- Charges
 - 29% theft of which 55% stock theft
 - “Non-bail-able” offences prominent 23% murder 18% aggravated robbery
 - Assault, drug offences, vandalism, trespassing, dangerous driving, civil debt; arson; housebreaking; forgery; and possession of stolen property
- Half spent more than a week in police detention
- Three quarters of families were informed of detention and transfer
- Most no idea for how much longer they will be detained
- Number of times to court range 0 to 22; median 5 times
- One quarter had legal assistance (mostly LAB)
- Half of detainees interviewed had been in custody for more than ten months; 10% more than 4 years

Economic and Social Rights

The rights contained in the ICESCR include:

- The equal right of men and women to pursue economic, social and cultural rights (art 3);
- The right to work and the duty of the state to take measures to enable people to access gainful employment (art 6);
- The right to just conditions of employment (art 7);
- The right to social security (art 9);
- The duty of the state to provide the widest possible protection to the family (art 10);
- The right to an adequate standard of living and to be free from hunger (art 11)
- The right to the enjoyment of the highest attainable standard of physical and mental health (art 12); and
- The right to education (art 13)

Nature of obligations ICESCR

- The nature of the obligations on states set out by the ICESCR is not that states must ensure that every person has employment and social security.
- The obligation is that states should 'respect', 'protect' and 'promote' these socio-economic rights.
- The duty to 'respect' entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and to use their resources to satisfy needs.
- This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedural and criminal laws.
- The decision to detain an accused person before trial almost invariably interferes with the resources of individuals, including individuals other than those being detained.

Fair Trial Rights (ICCPR)

- Arrested persons promptly before court and entitled to trial in reasonable time or release
- Custody before trial not be the general rule
- Fair and public hearing independent court
- Equality before the law
- No arbitrary detention
- Access for lawyers
- Independent external oversight

Conclusion

- The detention of detainees in Lusaka has a clear socio-economic impact.
- Decisions to detain and to continue to detain have a broad impact.
- Impact infringes upon the rights of persons other than the detained person, frequently penalising those who are already poor and marginalised.
- Violations of the right to a fair trial are likely to exacerbate the socio-economic impact on detainees and their associated households.
- In Zambia right to be tried within a reasonable time the most serious violation of fair trial rights (especially non-bail-able offences).

Recommendations

- Respect for socio-economic requires states to ensure that criminal procedural laws and practices are designed and implemented in ways to ensure that the impact on socio-economic rights of all persons is minimised.
 - Detention of an accused should only occur when absolutely necessary and for the shortest possible duration.
- There may also be a duty to take into account socio-economic rights beyond adherence to fair trial rights, particularly when children are involved.

Discretionary Powers of the National Prosecution Authority (NPA) and Orientation of Prosecutors and State Advocates

How Legislative, Administrative and Institutional Reforms of the National Prosecution Authority Could Contribute to a Reduction of Overcrowding of Zambia Correctional Facilities.

OVERVIEW

This presentation sets out to:

1. identify laws through which the NPA's prosecutes cases;
2. How these laws impact on the population in the correctional facilities; and
3. proposes possible legislative/administrative interventions that can impact on congestion in the correctional facilities

LEGAL AND ADMINISTRATIVE FRAMEWORK

- **The National Prosecution Authority (NPA):** An independent prosecution authority operating under the direction of the Director of Public Prosecutions (DPP) – Section 3 of the National Prosecution Authority Act No. 34 of 2010.
- Through the DPP, its mandate includes **instituting, taking over and discontinuing criminal proceedings** – Article 180 (4) of the Constitution
- To effectively carry out its mandate the NPA can: appoint state advocates and public prosecutors; **develop and promote practice standards for prosecutors; develop rules and guidelines for prosecutors** – Section 5 of National Prosecution Authority Act
- **The Criminal Procedure Code** sets out the procedure that the NPA must follow when handling cases

IMPACT OF CURRENT LAWS AND ADMINISTRATIVE PROCESS

NPA cannot divert a case from prosecution

- Discretion is limited to either prosecuting or not prosecuting. They cannot divert minor cases that clog the courts

Admission of guilt outside court limited to a few offences

- The impact of the procedure is limited because it is only applicable to minor offences

Absence of guidelines

- The absence of guidelines has prevented the NPA from fully and systematically using its discretionary powers

POSSIBLE ADMINISTRATIVE AND LEGISLATURE INTERVENTIONS

Developing Guidelines on the Drawing up Charges

- Guidelines will ensure that only meritorious cases are prosecuted. With fewer cases in court, the trials of detained persons will be expedited.

Review of Legislation limiting Bail

- The broadening of offences amenable to bail can contribute to managing the population in correctional facilities.

POSSIBLE ADMINISTRATIVE AND LEGISLATURE INTERVENTIONS Cont.

Diversion before prosecution

- Legislation to divert juveniles and persons who commit petty offences from the court process will ease the courts case load and ensure the speedy trial of the remaining cases.

Expansion of the scope of admission of guilt procedure

- The scope of the procedure can be broadened to cover groups like juveniles and more petty offences. The courts will only handle serious cases

Review of Plea Negotiations and Agreements Act

- Plea negotiations have been limited by sentences not being predictable. It can contribute to cutting down on lengthy trials and consequential detentions.



LEGAL AID BOARD

National Symposium on Reforms to Address Congestion in Correctional Facilities in Zambia

The Legal Aid System in Zambia
Legal Aid Board, 13 September 2017



LEGAL AID BOARD

Current Legal Aid System in Zambia

Legal Aid (Amendment) Act of 2005

- Establishes the Legal Aid Board (LAB)
- Provision of legal aid to poor persons (based on 'means test' and 'interests of justice' principle)
- Definition of legal aid limited to legal assistance and representation in court



Focus primarily on legal representation services at court level - reactive instead of proactive approach



LEGAL AID BOARD

Current Legal Aid System in Zambia

- Ratio of 1 legal practitioner in private practice to 17,000 persons, most legal practitioners concentrated in Lusaka and a few other major towns, focusing on court work
- Ratio of 1 legal aid counsel (LAB) to 650,000 persons, mostly constrained to provincial capitals
- Less than 500 active paralegals countrywide but not formally recognised nor regulated and operating without structured support



Huge gap in terms of citizens accessing legal aid services and legal aid needs not adequately catered for



LEGAL AID BOARD

Relevance of Legal Aid System

A broad-based legal aid system achieves societal benefits including:

- Elimination of unnecessary detention
- Speedy processing of cases
- Fair and impartial trials and dispute resolution
- Reduction of prison populations
- Lowering of appeal rates
- Decreased reliance on a range of social services

2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems



LEGAL AID BOARD

Reforms Envisaged under the Draft Legal Aid Policy

- Widen the **scope of legal aid** so as to comprise legal education, information, advice, assistance, representation and Alternative Dispute Resolution (ADR)
- Involving relevant justice stakeholders in **complementary legal aid service delivery models** – LAB Offices, Legal Services Units at court level, paralegal desks in correctional facilities and police stations, CSOs legal desks, the role of the legal profession, university law clinics



LEGAL AID BOARD

Legal Services Unit (LSU) Lusaka





LEGAL AID BOARD

Reforms Envisaged under the Draft Legal Aid Policy

- Recognise and regulate **CSOs and university law clinics** as providers of legal aid services
- Recognise and regulate the role of **paralegals** ensuring competence and accountability in services delivered
- Strengthen mechanisms among legal **coordination and cooperation** aid service providers for increased synergy



Establish a national framework guiding the provision of legal aid services by all providers



Providing equal access to justice for the poor and vulnerable groups



LEGAL AID BOARD

Contribution of Paralegals and Desks in Correctional Facilities

- Increased **access to pre- and post-trial measures** in terms of number of **bails** granted and executed, number of **appeals** lodged and **parole** applications submitted
- Increased use of **diversion** measures for **juvenile offenders**
- **Faster processing of confirmation orders** by the High Court for juveniles recommended for reformatory / approved schools



LEGAL AID BOARD

Contribution of Paralegals and Desks in Correctional Facilities

- **Improved case flow** at court level for LSU and paralegal desk clients – *Lusaka Subordinate Court: cases provided with legal representation through the LSU concluded on average within a period of ten months*
- **Lower conviction rate** of accused persons and use of custodial sentences – *Lusaka Subordinate Court: 82% of concluded LSU cases led to acquittals or were withdrawn/discharged, 11% convictions with fine, only 8% convictions with imprisonment*



LEGAL AID BOARD

Recommendations

Following adoption of the National Legal Aid Policy for Zambia:

- **Amendment** of the Legal Aid Act for a supportive and effective regulatory framework in accordance with the Legal Aid Policy
- **Strengthen and decentralise the operation of LAB**



LEGAL AID BOARD

Recommendations

- Establish additional **LSUs** and **correctional facility paralegal desks**, starting with courts facing significant backlog of cases, high caseload, where correctional facilities are most congested or with a high number of remandees
- Use complementary **outreach** strategies with **mobile legal aid clinics** to correctional facilities without permanent desk and the use of **paralegal desk at police station** level

Bail and Bond in Zambia

Challenges and Recommendations considering Legal and Administrative reforms

Ms. Kristen Petersen



Introduction

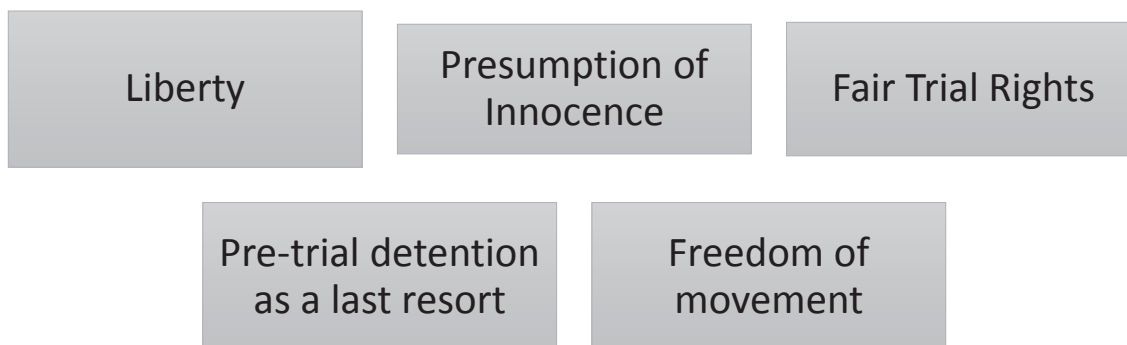
- The Constitution of Zambia guarantees fundamental rights and freedoms including pre-trial rights.
- Overcrowding remain a challenge in detention facilities –excessive use of pre-trial detention identified as a problem.
- Excessive and extended pre-trial detention violates a number of rights, key among are the right to liberty, dignity, a fair and speedy trial, and to be free from torture and other ill treatment.
- The implementation of fair and adequate bail and bond systems and provisions could provide substantial relieve to this phenomenon.

Overview of the presentation

- Zambia has a functioning bail and bond system BUT there seem to be challenges with implementation by police and courts / lack of certain bail mechanisms.
- My presentation is divided into the following areas:
 - Importance of legislative bail provisions
 - Important facets of good bail systems
 - Brief overview, analysis ,shortcomings of Zambia’s Legislative Framework on Bail
 - Recommendations and Conclusion



Importance of legislative bail provisions



Important facets of good bail systems

General provisions on bail must be clear, concise and unambiguous and should clearly define bail procedures and categories of bail and bonds available.

Information on bail and right to apply for bail at first court appearance

Reasonable and just factors to guide officials in executing bail decisions

Reasonable conditions set when granting bail /bond

Bail amounts and sureties set should be just and equitable and should not exceed the economic capabilities of the accused

Non-bailable offences violate the presumption of innocence



Important facets of good bail systems

Withdrawal of bail by the State : there should be clear and legitimate conditions and guidelines for withdrawing /revoking bail

A bail system with legislative prescripts that would prevent lengthy undue delays in pre-trial detention .i.e. pre-trial custody time limits, mandatory periods of commencement of trial

In the case of above, a mechanism in place to automatically review the pre-trial custody time limit of the accused

A system with an appeal process that allows one to appeal (a) a bail decision and (b) to apply for bail pending an appeal of case



Analysis: Zambia

General Provisions	<ul style="list-style-type: none">Legislative provisions - Criminal Procedure Code of Zambia (CPC)Functioning bail and bond system - extensive provisions that are clear, concise; forms of bail /bond defined –that are generally clearThe CPC has a 24 hour rule within which an accused must be brought to court if police bond was not granted unless the offence is serious. Despite this, there is evidence which suggests non-adherence to this rule.
Police Bond (or other bond besides bond)	<ul style="list-style-type: none">The CPC makes provision for police and court bail at any time throughout the course of proceedings provided sufficient sureties are provided.Despite legislative provisions allowing for police bond at the discretion of a police official for bailable offences, in practice, it seems that bail is generally granted by courts



Analysis: Zambia

Right to apply for bail at first appearance	<ul style="list-style-type: none">There is a right to apply for bail at first instance for bailable offences
Factors courts take into account when considering bail	<ul style="list-style-type: none">Such as the possibility of the accused absconding or interfering with witnesses, the severity of the crime or punishment, whether the accused is employed or not, is capable of providing credible sureties of fixed abode, the independence of sureties if bail were to be granted and whether the possibility exists that the accused will fail to attend court proceedings



Analysis: Zambia

Conditions set for bail/bond	<ul style="list-style-type: none">▪ The payment or deposit of sufficient sureties (money or property),▪ the condition that the accused must attend at the time and place mentioned in his or her bond; [123 (2) CPC]▪ the court or officer has a discretion to impose any other condition as may seem reasonable and necessary. [123 (2) CPC]▪ Others: the accused must not engage in any criminal activities, interfere with witnesses, keep the peace or be of good behaviour.
-------------------------------------	--



Analysis: Zambia

Provision for sureties	<ul style="list-style-type: none">▪ Before any person is admitted to bail or released on his own recognizance, a bond, for such sum as the court or officer, thinks sufficient, shall be executed by such person and by the surety or sureties, or by such person alone. [Article 123 (2), CPC.]
Bail Amounts	<ul style="list-style-type: none">▪ Despite legislation requiring that bail amounts fixed not to be excessive, there seem to be a problem in respect of the required sureties that are being invoked by police authorities- practices of requiring 2 working sureties, preferably civil servants.▪ Violates accused persons' right to apply for bail which is affordable▪ Considering alternatives to issuing of sureties / payment of cash bond/bail : the release of an accused on warning



Analysis: Zambia

Non-Bailable Offences

- Yes. Article 23 (1) CPC. Non-bailable offences includes murder, treason, any offence carrying a mandatory capital penalty; misprision of treason or treason-felony; aggravated robbery; theft of motor vehicle, if such person has previously been convicted of theft of motor vehicle.
- The existence of non-bailable offences in the Zambian criminal justice system violates this notion despite constitutional protections guaranteed in the Zambian Constitution
- The enforcement of non-bailable offence provisions treats people unfairly; it places persons in pre-trial detention as if they are already guilty or convicted of the alleged offence and denies persons their right to liberty and restricts their freedom of movement.
- Constitutional Bail provisions in Article 13 (3) (b) are not being used.



Analysis: Zambia

Legislative time limits for pre-trial detention

- The CPC contains no mandatory legislative time limit provisions for pre-trial detention
- Constitutional bail provisions exists which requires one to show that there has been an inordinate delay which is not due to the fault of the accused, but this seems not to be effected and there is no automatic review mechanism which triggers this mechanism.
- Evidence suggesting constitutional bail provisions are not being utilised and accused persons linger in pre-trial detention for lengthy periods of time.



Recommendations and Conclusion

- Repeal all provisions on non-bailable offences.
- Enhance police understanding on the fundamental objectives of bail and bond and ensure police bond are regularly utilised in less serious offences. Consider defining in the law or national directives/policy, categories of crimes where police bond may or may not be executed.
- Ensure compliance by the police with the legislative time limit of 24 hours within which an accused must be brought to court, in cases where police bond is not executed.
- Restrict police practice requirement of working sureties. Consider restricting in law or national directives/policy what sufficient sureties are for categories of offences to avoid this practice.



Recommendations and Conclusion

- Enhance judicial officials understanding on the main purpose of bail and ensure judicial officials use alternative release mechanisms, such as release on warning.
- Alternatively, and in addition to the above, consider adding a provision in the criminal code which automatically triggers the review by the judicial official, to reflect whether bail was previously granted, and thus enforcing the judicial officer the opportunity to reconsider the bail amount and or release the accused on warning.
- Implement mechanisms to ensure that the provisions in Article 13 (3) (b) of the Constitution are regularly invoked in cases of inordinate delay in relation to people on remand by implementing provisions in law that would trigger an automatic review of these cases.



Thank you



How can a review of minimum sentences address overcrowding in Zambian Correctional Facilities?

A look at the Anti Gender-based Violence Act, the Zambia Wildlife Authority Act and the Psychotropic Substances Act

A ZLDC PRESENTATION TO A NATIONAL SYMPOSIUM ON LEGAL AND ADMINISTRATIVE REFORMS TO ADDRESS CONGESTION (OVERCROWDING) IN CORRECTIONAL FACILITIES, SANDY'S CREATION CONFERENCE CENTRE, LUSAKA, 12TH TO 14TH SEPTEMBER, 2017

Introduction

In 2012 Zambia's prison population stood at 14, 500 inmates against 53 prisons.

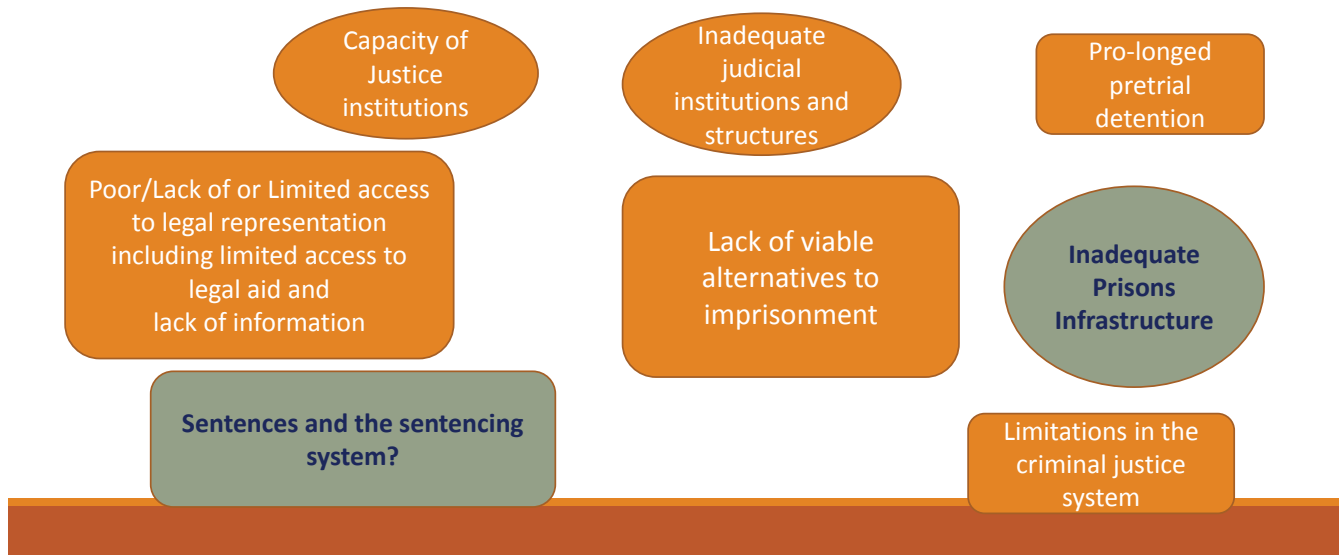
Today in 2017 it stands at 20, 608

Prisons and conditions of detention of offenders represent one of the most challenging areas in the field of human rights.

This presentation looks at **how a review of minimum sentences can address overcrowding in Zambian Correctional Facilities.**

It takes a specific look at the *Anti Gender-based Violence legislation, the Zambia Wildlife Authority Act and the Psychotropic Substances Act.*

Factors contributing to overcrowding



*A look at:
The Anti Gender-based Violence
legislation,
The Zambia Wildlife Authority Act
&
The Narcotic Drugs and
Psychotropic Substances Act*

The Anti Gender-based Violence Act

Acts of gender based violence are to be enquired into, tried or otherwise dealt with in accordance with the Criminal Procedure Code and the Penal Code and any other written law (section 2).

The Zambia Wildlife Authority Act, 2015

- Provides among others for establishment of the Department of National Parks and Wildlife in the Ministry responsible for tourism;
- Provides for the establishment, control and management of national parks, birds and wildlife sanctuaries and the conservation and enhancement of eco systems, biological diversity and objects of aesthetic, prehistoric, historical, geological, archeological and scientific interest in National Parks;
- Provides for the promotion of opportunities for the equitable and sustainable use of the special qualities of public wildlife estates;
- Provides for the establishment, control, and co-management of community partnership parks for the conservation and restoration of ecological structures for non-consumptive forms of recreation and environmental education, provides for the sustainable use of wildlife and the effective management of the wildlife habitat in game management areas, enhance the benefits of game management areas to local communities and wildlife, local community involvement, development and implementation of management plans, regulation of game ranching, licensing and control of hunting and related activities, implementation of CITES and other international agreements to which Zambia is party

Offences under the Zambia Wildlife Act

NATURE OF OFFENCE	SECTION	PENALTY
<p>Without licence or permit or authority in a national or community partnership park: Hunting, disturbing or removing wild animals, fish, birds, or their nests or sanctuaries or eggs Conveying or being in possession of weapons Introducing or driving out a wild animal Driving, conveying or introducing a domestic animal or permitting it to harass wild animals Introducing or causing vegetation to be introduced Removing a trophy or vegetation Damaging or defacing a sanctuary or other objects Or for any other offence for which a penalty is not provided</p>	19 - 26	<p>For a 1st offence to a fine of not less than four hundred thousand penalty units but not exceeding six hundred thousand penalty units or to a term of imprisonment not exceeding 7 years or to both</p> <p>For a 2nd or subsequent offence to a fine of not less than five hundred thousand penalty units or to a term of imprisonment of not less than 6 years but not exceeding ten years or to both</p>

Offences under the Zambia Wildlife Act

Hunting wild animals in a Game Management Area without	31	A fine or to imprisonment for a period not exceeding 5 years or to both
Hunting in an open area or private wildlife estate without a licence or consent or authorization, being in possession of game or protected animal	63-64	A fine or to imprisonment for a period not exceeding 5 years or to both, 4 years and a fine or a term not exceeding 3 years imprisonment or both respectively

The Narcotic Drugs and Psychotropic Substances Act

- ❑ Provides among other things for the Drug Enforcement Commission;
- ❑ Consolidation of the law relating to narcotic drugs and psychotropic substances;
- ❑ Incorporation of relevant conventions Zambia is a party to;
- ❑ Control the importation, exportation, production, possession, sale, distribution and use of narcotic drugs and psychotropic substances and
- ❑ Provide for seizure of property connected with unlawful activities under the Act

Offences under this Act

NATURE OF OFFENCE	SECTION	PENALTY
Trafficking in narcotic drugs	6	A term of imprisonment not exceeding 25 years
Imports or exports any narcotic drug or psychotropic substance listed in the Act without lawful authority	7	A term of imprisonment not exceeding 20 years
Possession or control or manufacture of any narcotic drug or psychotropic substance listed in the Act without lawful authority,	8, 13	A term of imprisonment not exceeding 15 years
Cultivation of any plant which can be used or consumed as a narcotic drug or psychotropic substance without lawful authority, possession of property obtained through trafficking, money laundering	9, 21, 22	A fine or a term of imprisonment not exceeding 10 years or to both (section 9) A term of imprisonment not exceeding 10 years (sections 21 and 22)
Conspiracy to commit drug offences, occupying or controlling premises used for unlawful administration of narcotic drugs and psychotropic substances, supplying or procuring narcotic drugs or psychotropic substances, impersonation	12,16, 17, 19	A term of imprisonment not exceeding 5 years
NOTE: Drug related offences are not bailable		

Sentencing levels under the Penal Code

There are four formulae of sentencing levels in the Penal Code:

- ❑ Mandatory sentence of death – both the trial judge and the appellate courts have no choice but to impose this term where it appears;
 - ❑ There are provisions which provide that convicted persons ‘shall be liable to imprisonment for life’ – the discretion of the sentence/court is not constrained provided that the court is satisfied that there are extenuating circumstances justifying the imposition of other than life’s imprisonment term;
 - ❑ Provisions which set a minimum as well as maximum term – such as the ones appearing in most of the provisions listed in this presentation; the legislature imposes control on the discretion of the courts in a limited fashion by denying the courts power to impose minimum terms of its choice’
 - ❑ Provisions which provide that the convicted person is ‘liable to imprisonment for a term not exceeding...years’ the court is allowed to impose a term that does not exceed the prescribed limit.
-

Recommendations

- Provision of shorter terms of imprisonment for selected offences
 - Leaving more discretionary leverage to Magistrates and Judges
 -
-

Thank you for listening



Principles of Sentencing– How Administrative and Institutional Reforms of the Judiciary Could Contribute to the Reduction of Overcrowding of Zambian Correctional Facilities

**Mrs. Twaambo Shalwindi-Musonda
and Dr. O'Brien Kaaba**

OVERVIEW

- Introduction
- Drivers of Prison Congestion
- Recommendations

INTRODUCTION

- The prison institution in Zambia is a British legacy.
- The forerunner to the current Zambian Correction Service (ZCS), the Zambia Prisons Service, was established in December 1963 on the eve of independence.
- At independence in 1964 Zambia had 55 correctional facilities holding a total of around 4,000 prisoners.
- Today, the correctional facilities across the country accommodate in excess of 21,000 inmates in facilities roughly established to house about 8,500 inmates

DRIVERS OF PRISON CONGESTION

- Legislative Framework
- Jurisprudence and Public Interest
- Requirement for Confirmation of Some Decisions of Sub. Court by the High Court

LEGISLATIVE FRAMEWORK

The law contributes to increased numbers of persons in detention in at least three ways, that is,

- by making some offences non-bailable;
- by prescribing long mandatory minimum terms of imprisonment; and
- by making imprisonment as the default sentence for persons who fail to pay fines.

JURISPRUDENCE AND PUBLIC INTEREST

- Lack of appropriate supervisory mechanisms for non-custodial sentences inclining adjudicators to custodial sentences as a matter of convenience.
- Sentencing jurisprudence which is predominantly retributive.
- Jurisprudence requiring adjudicators to reflect the public interest and attitude in determining an appropriate sentence.

CONFIRMATION OF SUBORDINATE COURT DECISIONS BY THE HIGH COURT

- The law requires certain decisions of the Subordinate Court to be confirmed by the High Court before they take effect.
- Section 7 of the Criminal Procedure Code Cap 88 sets the sentencing limits of magistrates, with the highest ranked being only able to issue a maximum of nine years.
- The Subordinate Court, however, tries several cases (such as offences against morality under chapter XV of the Penal Code) which attract a minimum mandatory sentence that is beyond the sentencing jurisdiction of the court.
- Section 217 of the Criminal Procedure Code provides that where a sentence available is above the sentencing powers of the trial court, the magistrate shall commit the case to the High Court for sentencing.
- The fact that the trial court cannot definitively and conclusively deal with the case causes unnecessary clogging of the courts and leads to avoidable delays in the administration of justice.

RECOMMENDATIONS

(1) Administrative

- Judiciary, ZCS and Department of Social Welfare should consider adopting the model of the Coordination, Communication and Collaboration Initiative (CCCI) in order to increase the possibility of common understanding of the challenges of supervising non-custodial sentences.
- The Judiciary should consider developing Sentencing Guidelines to enhance transparency, uniformity and consistency in sentencing.
- Continuous training of new and serving adjudicators in sentencing.

RECOMMENDATIONS

(2) Law Reform

- There is need to review and consider amending the law requiring some decisions and orders of the Subordinate Court to be confirmed by the High Court.
- The sentencing powers of the magistrates be enhanced or the mandatory minimum sentences in many cases be lowered so as to fall within the jurisdiction of at least the magistrates with the highest sentencing jurisdiction.
- Section 123 of the CPC which places restrictions on granting bail for some offences should be amended so that the default position should always be in favour of bail.

RECOMMENDATIONS

- The Prisons Act as amended in 2004 provides for release of prisoners on parole but only for prisoners serving at least a minimum of two years sentence and with only six months remaining on their sentences. It is recommended that the Act be amended to remove these restrictions on the granting of parole.
- Imprisonment should not be the automatic default sentence for defaulting to pay a fine.
- There is need to review and amend the Penal Code, the Criminal Procedure Code, the Prisons Act and other related laws with a view to provide for clear guidance on the enforcement of alternative sentences (non-custodial) and how these should be enforced.

RECOMMENDATIONS

(3) Advocacy

- Most of the jurisprudence relating to sentencing was handed down several years ago in the 1960s and 1970s when the dominant penal theories were deterrence and retribution.
- The amended Constitution seems to have provisions that could indirectly support restorative approaches to sentencing.
- It is therefore suggested that CSOs working in the justice sector should consider taking up test cases in public interest litigation to see if the courts can revise some of the old case law on sentencing to align it with human rights norms applicable to prisoners.

The End

Thank You for Listening

Coordination of the Criminal Justice Process- Increased Cooperation among Criminal Justice Institutions as a means to reduce the overcrowding of Zambian Correctional Facilities?

Mr. Lawrence Mudenda and Ms. Hon.
Mbololwa Mukela

Symposium on Legal and Administrative Reforms to address
Congestion in Correctional Facilities
13. September 2017, Sandy's Creation Lodge, Lusaka

Overview:

- Introduction
- CCCI and other coordination initiatives around the world
- Benefits of improved coordination- some examples and successes
- Recommendations



Shortcomings in Zambia's Criminal Justice Sector

Limited Case Flow Management involves multiple stakeholders. It is exacerbated by:

Limited Coordination and Cooperation

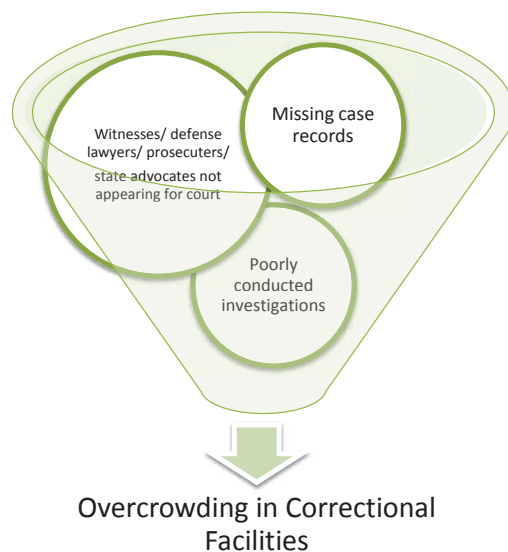


Overcrowding at Correctional Facilities

The justice system is like a large plumbing apparatus, held together only by the material flowing through it

CJCC Member, USA

Examples of limited/ lack of coordination among key criminal justice stakeholders



CCCI Zambia

- Started under Access To Justice Programme 2009-2011 (funded by DANIDA)
- Current Funding: Programme for Legal Empowerment and Enhanced Justice Delivery (GIZ/EU) 2015-2019
- 15 Chapters across Zambia
- Main criminal justice institutions: Judiciary, National Prosecution Authority (NPA), Legal Aid Board, Zambia Police Service and Zambia Correctional Services
- Other members include: Social Welfare Department, Human Rights Commission and CSOs
- Monitoring and Coordination at National Level: Governance Department at MoJ, Chairmanship with Judiciary at subnational level
- Aim: to meet the challenges of the Zambian Justice System more effectively through increased collaboration and interaction between key actors in the Zambian Justice System
- Challenges that arise from any interchange between institutions are discussed and resolved in an informal or formal manner



Coordination Initiatives around the World



- Child Justice Forum, Zambia, 2001
- Criminal Justice Coordinating Committee, CJCC, USA
- Juvenile Justice Committee, JJCC, Nepal

Benefits of enhanced cooperation in the criminal justice sector

Delays in litigation processes are often related to the lack of information exchange among key institutions, limited understanding of mandates of and processes within other institutions and their requirements (for example documents that are needed from other stakeholders)



Many of these challenges can be addressed through enhanced communication, cooperation and coordination among key stakeholders

All of us have this concept that we know what each other does. I've learned that I haven't a clue about what other people do and the problems that they have and how what we do may affect them. Only when you understand them can you give them due consideration. If you can accommodate them, then you do.
—CJCC Member, USA

Benefits Cont.

- Improved communication allows identifying challenges causing the delays in the justice system and will help to align processes of different institutions to each other
- Trust and good working relationship among the justice institutions
- Increase of information flow
- Peer review: concerned institutions assess each other's performance and react should improvements be made



CCCI Successes Choma and Livingstone Chapters

- Regular meetings are held (monthly)
- Multiple active ad hoc committees, Whats App group, visits to detention facilities (both chapters)
- Cause lists are prepared and submitted to court and correctional facilities a day before (Choma)
- As of 24th August 2017 there was no male juvenile at Choma Correctional Facility (Choma)
- Total inmate population at Choma Correctional Facility dropped from ca 400 to 350 due to CCCI interventions in 2017 (Choma)
- Sub-committee is tackling overdetention in Livingstone Correctional Facility – meeting with High Court Judge yielded positive results (Livingstone)



Recommendations

1. CCCIs should be established as formal platforms in the justice sector by a statute or a policy. It is recommended they are fully funded by Government as opposed to the current situation that most programmes are donor reliant
2. CCCI representatives should comprise of the decision-making, senior officials in respective authorities such that recommendations from the CCCI meetings could be effectively conveyed using the top-down communication channel
3. Revision of the overall MoU/Access to Justice Strategy which establishes the CCCI initiative
4. Development of clear ToR at chapter level in order to strengthen the initiative
5. Setting standards on case flow within the justice system in terms of standardized processes and timelines
6. Subordinate Courts, Police and NPA to have a legal time frame in which criminal and civil proceedings should be heard and determined
7. Comparative studies from countries where similar initiatives have been a success should be done such that when legislation is put in place it does not leave any loop holes and is easy to apply



UNDIKUMBUKIRE
PROJECT ZAMBIA

Review and Recommendations concerning the Impact of Diversion, Social Welfare Reports, and Confirmation Practices in the Zambia Juvenile Court System

*Prepared by
Undikumbukire Project Zambia
GIZ Symposium on Correctional Facilities in Zambia*



Prison Overcrowding A Juvenile Justice Perspective

- Same criminal justice system is used for adults and juveniles, with an added layer of rules for cases involving juveniles
- Rules and procedures specific to juvenile cases are set out in The Juveniles Act, Chapter 53 of the Laws of Zambia (adopted in 1956) and covers the protection of juveniles and juvenile delinquency
- Children ages 8 to 18 years are treated as juveniles for the purposes of criminal proceedings



Juvenile Justice Snapshot

Juvenile Facilities

- No separate detention facilities for juveniles during the court process
- Detention conditions and separation of juveniles from adult prisoners varies by facility
- There are few facilities for juveniles to serve custodial orders:
 - Katombora Reformatory School (males only correctional facility)
 - Nakambala Approved School (males only social welfare facility)
 - Insakwe Probation Hostel (females only social welfare facility)
- Juveniles can be sentenced as adults and in such cases are treated as adult prisoners
- It's estimated more than 1000 juveniles are being detained in Correctional Facilities at any given time

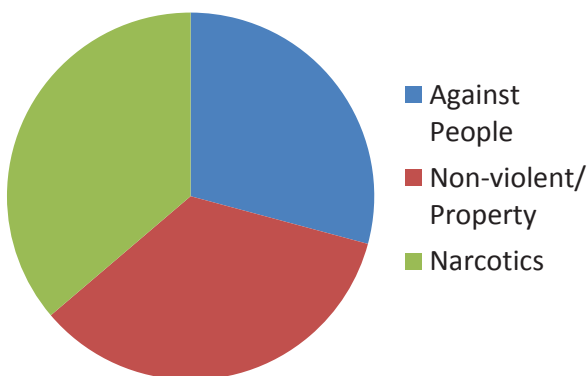


Juvenile Justice Snapshot

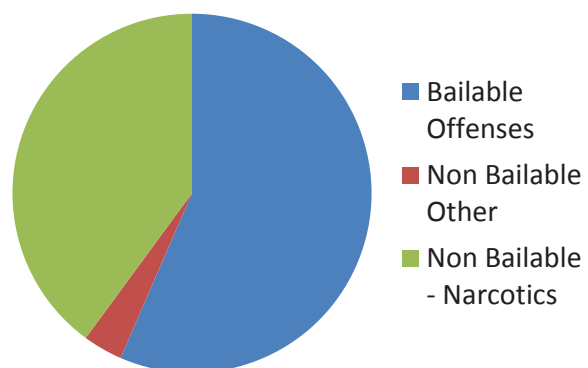
Lusaka District 2016

- Total Juveniles Appearing before Lusaka Juvenile Courts in 2016: **676** (654 Male, 22 Female)

Offenses



Access to Bail





Juvenile Justice Snapshot

Lusaka District September 2017

- Juveniles appearing before juvenile courts last week: **30**
- Number of juveniles charged with bailable offenses: **27**
- Number of juveniles on bond/bail: **13**
- Reasons for adjournments:
 - parents not in court: **2**
 - juvenile not in court: **3**
 - magistrate not in court: **5**
 - substitution of charges: **2**
 - continuation of trial: **6**
 - waiting for judgment: **4**
 - waiting for facts and social welfare report: **8**



Factors contributing to Juvenile Detention and Overcrowding

- **Lack of pre-court diversion programs**
- Delays bringing cases to court from police cells
- Lack of parent/guardian participation
- Delays in age determination or mental health evaluations
- Bail not granted or bail conditions not met
- No use of plea-bargaining in juvenile cases
- Lack of trial witnesses & trial by ambush practices
- **Delays in social welfare reports**
- Delays in committals of cases to the High Court for trial
- **Delays in confirmation process for custodial orders**
- Delays in transportation to juvenile facilities post-confirmation



Diversion

- **Diversion** refers to the resolution of criminal cases outside the criminal justice apparatus
- It is an effective tool for preventing case overloads before the Courts and prison overcrowding
- Zambian law provides a number of diversion measures in the course of criminal proceedings which would apply to juveniles



Diversion Legal Framework

- **Pre-trial diversion**
 - **Section 1(2) of the Juveniles Act:** Provides for resolution of juvenile cases under African customary law
- **Diversion during trial:**
 - **Plea Negotiations and Agreement Act No. 20 of 2010:** Provides for resolution of cases through plea deals
 - **Section 8 of the Criminal Procedure Code Act:** Provides for reconciliation of minor personal/private criminal cases



Diversion Legal Framework

- **Post-trial diversion**
 - **Section 73 of the Juveniles Act:** Provides orders a juvenile court can issue in lieu of prison
 - **Penal Code Act Chapter 87 of the Laws of Zambia:** Sets out orders that can be issued in respect of juvenile offenders for specific offences.
 - Example: certain sections provide that if a juvenile under the age of 16 is convicted of certain offences then he/she ought to be sentenced to either community service or counseling as would be in the best interests of the juvenile and the victim.



Diversion Recommendations

- The use of customary law dispute resolution and reconciliation mechanisms should be increased and **communities/local leadership empowered** to **resolve conflicts** involving juveniles rather than rushing to the formal criminal justice system
- Formal efforts should be made to **use plea-bargaining** in juvenile cases which reach court stage
- Juvenile courts, prosecutors, complainants, and accused juveniles and their families should be **encouraged to reconcile** minor cases where possible
- Existing post-conviction diversion programs should be **evaluated** and **enhanced** to address juvenile needs in a customized way
- Juvenile courts and social welfare officers should **be educated in the diversionary orders** mandated/permitted for specified offences



Delays in Social Welfare Reports

- A social welfare report is a report prepared by a probation officer from the Social Welfare Department under the Ministry of Community Development and Social Services.
- The social welfare report is intended to provide background information on a juvenile offender in juvenile proceedings to assist the juvenile court to make a decision that is in the juvenile's best interest.



Social Welfare Report Framework and Administrative Process

- **Section 64(7) of the Juveniles Act:** *the court shall, if practicable, obtain such information as to [the juvenile's] general conduct, home surroundings, school record, and medical history as may enable it to deal with the case in the best interests of the juvenile, and may put to [the juvenile] any question arising out of such information.*
- **Magistrates Handbook:** *"A report from a Social Welfare or Probation Officer will often be the best way of obtaining this information...where there is no Welfare Officer evidence...can often and should whenever possible be obtained by the parent or guardian of the juvenile."*
- **Current Process:** Probation officer interviews (at the social welfare offices or at the court) the parents or guardians of the juvenile to obtain relevant information set out in the Act. Home visits may be conducted. If the parents or guardians are not available, the Probation Officer may interview the juvenile offenders themselves at the Remand Prison. The report is then compiled and presented to the Court.



Challenges and Concerns

Challenges which create delays:

- Probation officers are overstretched as they handle many other duties and are not able to fully focus on juvenile court cases
- Poor coordination between the probation officers and the juvenile courts concerning the timing for presenting of the reports
- Lack of participation from parents/guardians in the report process

Concerns:

- Reports often mention previous offences which have not been properly brought before the court as required by the Criminal Procedures Code
- Reports often go beyond the information required by the law and contain recommendations on what order the court should make, which is a matter of law that should only be determined by the court, guided by statutory limits and judicial precedent



Recommendations

- In determining how to deal with the case in the best interest of the juvenile, the Court should **feel free to obtain the required information through any practical means**, rather than continuing to keep a juvenile in detention due to delays in obtaining a social welfare report.
- This can be done by obtaining the information required in the **most efficient** and **expeditious** way possible :
 - Through a written social welfare report if readily available; or
 - Through an oral report from the probation officer where a written report has not yet been prepared; or
 - Through direct questioning or testimony of the parents/guardians, the juvenile, or any other person who possesses the required information
- Reports and testimony should be limited to the required information only and **not venture into what order should be made by the Court.**



Confirmation

Framework and Administrative Process

- Under the Juveniles Act, an order that will require the juvenile to be detained in a facility must be confirmed by the High Court in order to take effect.
- When an Approved School Order or a Reformatory Order is given by the Subordinate Court, the juvenile's record or a certified copy must be compiled by the Subordinate Court and remitted to the High Court.
- The Subordinate Court may remand the juvenile in custody or grant bail pending confirmation.
- Juveniles Act Confirmation Timelines:
 - Juveniles waiting for confirmation of an Approved School order may be temporarily committed to the care of a "fit person" or a "place of safety" for a period of 28 days only, subject to renewal
 - Juveniles waiting for confirmation of a Reformatory Order can only be detained in a "receiving centre" for a maximum period of 3 months



Challenges and Concerns

Challenges which create delays and prolonged detention:

- Juvenile courts are not issuing bail pending confirmation
- Juvenile courts are issuing open-ended detention orders pending confirmation
- Statutory timelines for the confirmation process are ignored
- Preparation of juvenile court records are not prioritized
- Juvenile court records are not transmitted from the districts to the High Court in a timely manner
- High Court delays in addressing confirmations once records are transmitted

Additional Concerns:

- No standard process is set out in law for how confirmations should be handled and what factors should be considered by the High Court
- Many judges treat confirmation as administrative paperwork rather than a substantive review of the appropriateness of the order



Snapshot of Confirmation

- **Kamwala Remand Correctional Facility as of September 2017**
 - Number of juveniles waiting for confirmation: **11**
 - Longest detention period: **15 March 2017 (6 months)**
 - Average detention period: **3 months**
- **Kabwe Medium Security Correctional Facility as of June 2017**
 - Number of juveniles waiting for confirmation: **15**
 - Longest detention period: **17th November 2014 (2 years, 7 months)**
 - Average detention period: **12 months**
- **Kamfinsa State Correctional Facility as of June 2017**
 - Number of juveniles waiting for confirmation: **15**
 - Longest detention period: **26 August 2015 (1 year, 10 months)**
 - Average detention period: **12 months**

These delays are believed to be nationwide



Confirmation Recommendations

- Juvenile courts issuing Approved School Orders or Reformatory Orders should raise and address the issue of bail pending confirmation as a part of the process of making the order
- If the juvenile court finds that bail is not appropriate in a specific case then the court should issue temporary orders that are consistent with the statutory timelines, rather than issuing an open ended detention order.
- If the statutory timelines expire before a confirmation hearing is scheduled, bail pending confirmation should be mandatory
- Subordinate Court administration should expedite preparation of juvenile case records and deliver them to the High Court within the statutory timelines.
- Formal guidelines should be developed for the issues and factors to be considered by the High Court when confirming or quashing an order
- If the confirmation process cannot be improved so that it adds substantive value to the juvenile court processes, the confirmation process should be removed.



THE GRANTING OF PAROLE AS A MEANS TO REDUCE OVERCROWDING IN ZAMBIAN CORRECTIONAL FACILITIES

SYMPOSIUM ON LEGAL AND ADMINISTRATIVE REFORMS TO ADDRESS CONGESTION IN
CORRECTIONAL FACILITIES

SEPTEMBER, 2017

BY TOBIUS MWANZA
CHAIRPERSON – NATIONAL PAROLE BOARD

1.0 LEGAL CONSTITUENCY OF A PAROLE BOARD - ZAMBIA:

- A conditional release of an inmate to serve the remainder of his/her sentence in the community, before the expiry of the sentence under the supervision of the state
- Established under Prisons Amendment Act No. 16 of 2004 and the Parole Rules SI No. 101 of 2008 and Operationalized on November 28th, 2008
- **Composition:**
Commissioner - Corrections & Extension Services (Chairperson), Chaplain General, Correctional Service, Director of Health Services, Correctional Service, Representative of the Ministry responsible for Home Affairs, Representative of the Ministry responsible for Community Development and Social Welfare, Representative of the Attorney-General, Representative of Religious Organization, Representative of a Non-governmental organization dealing with the welfare of prisoners, Member of the Reception and Discharge Committee
- **Eligibility:** Convict who has served atleast 2 years remaining with 6 months before the expiry of sentence

1.1 FUNCTIONS OF THE BOARD


- To coordinate related activities and recommend the release of inmates on parole
- Receive RDCs reports/recommendations and make evaluations
- Conduct hearings to recommend for granting of parole or not to Commissioner General
- Commissioner General either orders the release of the inmate on parole or not as the case may be
- Recommend for suspension of parole to allow for investigations
- Recommend for the revocation of parole in case of breach of conditions
- Recommend for a recall of a parolee on public interest

1.2 LINK BETWEEN GRANTING PAROLE AND OVERCROWDING IN CORRECTIONAL FACILITIES

- Allows for community corrections
- Fosters family and community reintegration and resettlement
- Reduces ex-offenders' tagging, stigma and discrimination
- Strengthens family and community ties and acceptance
- Provides for greater responsibility and accountability on the offender to seek reconciliation and make amends
- Cost effective
- Reduces reoffending and recidivism
- Decongests correctional facilities, scales up efficiency in programming and supervision
- Increases resource availability for remaining inmates and promotes good behavior




1.3 CHALLENGES IN THE CURRENT LEGAL & ADMINISTRATIVE FRAMEWORK ON GRANTING PAROLE

- Restrictive and prescriptive legal framework
 - Centralized parole system
 - Non-autonomous operational structure
- 



1.4 RECOMMENDATIONS TO BE CONSIDERED

- Flexible legal framework: Open eligibility on conviction with regulations, except for death-row inmates and lifers
 - Decentralization of the parole system: District and Provinces
 - An autonomous National Parole Board
 - Increased funding
- 



THE END

THANK YOU ...





Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



Parole – lessons learnt from the South African situation

September 2017

Lukas Muntingh



Introduction

- History
- System overview
- Budget
- Problems and challenges
- Lessons and observations



History

- Roots lie in a system of hiring out convict labour for public and private work – a practice inherited from the British
- Formalised by Prisons Act (8 of 1959)
- Various amendments over time but new Correctional Services Act (111 of 1998) adopted in 1998 and fully promulgated in Oct 2004.
- Two parole regimes running in parallel created major confusion: those sentenced prior to Oct 2004 and those sentenced after 2004.
- Rule of thumb: those before Oct 2004 serve half less credits = one third; after Oct 2004 serve one half before considered for parole.

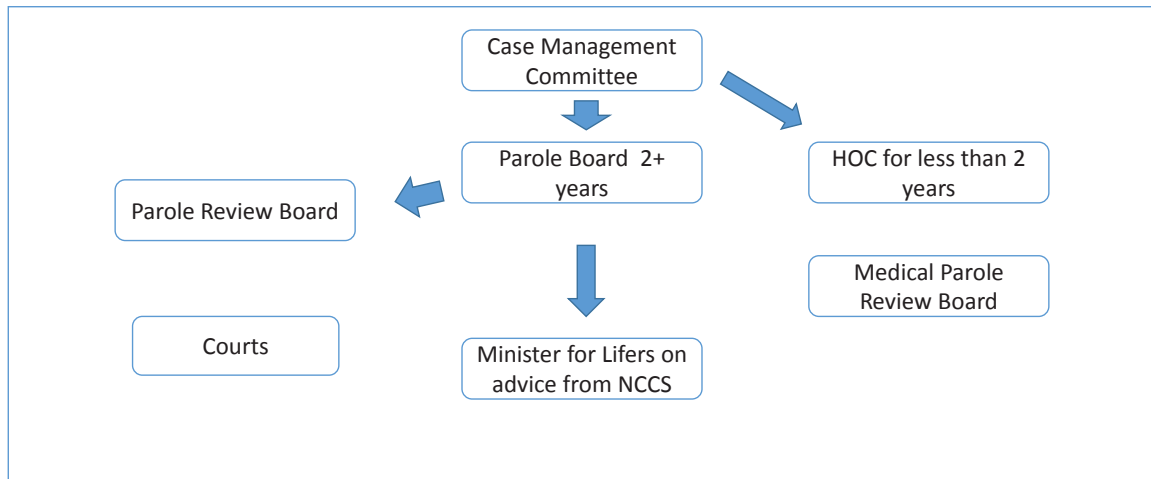


System overview

- Total: 161 984; Male – 157 791; Female - 4193
- Sentenced: 116 727; Male – 113 691; Female – 3036
- Unsentenced: 45 257; Male – 44 100; Female – 1157
- Community Corrections
 - Parolees: 51 937 compliance 98%
 - Probationers: 16 640 compliance 98%
- Released by:
 - Under 2 years by Head of Centre (HOC) on advice of the Case Management Committee (CMC)
 - Plus 2 years excl. life: Parole Board on advice of CMC; 48 Parole Boards
 - Life: Minister of Justice and Correctional Services
 - Medical Parole: Medical Parole and Review Board



System overview



System overview

- CMC is the hub and collects information on prisoner and presents to HOC, Correctional Supervision and Parole Board (CSPB – Parole Board), Medical Parole Review Board (MPRB)
 - the offence or offences
 - sentencing remarks by court
 - previous criminal record
 - conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such offender;
 - likelihood of a relapse into crime, the risk posed to the community and the manner in which this risk can be reduced;
 - assessment results and the progress with regard to the correctional sentence plan
 - the possible placement of an offender under correctional supervision or conversion of sentence to Correctional Supervision



System overview

- the possible placement of such sentenced offender on day parole, parole or medical parole, and the conditions for such placement;
- a certified copy of the offender's identity document and, in the case of a foreign national, a report from the Department of Home Affairs on the residential status of such offender;
- the possible placement under correctional supervision or release of an offender who has been declared a dangerous criminal
- Such other matters as the Correctional Supervision and Parole Board may request; and
- a report as contemplated in paragraph (d) to the National Commissioner in respect of any sentenced offender sentenced to incarceration of 24 months or less.



Budget

- Social Reintegration Programme 3.7% of total budget R807 million or US\$ 60.9 million
- Staff establishment 2205 for approx. 68 570 parolees/probationers
- Cost per day per parolee/probationer = US\$ 2.50



Problems and challenges

- The non-parole period and certainty in sentence
 - Parole is not a right but it is a right to be considered for parole
 - Prior to Oct 2004 half less credits = 1/3; after Oct 2004 half
 - Lifers before Oct 2004 uncertain but settled at 20 years, after Oct 2004, 25 years or 15 years if aged 65 years. However, lifers sentenced before Oct 2004 13 years
 - 1998 Policy Guidelines created massive confusion by imposing harsher requirements than the Act (e.g. $\frac{3}{4}$ for violent crimes) and did so retrospectively; unlawful. Litigation. *Combrinck v Min of Correctional Services* Court clarified – entitled to regime under which sentenced
 - Poorly communicated to Parole Boards and numerous court cases followed overturning incorrect interpretations by Parole Boards



Problems and challenges

- Non parole period specified by courts
 - The CSA and CPA (after 2004) provide that a court may specify a non-parole period
 - Doctrine of separation of powers - the judiciary and the executive
 - An unnecessary incursion
 - Number of court decisions
 - Botha – SCA “just a recommendation”
 - Stander SCA “only in exceptional circumstances”
- DCS is best placed to make the decision, especially if a court expressed a particular view several years earlier.



Problems and challenges

- Structure and functioning of parole boards
 - 48 PBs for each Management Area staffed by civilians and DCS provides secretarial service with no voting powers; 5 members (Chair, dep chair, 1 DCS and 2 community members) Term of 5 years; meet at least once per month
 - Deal with 24 months and longer (12 months prior to 2008 amendment). Lifers – make recommendation to Min (National Council on Correctional Services NCCS)
 - Parole Boards not managed properly e.g. vacancies; remuneration unclear; admin and logistical concerns, little support from DCS esp. when in litigation
 - Independence, meddling by senior officials from Dept of Correctional Services (DCS)
 - CMC reports lack vital information e.g. report from social worker, psychologist etc.
 - Inconsistent decision-making & poor training
 - SAPS seldom participate in Parole Board meetings when required to do so.



Lessons and observations

- The impact of parole on the prison population is dependent on:
 - Sentence length – longer sentences will make for reduced impact
 - Number of people entering the system – in SA sentenced admissions dwindling
 - Size of Pre-trial Detainee (PTD) population – more PTDs make for reduced impact
- Legal clarity to avoid litigation
- Well trained Parole Boards with clear Standard Operating Procedures
- Parole should provide tangible post-release services to reduce risk of re-offending
- Are the performance indicators meaningful? What do they measure?



Lessons and observations

- Deal with eligible cases on schedule to avoid litigation
- Process must be transparent, fair and just and seen by the public to be that.
- Conduct research on impact of parole.
- Oversight and complaints/review mechanism to avoid litigation



Thank you



Setting Standards

How a Maximum allowed duration for Remand would contribute to reducing the Overcrowding in Zambian Correctional Facilities.

International Examples

Ellah T.M Siangádu

Scope

- Problem
- International Examples
- Recommendations

Study Pre-trial detention in Zambia (2011)

- The average time spent in remand ranged from 18 days in Kamwala to 246 days in Kabwe
- [Pre-trial detention in Zambia: Understanding Case-Flow Management and Conditions of Incarceration 39, 98].

International Best Practices with regard to setting a maximum allowed duration for remand.

- No agreement with regards to maximum allowed duration for remand under International Human Rights and Comparative Penal Law;
- Presumption that suspect/accused is in jail because they have committed an offence;
- However, although they are responsible for their being in prison, it does not imply that they forfeit certain rights and freedoms;
- Therefore, the state still owes them a duty as much as to any other citizen for instance right to life.

The International Covenant on Civil and Political Rights (1966)

- International norms governing rights of suspects/accused;
- There is a general requirement of due process before someone is punished.
- International Covenant on Civil and Political Rights (ICCPR)
- Article 7 – prohibition against torture, cruel, inhuman or degrading treatment;
- Article 9 right to liberty & security of person. Any deprivation of liberty needs to be in accordance with such procedures established by law.
- Provision is silent in terms of what ought to be the maximum allowed duration for remand.

The African Charter on Human and Peoples Rights (1981)

- The African Charter on Human and Peoples Rights (ACHPR)
- Article 5 – right to the respect of dignity inherent in a human being; prohibition of torture.
- Article 6 – individual right to liberty and security of person;
- Article 7 – right to have cause heard.
- There is need to clearly stipulate a limit of time in which a suspect can be held before proceeding to trial.
- In order to expedite the process of handling individual cases and addressing the problem it is necessary to have time limits imposed;

Examples constitutions of the following states:

- Ghana;
- Malawi
- South Africa
- Uganda.

Nigeria

- With regards to police detention pre-trial, the law provides that a suspect must be charged to a court of law within a reasonable time or be granted bail [1999 Constitution, section 35(4)]
- Section 35(5) defines what is meant by phrase 'reasonable time'
- accordingly, where there is a court with competent jurisdiction within forty (40) kilometres, reasonable time means one day and two days or a longer period as may be considered to be reasonable by the court.

England and Wales

- Time limits have been established to limit the maximum length of pre-trial detention in England and Wales set for 182 days;
- However, this limit can be extended further as long as prosecution can justify the time taken to bring case to trial.
- Like Zambia, England and Wales has a problem of overcrowding in prisons;

England and Wales - Measures available to address problem

- Maximum length of pre-trial detention;
- There is a presumption in favour of releasing the suspect/accused pending trial, subject to a number of limitations i.e. if the Court is satisfied suspect/accused will not reoffend, or fail to surrender to custody (Section 4 of Bail Act 1976);
- A number of factors are taken into account i.e. the nature and seriousness of the offence, character; etc.

Supervision measures could be imposed including;

- Restriction of freedom of movement;
- An obligation not to drive;
- An obligation not to wear electric tags;
- An obligation not to leave the country;
- An obligation to inform the authorities of change of residential address; etc.

Recommendations

1. The Judiciary must be encouraged to use alternative measures to pre-trial detention more often;
2. Judiciary must be encouraged to make use of non –custodial sentences where appropriate in order to address the overcrowding problem.
3. It is therefore imperative that the constitutions of Zambia, particularly the bill of rights is amended to include a time limit.

Amend the Bill of Rights - The constitution needs to be instructive of the period of time that a suspect can be held in custody before

Community Sentencing Orders in Zambia – A way to address overcrowding in Zambian Correctional facilities?

Presented by

Mr. Moses Kakungulu Wagabaza

Ag. Director of Prisons/Assistant Commissioner General of Prisons, responsible for Cooperation and Corporate Affairs, Uganda Prisons Service

To

The Symposium on overcrowding in Zambian Correctional Facilities

12th – 14th September 2017, Lusaka, Zambia.

29/09/2017

1

1. Introduction

- ❖ The transformation agenda in the Corrections sector has been very vibrant and active in the last decades with a number of concepts, guidelines and rules developed to solve the attendant problems of the sector.
- ❖ The significant ones have been – the UN Standard Minimum Rules on the treatment of Prisoners – a guide on how countries do business in the Corrections sector and sixty years later, The Mandela Rules.
- ❖ In between, Africa specifically developed the following resolutions/treaties to ameliorate congestion in our Prisons/Correctional facilities:
 - The Kampala Declaration on Prison Conditions, 1996,
 - the Kadoma Declaration on Community Service Orders, 1997,
 - the Abuja Declaration on Alternatives to Imprisonment 2002
 - the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002.

29/09/2017

2

- ❖ The Community sentencing initiatives that arose from the above resolutions have taken root in some African countries,
- ❖ South Africa taking the lead.
- ❖ Others like Kenya, Malawi and Zimbabwe achieving considerable success,
- ❖ others like Uganda struggling but, the problem of overcrowding still a challenge.

29/09/2017

3

African Prison/Corrections congestion dilemma.



A typical congested prisoners sleeping accommodation ward

29/09/2017

4



Prisoners with swollen feet arising from standing throughout the night due to lack of sleeping space

29/09/2017

5

All Roads Begin and end in the Community



29/09/2017

6

All Roads Begin and end in the Community

- ❖ All individuals convicted of a crime begin in the community.
- ❖ Those given bail or released on their own recognizance prior to trial are returned to the community.
- ❖ Those on probation go to community after sentencing.
- ❖ 95–97% of those sentenced to prison return to the community.

Therefore community sentencing/alternative sentencing means a return to the community.

29/09/2017

7

What is a Community sentence?

- ❖ Community sentencing is a collective name for alternative sentences or non-custodial sentences
- ❖ It is a punishment for an offender who has been convicted of committing an offence, and sentenced to serve in the community other than a custodial sentence (serving a prison term) or capital punishment (death).

29/09/2017

8

Objectives of Community Sentencing

- ❖ Promote the reduction of crime through effective community based rehabilitation of offenders.
- ❖ Lessen recidivism by avoiding contamination which occurs when petty offenders are imprisoned with hard core criminals.
- ❖ Contribute towards decongestion of prisons.
- ❖ Promote community development through utilization of skills possessed by offenders instead of wasting their resourcefulness by locking them up in prison.
- ❖ Promote reconciliation to maintain social cohesion

29/09/2017

9

Community sentences commonly used in Africa which is the subject of discussion by this symposium are:-

29/09/2017

10

1. Community service orders

- ❖ Community Service order is a community based sanction established by law.
- ❖ It requires that a person who commits a minor offence is sentenced by a competent court to perform unpaid work in the community where he or she resides instead of being sent to prison.
- ❖ This sentence takes into account the balance between human rights and dignity of the offender, the needs of the victim and safety of the community.

29/09/2017

11

Analysis of the Legal and administrative frame work– Zambia

The Community Service Orders in the Republic of Zambia are guided by the following provisions:-

- ❖ Penal code amendment no.12 of 2000
- ❖ Criminal procedure code amendment no. 13 of 2000
- ❖ Prison Act amendment no 14 of 2000

29/09/2017

12

Gaps

- ❖ Penal code amendment No. 12 of 2000 provides for community service as a formal punishment and conditional suspension of a sentence of imprisonment.
- ❖ Criminal procedure code amendment code No. 13 of 2000 provides that Police Service should recommend offenders for community service to the courts at the pre-trial stage.

29/09/2017

13

- ❖ The law lacked clear guidelines regulations, administrative structures, supervisors, and placement institutions.
- ❖ Further, the Criminal Procedure code, 2000 (Act 13 of 2000), s.306A (3) requires obtaining the consent of the offender to perform community service and an explanation of the consequences.
- ❖ This legislation assumes that Community service in Zambia is not a sentence on its own; it is a condition which may be attached to a suspended sentence and therefore a direct alternative to a custodial sentence.

29/09/2017

14

- ❖ In addition, the act does not specify the time frames and neither provides the sentencing guidelines, for Section 306B (1) Provides that An order for community service shall specify— (a) the number of hours to be worked; (b) the days on which the work is to be performed; (c) the period of community service; (d) the place where the offender is to perform community service; (e) that the offender shall, during the period of the community service, be under the supervision of an authorized officer; and (f) any other special terms and conditions of the order.

- ❖ Finally, Section 306C provides that upon making an order for community service, the court shall order the offender in respect of whom the order is made to report forthwith to an authorized officer in the area community service will be performed.
- ❖ . the act is silent on who an authorized officer is and equally in the Prisons Act where reference is made, there is nothing defining an authorized officer
- ❖ This is an important provision because those who manage such a programme should be in position to understand that a CSO is not a "soft option", but is indeed punitive and this should be reflected in the content of the service itself.

(ii) Probation Legal frame work

This is provided for under the Probation of offenders Act CAP 93 (as amended) and has the following aspects:-

- ❖ Pre-conviction -where during the trial, court feels that the charges have been proven but is of the opinion that the extenuating circumstances (youth, character, antecedents, home surroundings, health or mental condition of the offender); it is expedient without making a conviction to make a probation order.
- ❖ Post conviction - as above but after conviction the court makes a probation order instead of a custodial sentence.

29/09/2017

17

Gaps

- ❖ The programme is not well appreciated and embraced by the implementing institutions (Courts, Ministries and the Community)
- ❖ The Zambian Probation Act only provides for the post conviction probation while other jurisdictions (Kenya) provide for both. The danger with the former is that before conviction is arrived at the offender could have been remanded in Prison.
- ❖ Sec. 15 of the Probation Act provides for the Minister to make appointments of Probation officers at different levels which is the mandate of Public Service Commission. This scenario creates job insecurity, under performance etc.
- ❖ The Minister referred to in the Act is not defined

29/09/2017

18

Repercussions for limited use of community sentencing in Zambia. A comparative analysis.

Prison populations for selected African countries

Countries	Prison population (100.000) of national population	Rate of national	Occupancy levels	Pre-trial detention
Zambia	160 (15.58 million)		303.0%	23.2%
Zimbabwe	120 (16.27 million)		110.9%	17.1%
Uganda	120 (40.7 million)		293.2%	54.2%
South Africa	291 (55.58 million)		132.7%	27.9%
Kenya	114 (47.4 million)		201.7%	40.4%
Malawi	79 (17.84 million)		200.3%	16.2%

World Prison Brief (2016)

29/09/2017

19

From the table above, it's clear that Zambia's prison population is quite high and the Prisons are overcrowded. The explanation for this, highly suggests that the sentencing regime of the country prefers imprisonment to other sentencing regimes. With 23.2% of pre-trial detention, one would expect the 76.8% to be shared by both the Correctional and community based alternatives to imprisonment.

29/09/2017

20

Recommendations

1. (a) Amendment of the Criminal Procedure Act of 2000 to make provision for awarding of community service orders for some capital offences whose risk is not high.

(b) Amendment the Criminal Procedure Act of 2000 to specify persons and institutions which should provide reports for consideration by court to award community service orders

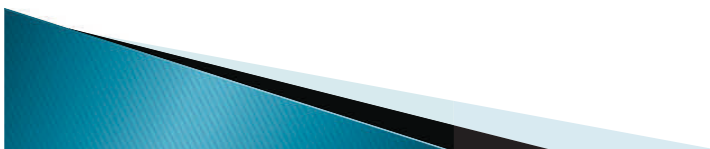
(c) Amend the criminal Procedure Act of 2000 for court to award both a custodial sentence and community service order so that it is not upon the accused to make choice among the two. This will do away with the current system where the courts asks the accused whether he or she is willing to do community service.



29/09/2017

21

2. There should be a comprehensive legislation in regard to Community Sentences. This legislation will provide clear instructions, categories, institutions mandated to handle offenders and who qualifies for Community Sentences, which offenses are eligible, and tools for monitoring and evaluation. Either Make Community Service an independent institution established by an Act of parliament as it is the case with Uganda, Zimbabwe and Kenya or let it be part of the Correctional Service.



29/09/2017

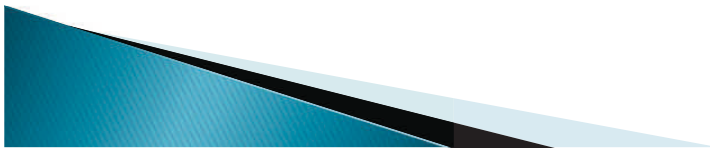
22

3. Develop a regulatory framework that creates a conducive environment for the operational of Community service in the country.

4. Carry out a massive sensitization of the Criminal Justice actors and the community about the benefits of Community sentencing in as far as decongestion of Prisons is concerned.

5. Constantly benchmark with the countries where Community sentencing has helped in addressing decongestion in the Prisons and learn from their experiences.

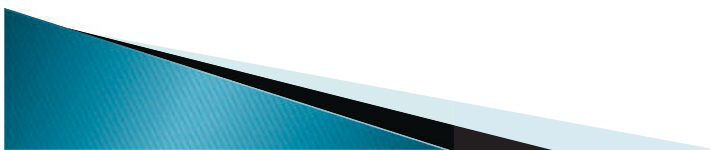
6. The Zambia Criminal Justice system and in particular the Judiciary should come up with sentencing guidelines to among other things create a conducive atmosphere for issuance of community sentence orders. Uganda has in place sentencing guidelines to guide its officers when handing out sentences.



29/09/2017

23

7. The Judiciary should give practical directives/ orders to its officers to endeavor and consider Community sentence orders as part of punishment to offenders. It is now incumbent upon all Magistrates in Uganda to have each issued out a certain number Community service sentences within a given period. This has led to an increase in the number of Community Service Orders issued out.



29/09/2017

24

4. Way forward

Legislations should be made that will take into account the above recommendations, and that the below models could be considered:–

a) Community, Probation and After care Services (independent institution)

b) Community Corrections (Directorate or department of the Correctional Service)

29/09/2017

25

However, not to lose focus of the purpose of imprisonment, it is strongly advised that, any of the two models should be able to offer:

1. Institutional Facilities

- ❖ Half way houses
- ❖ Probation Hostels and Homes
- ❖ Class room space
- ❖ Vocational skills workshops

2. Programmes

- ❖ **Correctional programmes**
 - New beginnings
 - Sexual offences
 - Anger management
 - Substance Abuse
 - Restorative justice orientation
 - Behavior modification
 - Economic crimes (theft and fraud related) programme

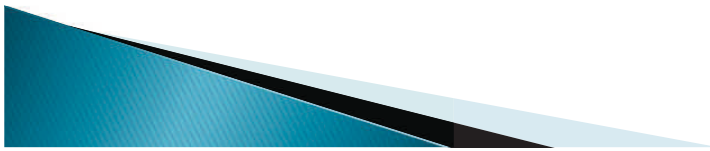
29/09/2017

26

❖ Social work programmes

Therapeutic programmes should be rendered to sentenced offenders:

- Anger management programme
- Sexual offender treatment programme
- Substance abuse programme
- Family and marriage care programme

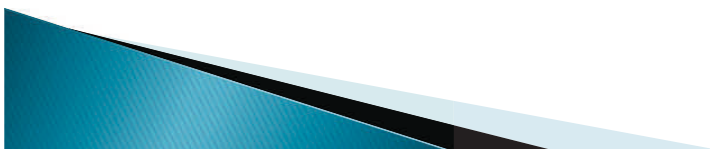


29/09/2017

27

❖ Spiritual care

- Moral regeneration programme
- Combating HIV and AIDS through spiritual and ethical conduct
- Restorative justice
- Pre release programme
- Anger management programme
- Building healthy relationships
- Family life programme

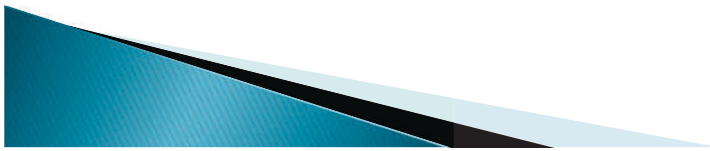


29/09/2017

28

- ❖ Psychological Programmes
- ❖ Skills development Programmes
- ❖ Education Programmes
 - Literacy
 - Adult literacy education
 - Further education

- ❖ Sports, recreation, arts and culture

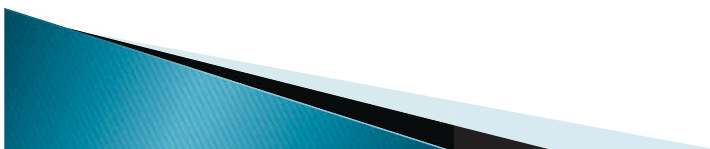


29/09/2017

29

5. Road Map

- ❖ Develop a Correctional Policy
- ❖ Introduce new legislations that takes into account the new paradigm shift
- ❖ Review the Prisons Act, Rules and Regulations
- ❖ Restructure the Correctional service
- ❖ Develop an Integrated Prisoners Information Management System
- ❖ Engage, bring on board, involve and sensitize all stake holders as a continuous process



29/09/2017

30

6. Conclusion

- ❖ Successful implementation of the Community sentencing Initiatives, requires the communication, cooperation, and coordination in all of the aforementioned actors.
- ❖ It will only be possible if all key players do their part to add value and fill missing gaps. Non-custodial sentencing proves to be an extremely attractive option in this regard.
- ❖ It will alleviate a huge portion of the burden of overcrowding on the Correctional Service. It will also alleviate some budget constraints on the government, return a population of civilians to the productive economy for the benefit of society rather than isolating them in prison.
- ❖ And finally, non-custodial sentencing will far exceed and improve existing standards in the rehabilitation of offenders.

THANK YOU

Reviewing the Penal Code and the Criminal Procedure Code– overview of the Process

How can legislative reforms in the criminal justice sector address the overcrowding in Zambian Correctional Facilities?

A ZLDC PRESENTATION TO A NATIONAL SYMPOSIUM ON LEGAL AND ADMINISTRATIVE REFORMS TO ADDRESS CONGESTION (OVERCROWDING) IN CORRECTIONAL FACILITIES, SANDY'S CREATION CONFERENCE CENTRE, LUSAKA, 12TH TO 14TH SEPTEMBER, 2017

About the Zambia Law Development Commission (ZLDC)

- Is a statutory body created under Chapter 32 of the laws of Zambia whose primary mandate is law reform.
- The functions of the Commission are to:
 - revise and reform the law in Zambia;
 - codify unwritten laws in Zambia;
 - review and consider proposals for law reform referred to the Commission by the Minister or the members of the public;
 - hold seminars and conferences on legal issues;
 - translate any piece of legislation into local languages; and

About ZLDC Cont...

- To research and make recommendations on:
 - ✓ *the socio-political values of the Zambian people that should be incorporated into legislation;*
 - ✓ *the anomalies that should be eliminated from the statute book;*
 - ✓ *new and more effective methods of administration of the law and the dispensation of justice that should be adopted and legislated;*
 - ✓ *the removal of archaic pieces of legislation from the statute book;*
 - ✓ *new areas of the law that should be developed which are responsive to the changing needs of the Zambian society.*
- encourage international co-operation in the performance of its functions under this Act; and
- do all such things incidental or conducive to the attainment of the functions of the Commission.

ZLDC Law Reform Projects

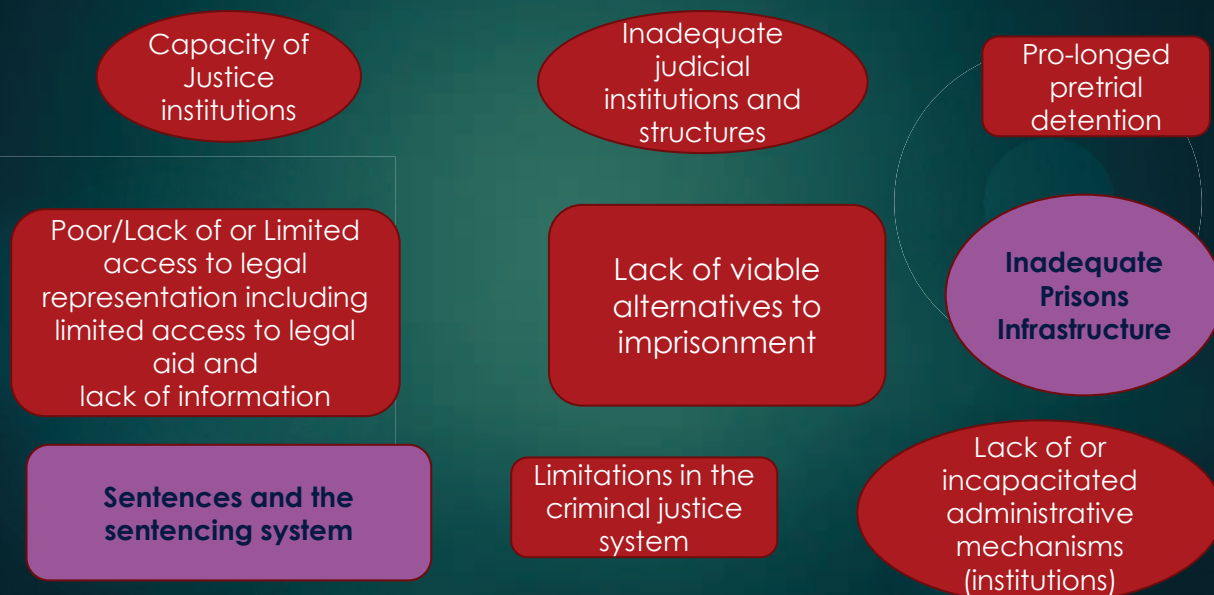
- Review of Laws Relating to Children (Children Code Bill).
- Development of Legislation to enhance Customary Land Tenure.
- Review of Laws relating to Civil Registration and Vital Statistics (CRVS).
- Review of the Witchcraft Act.
- Review of the Road Transport and Safety Agency Legal & Institutional Framework.
- Review of the Chiefs Act and allied Legislation and Development of Villages Act.
- Development of Legislation to regulate Customary Marriages.
- Development Of Legislation to address Early/Child Marriages.
- .Review of Prevention and Prohibition of Money Laundering Act.
- Review of the National Sports Council of Zambia Act and the National Youth Development Council Act.
- **Review of Prisons Act and Allied Legislation.**
- Review of Penal Code and Criminal Procedure Code.
- Criminalisation Against Torture.

Introduction

- ▶ According to a 2012 ZLDC study on **'Implementation of Community Service Sentencing in Zambia'**, half the prison population in Latin America and Africa are awaiting trial.
- ▶ In 2012 Zambia's prison population stood at 14, 500 inmates against 53 prisons.
- ▶ Today in 2017 it stands at 20, 608
- ▶ Prisons and conditions of detention of offenders represent one of the most challenging areas in the field of human rights.
- ▶ According to this study, the most prominent problem faced countrywide in Zambia's prisons was found to be overcrowding and large numbers of unsentenced remandees.
- ▶ This presentation looks at how legislative reforms in the criminal justice sector can address overcrowding in **Zambian Correctional Facilities**.


It presents the ongoing reform process relating to the Penal Code and Criminal Procedure Code.

Factors contributing to overcrowding



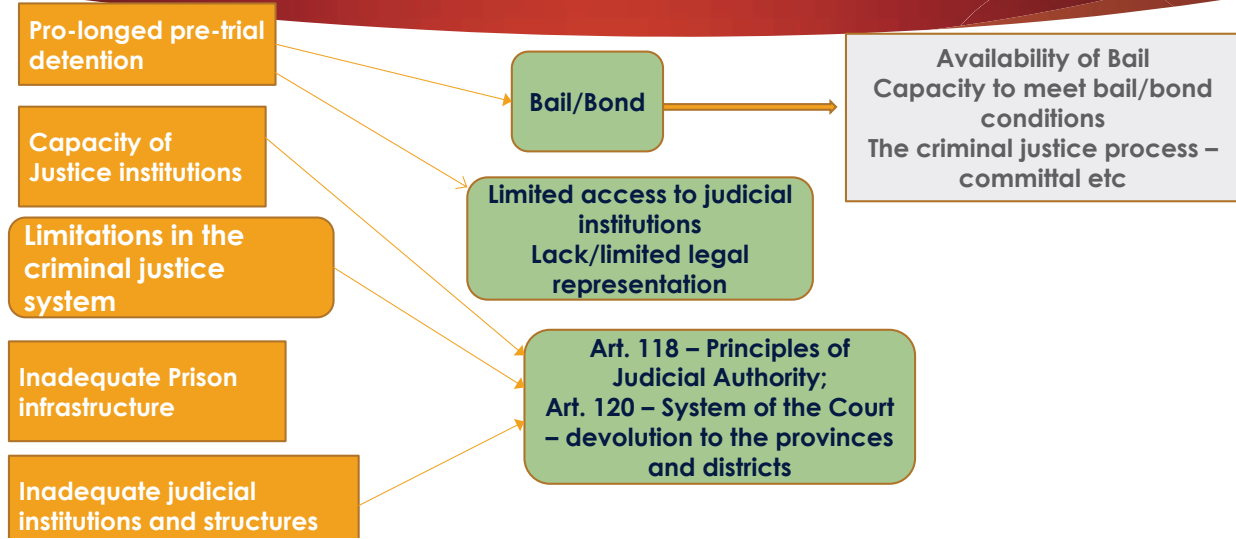


**How can legislative reforms in the criminal justice sector address the overcrowding in
Zambian Correctional Facilities?**

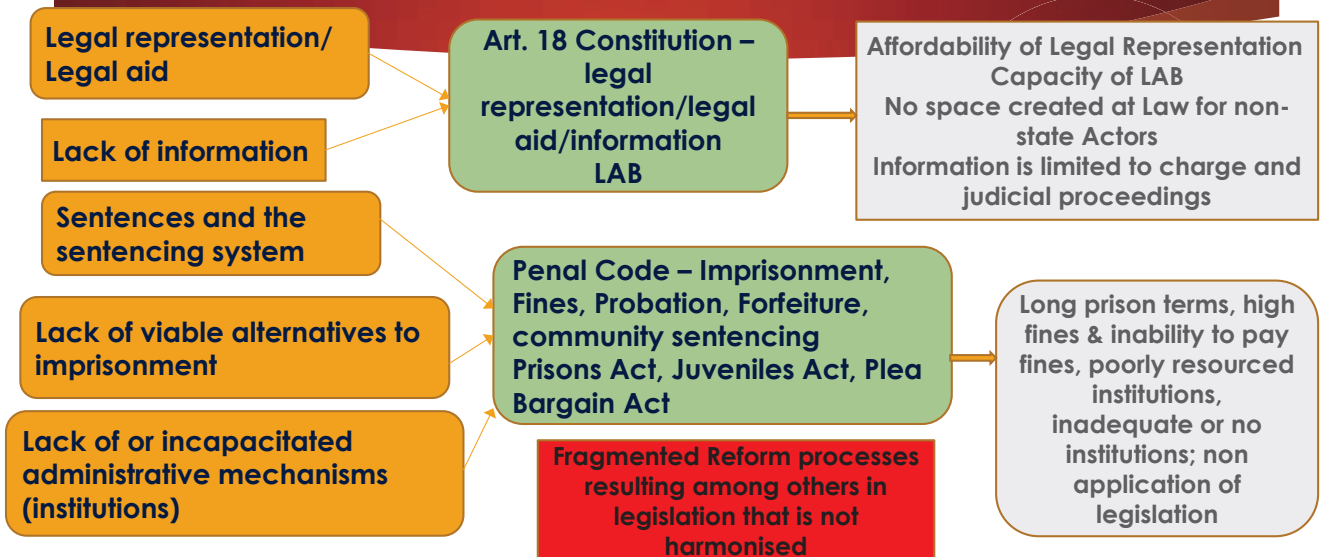


**Are any of these causes, factors or drivers of overcrowding caused by legislation?
The lack of or inadequacy of our legislation? or
indeed the absence of legislation?**

Provisions in our legislation relevant to Overcrowding



Provisions in legislation cont...



Provisions Relating to Sentencing and Fines

- ▶ High Court can Impose any sentences (Sec 6. CPC)
- ▶ Subordinate courts can impose sentences as per their varying jurisdiction levels with some sentences being subject to confirmation by the High Court (Sec 7 and 9 CPC)
- ▶ Provision for bail pending confirmation (Sec 13)
- ▶ Suspended sentences (Sec 16) for up to 3 years with conditions set at the discretion of the Court
- ▶ Pardon (Sec 305)
- ▶ Flexibility for the payment of fines – time – distress – imprisonment (Sec 310)

THE LAW REFORM PROCESS

- ▶ In 2010, the Zambia Law Development Commission embarked on the process of reviewing the Penal Code and Criminal Procedure Code.
- ▶ The objectives of the review process were to:
 - Remedy identified challenges related to the two codes such as removal of archaic and redundant provisions;
 - Making the codes more responsive to the changing needs of the Zambian society and to contemporary developments in the field of criminal law;
 - **Remedying the perceived confusion and uncertainty in the administration of criminal law resulting from the various new legislation that has been enacted over the years.**
- ▶ The review process has been conducted with the assistance of the UNDP and the Swedish Embassy.

The Process

- ▶ The Review Process has involved:
- ▶ A desk Research which resulted in the production of an Issues Paper (including studying comparable jurisdictions);
- ▶ A Defining Workshop held in 2011 with multi-sectoral stakeholders to refine the issues set out in the Issues Paper;
- ▶ Stakeholder Consultative Group meetings with the Judiciary, State Advocates, Public Prosecutors, Police Officers from the CID and VSU, Legal Practitioners and Legal Aid Counsel;
- ▶ National Stakeholder Consultative Workshops with law enforcement institutions and civil society organisations;
- ▶ Comparative Study visits to countries with criminal legislation considered to be more progressive
- ▶ Technical Committee Meetings (Committee of Experts)
- ▶ **Identification, Collation, analysis and harmonization of all criminal legislation enacted from the 1980s to date**
- ▶ **Inclusion of an aspect of diversion for juvenile offenders**
- ▶ **NEXT STEPS:** Are embarking on the process of drafting amendments (expected completion date December, 2017)

Selected Stakeholder Recommendations


- The interpretations section should be broadened and terms such as nighttime, immature age (for carnal knowledge), judicial officer should be defined;
- **On punishment, the death penalty should be maintained and Section 25 should be amended to provide for different methods of killing and a time frame in which to conduct an execution.**
- The power to sign the death penalty should be vested in a board and not in the President;
- **Revision of punishment for selected offences (both in terms of reduction and enhancement);**
- **Enhance the Court's discretion in relation to sentencing, drafting of sentencing guidelines (in an Act of Parliament) and reduction on the use of minimum mandatory sentences;**
- Deletion of terms in selected provisions and deletion of selected sections (removal of offences)
- **Enhancing provisions by the inclusion of international treaty definitions in order to cater for contemporary issues;**
- Broadening of some provisions such as Section 70 to include other groups – 'gender and sex'

Direction of the proposed amendments

- ▶ **The need for sentencing guidelines or sentencing legislation;**
- ▶ **Reduction in some sentences, increase in others, removal of fines in some cases**
- ▶ **The need to harmonise criminal legislation and group similar offences together and have uniform penalties and procedures**
- ▶ **All criminal offences to be placed in the Penal Code and Regulatory offences to be placed (remain) in the specialised legislation**
- ▶ **Harmonisation of provisions such as those relating to the age of a child, review of language especially from a human rights perspective (removal of derogatory terms)**
- ▶ **Make provisions for new developments in the area of criminal law**

Recommendations

- ▶ Harmonisation of legislation will eliminate disparities in both processes and penalties or sentences imposed;
- ▶ Legislation making a clear distinction between the different actors and different levels of participation in criminal activities and imposing punishments accordingly
- ▶ Development of sentencing guidelines or sentencing policy or provide a range of sentences in order to enable the courts to apply flexibility in sentencing
- ▶ The Penal Code and Criminal Procedure Code review process does not exactly tackle the question of sentences – minimum or maximum – a separate process is being embarked on for this
- ▶ Make provisions for alternatives to imprisonment including adequate institutional and coordinating mechanisms

- 
- ▶ Make provisions for diversion programmes for offenders such as juveniles or adult offenders who commit petty offences or other offences that can be remedied at community level and/or Restorative justice programmes
 - ▶ Legislation can make provision for compassionate release and national pardoning mechanisms
 - ▶ To provide for the imprisonment of children as a last resort
 - ▶ To provide for non-state legal aid providers
 - ▶ Translate the correctional service approach not only to the Zambia Corrections Service but to all other law enforcement agencies in the criminal justice system (changes in attitudes and perceptions)
 - ▶ Undertake holistic legal reforms in the sector as opposed to fragmented reforms



REVIEW OF THE PRISONS ACT AND ALLIED LEGISLATION

The Review of the Prisons Act & Allied Legislation

■ Project Objectives

- To review the Prisons Act and related legislation so that the laws respond to the needs of prisoners; and,
- To promote effective and sustainable prison reforms in Zambia which are in compliance with international and regional human rights standards and good governance so as to improve the human rights situation of those in custody.

The Review of the Prisons Act & Allied Legislation

■ The Review Process thus far....

- Stakeholder Consultations have been conducted with various stakeholders and with the ZCS Command;
- **Activity Objectives:** To obtain views from stakeholders on the appropriate interventions or practices to incorporate in the Correctional Services legislation including views on measures with respect to education, training, health, rehabilitation, vulnerable prisons populations, rehabilitation and reintegration of prisoners and overcrowding;
- To fulfil the requirement for stakeholder consultation in any law reform process;
- **Desk study**
- **Activity Objective:** to identify, map and document allied/related legislation in order to make recommendations vis-à-vis the required amendments and administrative, financial and other actions to give effect to the amendments to the Prisons Act; Review the Draft Correctional Services Bill

The Law Reform Process...Steps

PART I:

1. Review of draft Correctional Services Bill
 - Objectives: To check for adequacy and make appropriate recommendations vis-à-vis the objectives of the review process;
2. Hold 2 Stakeholder Validation meetings on the bill;
3. Handover Report and Recommendations on Draft Bill to MoJ/MoHA;

PART II:

1. Collation of information from identified comparable jurisdictions;
2. Drafting Appropriate Regulations and Standing Orders;
3. Drafting proposed Amendments to allied/related legislation;
4. Stakeholder Consultations/Validations
5. Project Finalisation and Handover.

Review of Prisons Act and Allied Legislation

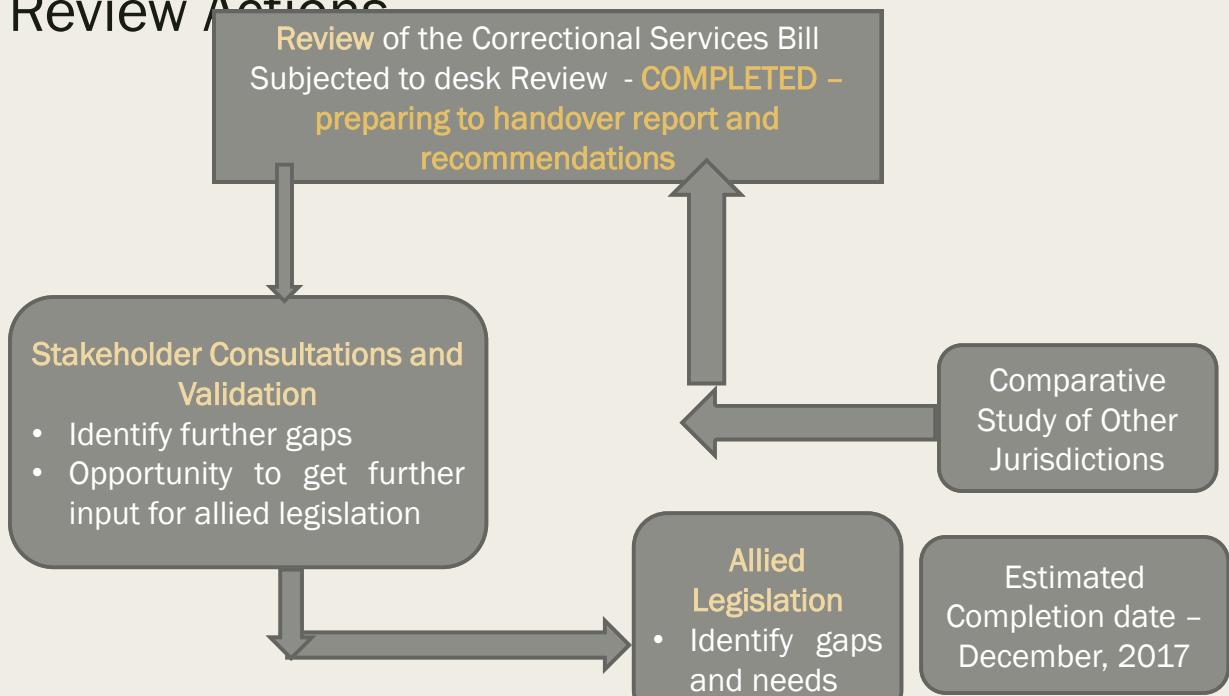
■ **Project Objectives**

- To gather views from stakeholders on whether or not to criminalize early and forced or child marriages;
- To collect submissions on the possible penalties for perpetrators;
- To collect submissions on best practices in relation to combating early forced or child marriages and its effects
- To make recommendations on the domestication of international and regional instruments pertaining to marriages that Zambia has acceded.

The Review Process.....

- The Review Process thus far....
- Stakeholder Consultations
 - **Activity Objectives:** To gather views from stakeholders to determine areas in the Prison legislation that require amendment, repeal or enactment.
- Desk study
 - **Activity Objectives:** to identify, map and document aspects of the Prison legislation and allied/related legislation that requires amendment, repeal or enactment;
 - To identify international, regional and national correctional and human rights standards to be incorporated in the Correctional Services legislation;

Review Actions





Thank You



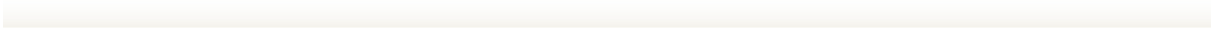
Symposium on Legal and Administrative Reforms to address Congestion in Correctional Facilities

- Summary on Recommendations -

Lusaka, 14/09/2017

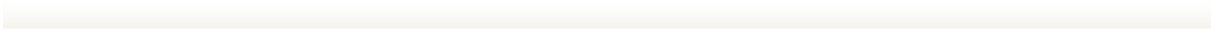


1. DISCRETIONARY POWERS OF NPA AND ORIENTATION OF PROSECUTORS AND STATE ADVOCATES

- Developing guidelines on the drawing up of charges
 - Including time frames for processing of cases
 - Review of legislation limiting bail
 - Diversion before prosecution
 - Police should be given the power to settle some matters outside of court
 - Expansion of the scope of admission of guilt procedure
 - Review of Plea Negotiations and Agreements Act
 - Also include felonies
 - Legal Practitioners shall make more use of the Plea Negotiation Act
- 

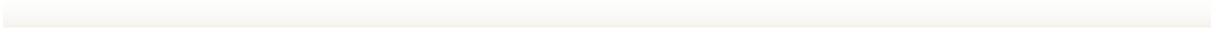


2. THE ENHANCED PROVISION OF POLICE BOND AND COURT BAIL IN ZAMBIA

- Repeal all provisions on non-bailable offences
 - Train police and magistrates on objectives of bail and bond
 - Ensure compliance of police with 24h rule
 - Review police practice requiring work sureties
 - Consider periodic review of bail conditions in order to allow judicial officer to revise the bail amount in case not met by the offender
 - Strengthen constitutional bail provisions (in cases of inordinate delays)
 - What constitutes reasonable delay in constitutional bail must be specified by the law and the said delay must not be as a result of the accused's actions
- 

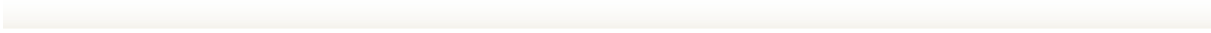



3. PRINCIPLES OF SENTENCING, CONFIRMATION OF SENTENCES AND ORIENTATION OF MAGISTRATES AND JUDGES

- Agree among Judiciary, ZCS and Social Welfare Department on how to oversee community sentences
 - Judiciary to develop sentencing guidelines to enhance transparency, uniformity and consistency in sentencing
 - Training of new and serving adjudicators in sentencing
 - Revise the law requiring confirmation orders for Subordinate Court cases and/or align sentencing powers of Subordinate Courts with the cases in their jurisdiction
 - Review provisions on non-bailable offences
- 

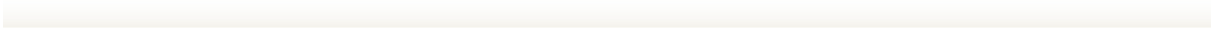



3. PRINCIPLES OF SENTENCING, CONFIRMATION OF SENTENCES AND ORIENTATION OF MAGISTRATES AND JUDGES

- Review parole legislation to make it less restrictive
 - Imprisonment should not be the automatic default sentence for defaulting to pay a fine
 - Review Penal Code and CPC in order to enforce non-custodial sentences
 - There is a need to relook at the law regulating mandatory minimum sentences, especially regarding sexual sentences by having guidelines or Acts to regulate them
 - Align legislation to constitutional provisions which support restorative approaches to sentencing
- 



4. JUVENILE JUSTICE: ENHANCED USE OF DIVERSION IN JUVENILE CASES AND THE ISSUING OF SOCIAL WELFARE REPORTS

- Enhance the use of customary law as a diversion measure
 - Amend Plea Negotiation Act to enhance its use to juvenile cases
 - Train social welfare officers and adjudicators in the use of diversion
 - Encourage reconciliation in cases of minor offences
 - Social welfare reports should not be mandatory for juvenile cases
 - Review social welfare report process
 - Reports and testimony should be limited to the required information only and not venture into what order should be made by the Court
- 



4. JUVENILE JUSTICE: ENHANCED USE OF DIVERSION IN JUVENILE CASES AND THE ISSUING OF SOCIAL WELFARE REPORTS

- If the confirmation process cannot be improved so that it adds substantive value to the juvenile court processes, the confirmation process should be removed
- Consider bail pending confirmation of sentences
- Develop guidelines for confirmation by High Court
- If the confirmation process cannot be improved so that it adds substantive value to the juvenile court processes, the confirmation process should be removed
- Ensure legal representation by the Legal Aid Board in all juvenile cases
- Instead of waiting for the High Court to enforce reformatory orders, this task can be given to the Subordinate Court to reduce the workload

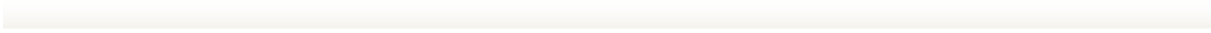


5. SETTING STANDARDS FOR MAXIMUM DURATION OF REMAND

- Setting standards for maximum duration of remand by further defining reasonable time frame in the constitution through:
 - a) subsidiary legislation (e.g. England and Wales 182 days), or
 - b) in the constitution (e.g. Nigeria), or
 - c) through judicial precedence
- Establish strong oversight systems within ZPS or other institutions (Judiciary, HRC) to ensure compliance with maximum remand durations
- Strengthen justice institutions in order to speed up investigation, prosecution and trials

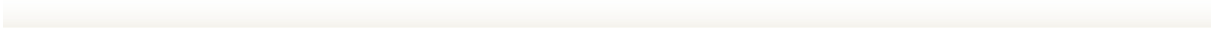


6. THE LEGAL AID SYSTEM IN ZAMBIA

- Adoption of draft Legal Aid Policy
 - Amendment of Legal Aid Act in line with adopted Legal Aid Policy
 - Strengthen and decentralize the operation of LAB
 - Establish additional LSUs and paralegal desks in correctional facilities and police stations
 - Establish an effective pro-bono service system
- 

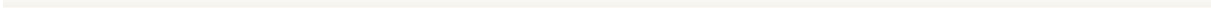


7. AGBV, ZAWA AND NARCOTICS AND PSYCHOTROPIC SUB-STANCES ACT

- Review of Penal Code in terms of minimum sentences provided for certain crimes, e.g. GBV related, poaching and drug related
 - Leaving more discretionary leverage to Magistrates and Judges to determine the severity of an offense (e.g. the amount of drugs in someone's possession)
 - Introduce alternatives to imprisonment such as house arrest, fines and community service
 - Enhance the use of the admission of guilt procedure for ZAWA offenses by establishing guidelines for ZAWA officers on the procedure
 - Repeal provisions on non-bailable GBV and drug offences
- 




8. THE COORDINATION OF THE CRIMINAL JUSTICE PROCESS

- CCCIs should be established as formal platforms in the justice sector by a statute or a policy.
 - CCCI representatives should comprise of the decision-making, senior officials in respective authorities
 - Revision of the overall MoU/Access to Justice Strategy which establishes the CCCI initiative
 - Development of clear ToR at chapter level in order to strengthen the initiative
 - Setting standards on case flow within the justice system in terms of standardized processes and timelines
 - Every time CCCIs' meet they should have a list from correctional facilities indicating inmates who have overstayed in prisons and the list shall be taken to the necessary institutions in order to deal with them
- 

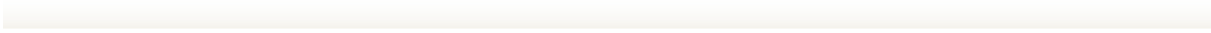


8. THE COORDINATION OF THE CRIMINAL JUSTICE PROCESS

- Subordinate Courts, Police and NPA to have a legal time frame in which criminal and civil proceedings should be heard and determined
 - CCCIs should have reasonable amount of funding to be in a position to operate fully
 - But, funding is not the basis for CCCIs and two chapters have been meeting successfully without money
- 




9. THE GRANTING OF PAROLE AS A MEANS TO REDUCE OVER-CROWDING IN ZAMBIAN CORRECTIONAL FACILITIES?!

- Flexible legal framework: Open eligibility on conviction with regulations, except for death row inmates and lifers
 - Decentralization of the parole system: District and Provinces
 - Autonomous National Parole Board
 - Parole Board would work better as a standalone entity or under the Ministry of Home Affairs.
 - Oversight and complaints/review mechanism to avoid litigation
 - Sensitization campaigns on granting parole within communities and for parole officers
- 



10. COMMUNITY SENTENCING ORDERS IN ZAMBIA

- Harmonize legislation on community sentencing orders by enacting a comprehensive law on community sentencing orders
 - Might be part of Zambia Correctional Service Bill
 - Develop clear instructions, categories, institutions mandated to handle offenders and who qualifies for Community Sentences, which offenses are eligible, and tools for monitoring and evaluation
 - Either make Community Service an independent institution established by an Act of Parliament or let it be part of the Correctional Service
 - There is also need to appoint more probation officers countrywide
 - Judiciary to develop sentencing guidelines to enhance the use of community sentencing
 - Especially with regard to felonies
 - Establish a structure for community service by enacting the Zambia Correctional Service Bill
- 



”This document has been produced with the assistance of the European Union and the Federal Republic of Germany under the Programme for Legal Empowerment and Enhanced Justice Delivery (PLEED). The contents of this publication are the sole responsibility of participating experts/stakeholders as named in the report and can under no circumstances be regarded as reflecting the position of the European Union and the Federal Republic of Germany”.