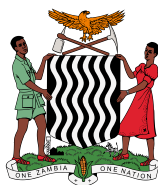


# **Challenging disadvantage in Zambia**

*People with psychosocial and intellectual  
disabilities in the criminal justice system*





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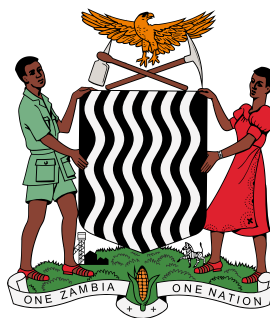
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# *Challenging* disadvantage in Zambia

People with psychosocial and intellectual disabilities in the criminal justice system



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# Foreword

People with disabilities experience discrimination and marginalization in all walks of life, throughout the world, including here in Zambia. In 2010 the Zambian Government ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and, since then, has been working in partnership with civil society groups such as the Mental Health Users Network of Zambia, the Zambian Federation of Disability Organizations and the Paralegal Alliance Network to align domestic legislation with the provisions and principles of the Convention. This is evidenced by the Persons with Disabilities Act of 2012.

The UNCRPD has stimulated a robust global discourse on how people with disabilities are treated in society and able to access the same rights as their non-disabled peers. The same, however, cannot be said for people with disabilities caught up in the criminal justice system, despite evidence of high numbers of people with psychosocial and intellectual disabilities who routinely come into contact with criminal justice services and the particular hardships they face.

While recognising these difficulties, criminal justice, healthcare and disability rights communities have rarely worked together to understand the problems and to look for solutions. As a result, there is little guidance available on how to ensure equal access to justice for people with disabilities, especially those with psychosocial or intellectual disabilities.

In Zambia, a unique partnership has worked together to better understand the challenges faced by people with psychosocial and intellectual disabilities caught up in the criminal justice system, and the staff who work with them, and to develop shared solutions. Led by the Ministry of Home Affairs, this partnership has involved four government ministries (Home Affairs, Justice, Health, and Community Development Mother and Child Health), professionals and practitioners from the criminal justice and healthcare sectors, disability rights and other civil society organizations, service users, self-advocates and family members.

## Foreword

Over the last two years we have listened to what people have to say and we have examined our own legislation, policies and practice. What we have discovered has not always been comfortable; but unless and until we know what the difficulties and shortcomings are, it is hard to consider how best to move forward.

The Ministry of Home Affairs has been pleased to support this ambitious study. We recognise the importance of this research, which has helped highlight the experiences and circumstances of some of our most disadvantaged citizens. As Zambia moves towards a new constitutional dispensation that enshrines the right to dignity, freedom, and equality before the law of all its citizens, a report such as this will help to ensure that no one is left behind. Not only can this report serve as a yardstick for Zambia, but it can also serve as a resource for other countries seeking to protect and enhance the rights of people with disabilities in the criminal justice system as it offers solutions to the problems identified.

The recommendations made in this report are challenging and far reaching and will require the cooperation and determination of us all to move beyond our current situation. My Ministry looks forward to continuing this unique partnership to effect sustainable change that will not only benefit those caught up in the criminal justice system, but society as a whole.

I applaud the work that has been done on this report and the efforts of all those involved in bringing it to fruition. I would like to express my particular thanks to the Paralegal Alliance Network for their tireless efforts in coordinating this complex programme of work.

Mr. Davies Mwila, MP  
***Minister of Home Affairs***



# Acknowledgements

Over the last two years this project has worked with, and been supported by, a large number of people and organisations, far too many to name individually. We are, however, extremely grateful to all of them for their wise advice, practical support and involvement.

As with any project, there are a number of people and organisations whose involvement has been of particular significance, and these are listed below.

- Members of the project consortium, which was led by the Paralegal Alliance Network. Other members of the consortium were: Legal Resources Foundation, Mental Health Users Network Zambia, Prisons Care and Counselling Association, Zambia Federation of Disability Organisations, and the Prison Reform Trust, a UK-based charitable organisation.
- Members of the project steering committee, which, in addition to consortium members included representatives from the Ministries of Community Development Mother and Child Health, Home Affairs, Health, and Justice; the Legal Aid Board; National Prosecutions Authority; the Judiciary; Young Women's Christian Association; Justice For Widows and Orphans Project; Chainama Hills Hospital ; Zambia Police Service; Zambia Prisons Service; the Law Association of Zambia; and the Open Society Foundation of Southern Africa. Particular thanks go to Kaputo W. Chisapa from the Ministry of Home Affairs, whose chairmanship of the steering committee was exceptional, and whose support in helping to arrange research interviews in three Provinces went far beyond what could reasonably be expected.
- Members of the project advisory group, which, in addition to consortium members, included representatives from the Social Welfare Department, Justice for Widows and Orphans Project, and Chainama Hills Hospital.

## Acknowledgements

- Field workers who, often in difficult circumstances, conducted over 100 interviews with senior stakeholders from government and civil society organisations, professionals and practitioners from the criminal justice and health sectors, individuals with psychosocial or intellectual disabilities with direct experience of the criminal justice system, and family members. Field workers were drawn from the following organisations: Paralegal Alliance Network Secretariat, Justice for Widows and Orphans Project, Chainama Hills Hospital, Social Welfare Department, Mental Health Users Network of Zambia, Zambia Federation of Disability Organisations, Young Women's Christian Association, Prisons Care and Counselling Association and the Legal Resources Foundation.
- Special thanks go to all who consented to be interviewed, especially those with direct experience of the criminal justice system. Without their input, this project would not have been possible; there would be no report and no recommendations for change.
- The authors of interim reports, Likando Kalaluka and Raymond Mutale; and the authors of this final report, Jessica Jacobson, Institute for Criminal Policy Research, Birkbeck, University of London and Jenny Talbot, Prison Reform Trust, London.

This has been an ambitious, complex and demanding project, which has required tenacity alongside significant leadership and organisational skills. The project was led by Phillip Sabuni, from the Paralegal Alliance Network with ongoing support from Jenny Talbot, Prison Reform Trust. Particular thanks go to Phillip whose ability to successfully steer the work through a number of challenges, and within the given timeframe, with good grace, patience and kindly encouragement is a major achievement.

And finally, we are very grateful to the Ministry of Home Affairs, to Patricia Mwanyisa from the Open Society Initiative for Southern Africa, and to Louise Ehlers and Tirza Leibowitz from the Human Rights Initiative at the Open Society Foundations, without whose full support and encouragement none of this work would have happened.

# Executive Summary

**T**his project investigated how individuals with psychosocial and intellectual disabilities are dealt with by the criminal justice system in Zambia, and developed recommendations for improving policy and practice. The project was undertaken by a consortium of non-governmental organisations (NGOs) comprising the Paralegal Alliance Network (PAN), Mental Health Users Network Zambia (MHUNZA), the Prisons Care and Counselling Association (PRISCCA), the Zambia Federation of Disability Organisations (ZAFOD), the Legal Resources Foundation (LRF) and the UK-based Prison Reform Trust. The work was funded by the Open Society Initiative for Southern Africa (OSISA) and the Human Rights Initiative at the Open Society Foundations, and was overseen by a steering committee chaired by the Ministry of Home Affairs.

Several research activities were undertaken for this project. These included a review of national policy and legislation; the collation of national criminal justice statistics; and a review of international research literature. The research also involved in-depth interviews with over 100 individuals, including senior stakeholders from government and civil society organisations; practitioners from criminal justice and health services; family members of people with psychosocial or intellectual disabilities; and self-advocates – individuals with psychosocial or intellectual disabilities who have direct experience of the criminal justice system.

## **Main research findings**

The vast majority of people interviewed for this study said that people with psychosocial and intellectual disabilities face stigma and discrimination in society, generally. It is inevitable that discriminatory attitudes, including widespread assumptions that such individuals lack capacity and have little to contribute to society, pervade public services and how people with psychosocial and intellectual disabilities are dealt with by public services personnel. At least until recent years, such attitudes were reflected also in national legislation which did not

afford people with disabilities the same rights as were granted to those without disabilities, and frequently contained discriminatory language and provisions.

This study has shown that people with psychosocial and intellectual disabilities in contact with criminal justice services are disadvantaged and discriminated against routinely and systematically. Like all detainees, they experience the harsh and at times brutal conditions of detention, including violence and abuse from officers and other detainees. However, their disabilities may render them more vulnerable to the negative impact of such experiences. For example, people with psychosocial and intellectual disabilities may be less resourceful than their peers and therefore less able to cope in the prevailing conditions of detention. This, together with limited access to medical care and other forms of support, can exacerbate pre-existing conditions, making a harsh environment more difficult to bear; such an environment can also trigger problems for individuals pre-disposed to certain conditions, including psychosocial disabilities.

People with psychosocial and intellectual disabilities who engage in, or who are alleged to have engaged in, offending behaviour are likely to come to the attention of the police in much the same way as anyone else. However, powers vested in the police extend the scope for arrest and detention to non-criminal behaviour that is commonly associated with people with psychosocial and intellectual disabilities, consequently heightening their risk of becoming caught up in the criminal justice system. At the same time, a lack of community-based services for people with psychosocial and intellectual disabilities can lead to crises, and family and community members may feel there is no option available to them other than to alert the police to deal with behaviour regarded as challenging or dangerous. The police, for their part, are not trained to deal effectively with such situations and often have little alternative themselves other than to arrest and detain the individuals concerned. Thus, the legislative framework and lack of community services conspire to create a disproportionate and potentially discriminatory police response to people with psychosocial and intellectual disabilities, at times when they are in most need of support.

The structural constraints of an overburdened and under-resourced criminal justice system can result in severe delays to the progress of cases through the system from the point of arrest through to court appearances, sentencing and release. Suspects and defendants with psychosocial or intellectual disabilities

are at particular risk of encountering delays. A combination of shortcomings in legislation and operational practice, possibly compounded by entrenched prejudice, has created a situation whereby periods of pre-trial detention are frequently longer than is allowed by law. An individual with, or suspected of having, psychosocial or intellectual disabilities may first be made to wait in pre-trial detention for a medical assessment, which itself can take several months or longer; following their assessment, they are likely to wait again to be returned to court – and at each stage, both pre and post medical assessment, there is a risk of becoming ‘lost’ in the system. Depending on the outcome of the assessment, the individual might then be detained indefinitely (during His Excellency’s Pleasure) and without trial, with inadequate review procedures, no opportunity for appeal and again, the risk of becoming ‘lost’ in the system. The level of seriousness of the alleged crime, for example, whether it is theft or murder, has little bearing on an individual’s exposure to the risk of indefinite detention.

Another consideration is that while criminal justice proceedings can be difficult for anyone to navigate, understand and participate in, individuals with psychosocial or intellectual disabilities are likely to have particular difficulties in this regard – especially given that access to legal representation for those unable to pay for it is extremely limited. For example, suspects and defendants with psychosocial or intellectual disabilities might have reduced communication and comprehension skills and experience heightened levels of anxiety, which can make them especially vulnerable to coercion and unfair decision making. Most self-advocates interviewed for this study said that they struggled to understand the justice process and its outcomes, and to communicate with the relevant authorities.

Notwithstanding the evidence that this project collected about the extent of disadvantage and discrimination experienced by people with psychosocial and intellectual disabilities in the criminal justice system and beyond, the scene is set for change for the better. Many of the criminal justice practitioner interviewees were aware of the range of difficulties faced by people with psychosocial and intellectual disabilities caught up in the criminal justice system, and were able to make considered suggestions for how some of these difficulties could be addressed. For example, they frequently called for more and improved specialist

provision, and for training and guidance to help them deal with individuals with psychosocial and intellectual disabilities.

Zambia's ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2010, and the domestication of its provisions through the Persons with Disabilities Act of 2012, have demonstrated a commitment by political leaders to ensuring the rights of people with disabilities and their inclusion in society. This is further reflected in the new draft Constitution (as at November 2014) and, in part, in the Mental Health Bill. New and forthcoming legislation sets out provisions that will provide community services and support for people with psychosocial and intellectual disabilities, so helping to reduce and prevent their contact with criminal justice services; removes discriminatory language and provisions from existing legislation; and seeks to ensure access to justice, through reasonable accommodation and legal assistance, and to improve mental health care for detainees.

To drive forward these promised changes and to ensure that they have the intended impact, there is a need for strong political leadership and commitment by government departments, allied with continuing advocacy and support from the range of non-governmental organisations working in the fields of criminal justice, mental health, and disability rights.

On the basis of this study, a series of recommendations have been developed, and these are shown in Chapter six (6.2).

## CHAPTER 01

# Introduction

**T**his is the final report on a study that has investigated how individuals with psychosocial and intellectual disabilities are dealt with by the criminal justice system. It has sought to obtain an in-depth understanding of the intersection between disability and criminal justice, and to develop recommendations for addressing the associated challenges.

The study has the full support of the Ministry of Home Affairs and is funded by the Open Society Initiative for Southern Africa (OSISA) and the Human Rights Initiative at the Open Society Foundations. It has been undertaken by a consortium led by the Paralegal Alliance Network (PAN), and overseen by a steering committee chaired by the Ministry of Home Affairs (see Acknowledgements for membership of the consortium and steering committee).

The funder's selection of PAN, as a network of paralegals, to lead the study was based on the following considerations:

- PAN's membership combines substantive knowledge of the criminal justice system and practical experience of obtaining access to the criminal justice institutions
- The increasingly significant role played by paralegals in the provision of legal advice and assistance means that paralegals have a thorough understanding of the day-to-day issues faced by detainees and prisoners, and established relationships of trust with criminal justice staff including prison warders and heads of prison
- The strength of the existing working relationships between PAN and the other consortium members, which have evolved through prior collaborative activities, for example, in the development of training for paralegals

- PAN's national presence through its membership and its continued engagement in community outreach work, both of which will support implementation of the project recommendations.

## **1.1 Project aims and objectives**

This report and the research on which it is based focuses on people with psychosocial and intellectual disabilities; individuals who, as a result of their disability and a limited availability of appropriate support, often find it hard to deal with the daily demands of the social environment, and who encounter stigma and other negative attitudes from society (see Chapter one, (1.2), below, for a definition of psychosocial and intellectual disabilities). People with psychosocial and intellectual disabilities represent a substantial minority of the world's population. Although precise data are not routinely available, it is generally acknowledged, both in Zambia and internationally, that disproportionate numbers of people with psychosocial and intellectual disabilities are caught up in the criminal justice system as suspects, defendants and prisoners. The starting-point of the study was the recognition that, in most jurisdictions across the world, individuals with psychosocial and intellectual disabilities tend to be disadvantaged by a criminal justice process that frequently does not recognise, take account of or support their particular needs. At worst, the criminal justice process may actively discriminate against these individuals, or permit or facilitate abusive behaviour towards them.

Disadvantage can be experienced by individuals with psychosocial and intellectual disabilities at all stages of the criminal justice process, from initial apprehension by the police through to conviction, sentencing and release. It can take a wide variety of forms: for example, individuals may be denied or otherwise unable to exercise their legal rights; they may face arrest, conviction and punishment for behaviour that is associated with their disability and has no criminal intent; they may find it more difficult than their non-disabled peers to cope with being imprisoned; and they may be unable to access or derive value from reintegration, educational or other services made available to offenders.

Direct and indirect discrimination relating to disability has the effect of undermining due process and justice for the individual, and can cause significant suffering. There are, furthermore, implications for wider society. The failure to appropriately address offending or otherwise challenging behaviour by individuals



with psychosocial and intellectual disabilities may trigger rather than moderate or prevent potentially harmful conduct.

This study has two main aims. First, to provide insight into the extent and nature of disadvantage experienced by individuals with psychosocial and intellectual disabilities who come into contact with criminal justice services. Secondly, it aims to contribute to improvements in how these individuals are dealt with across all parts of the criminal justice system and in the wider community. The study has sought to achieve these broad aims by undertaking research focused on the following questions:

- What is the current legal framework with respect to people with psychosocial and intellectual disabilities within the criminal justice system?
- What is the likely prevalence of psychosocial and intellectual disabilities within the criminal justice system?
- What are the ways in which people with psychosocial and intellectual disabilities come in contact with the criminal justice system?
- How does the criminal justice system handle people with psychosocial and intellectual disabilities at the different stages of the criminal justice process?
- How do people with psychosocial and intellectual disabilities experience the criminal justice process?

The findings of the research are presented over the course of this report, and have been used to develop a series of recommendations, which are presented in the report's final chapter. The recommendations are intended to stimulate sustainable change in both policy and practice within the criminal justice system, in healthcare, and beyond. Although focused on Zambia, these recommendations also have application to other countries in Africa and, potentially elsewhere.

## **1.2 Definition of terms**

Both 'intellectual disability' and 'psychosocial disability' are complex and often contested phenomena, and the two terms are subject to varying definitions and

interpretations. For the purpose of this study, the terms are used in the manner outlined below.

***Intellectual disability***

An intellectual disability affects the way an individual learns, communicates and undertakes everyday activities. It is a developmental disability, which is present at birth or may develop during childhood. People with intellectual disabilities often need help with every day activities and with the right support can live full and active lives. In the absence of such support, however, they are likely to face particular barriers. For example, they may have limited language ability, comprehension and communication skills, which can result in difficulty understanding and responding to questions, including appearing to agree to an instruction and then not complying because it wasn't adequately understood; they may take longer to process information; and have difficulty recalling information and sequencing events. They may be acquiescent and suggestible and, under pressure, may try to appease other people, for example, by answering questions in the way they think the questioner wants them answered, regardless of what they consider to be the truth of the matter. All of these difficulties are likely to be exacerbated in stressful situations, such as contact with criminal justice services and, in particular, during interviews with the police, appearing in court and being held in detention.

Many people with intellectual disabilities have greater health needs than the general population; for example, they are more likely to experience psychosocial disabilities and are more prone to chronic health problems, epilepsy, and physical and sensory disabilities. Health needs can be triggered and exacerbated by experiences of the criminal justice system.

The World Health Organisation (1996) defines intellectual disability as a 'reduced level of intellectual functioning resulting in diminished ability to adapt to the daily demands of the normal social environment.'

***Psychosocial disabilities***

High numbers of people experience difficulties with their mental health at some stage in their lives. These difficulties might range from, for example, transient anxiety to the development of conditions that are more pronounced, such as schizophrenia, and recurring, such as depression. Some people may have a mental

health condition for a short amount of time and make a full recovery. Others may have a long term condition, and for some people, their condition can come and go. An individual can have a mild, moderate or severe mental health condition. It is possible for an individual to have a severe condition but experience good mental health because they are managing their condition well, for example, through therapy and/or medication. In contrast, an individual might experience poor mental health due to a particularly stressful time in their lives such as bereavement, relationship problems, or difficulties at work.

Difficulties arising from mental health concerns are increasingly referred to as psychosocial disabilities. This term reflects both the challenges that people face as a result of their condition, and the negative attitudes that communities frequently display towards them.

The subject of psychosocial disability is no longer viewed within the context of healthcare alone. Although some may argue that mental health problems should be addressed mainly through the healthcare system, consideration of psychosocial disabilities more broadly points to the need for a shift in social attitudes, to end stigma and discrimination, and greater provision of social support across society.

### ***Differences and commonalities***

As the above brief discussion of terminology highlights, people with psychosocial and people with intellectual disabilities represent two different constituencies, with varying social, emotional, practical, medical and other needs. However, there are also many shared characteristics and experiences across the two groups. For example, members of both groups frequently experience discriminatory and even abusive social attitudes, and for this and other reasons, many people with psychosocial and intellectual disabilities try to hide their disability for fear of ridicule, stigma – or worse. Many of the attributes common to people with psychosocial and intellectual disabilities make them especially vulnerable to discrimination and abuse within the criminal justice system; and a common response, where appropriate, in terms of criminal justice policies and practices, will frequently be helpful.

Contact with criminal justice services and imprisonment, in particular, can make a pre-existing disability or health condition worse, and can cause poor mental health. Furthermore, individuals may experience a number of conditions at the

same time; for example, people with intellectual disabilities can also experience psychosocial disabilities, and this is sometimes described as co-morbidity. It should also be recognised that other social characteristics of an individual, such as age and gender, can impact on personal experiences of the criminal justice system.

### **1.3 Research methods**

The intersection of disability and criminal justice has many complex aspects. In order to do justice to this complexity, it was decided from the outset that this study would have several elements, combining literature and documentation reviews with interviews with a range of individuals who have a professional or personal stake in the criminal justice and health systems. The main components of the research, which were undertaken over the period September 2013 to November 2014, were as follows:

- Review of current and forthcoming national policy and legislation relating to people with psychosocial and intellectual disabilities who come into contact with, or are at risk of coming into contact with, the criminal justice system.
- Collation of available statistics on the criminal justice population in Zambia.
- Review of the existing international research literature on the prevalence of people with psychosocial and intellectual disabilities caught up in the criminal justice system, with a particular focus on any available research from Zambia and countries broadly comparable to Zambia.
- In-depth interviews with:
  1. Senior stakeholders from government, criminal justice services, health services and civil society organisations – including the Ministries of Home Affairs, Health, Community Development Mother and Child Health, and Justice; the Prisons Service; Zambia Police Service; the National Prosecutions Authority; and Chainama Hills Hospital (see Appendix A for a full list of respondents). A total of 17 of these interviews were conducted, in which respondents' views were sought on the adequacy and implications of national laws, policies and procedures affecting how individuals with psychosocial and intellectual disabilities are dealt with by the criminal justice system; the

extent and nature of discrimination and disadvantage experienced by these individuals; and respondents' views on improvements that can be made.

2. Practitioners based in police, courts, prisons, hospital mental health services, and the Legal Aid Board in three provinces: namely, Lusaka, Copperbelt and Southern. In total, 56 practitioners were interviewed across all agencies in all provinces (see Appendix A for a full list of respondents). Topics covered by the interviews included respondents' awareness and understanding of psychosocial and intellectual disabilities; their perceptions of difficulties faced by people with disabilities within the criminal justice system; and their views on improvements that can be made.
3. Individuals with psychosocial and intellectual disabilities who have had direct experience of the criminal justice system as suspects, defendants or prisoners (henceforth these individuals are referred to as 'self-advocates'). A total of 29 self-advocates were interviewed, of whom all but four were in prison or prison hospital at the time of the interview. Self-advocates were asked about their experiences of all parts of the criminal justice system from the point of arrest through to court attendance and imprisonment. Supplementary research activities aimed at providing further insight into the nature of individual encounters with the criminal justice system took the form of three interviews with prisoners who do not have disabilities, and the collation of a number of illustrative studies from service providers working with people with psychosocial and intellectual disabilities.
4. Family members of people with psychosocial or intellectual disabilities who had direct experience of the criminal justice system. Interviews were undertaken with six family members, and one focus group was held involving seven family members.

All the interviews were undertaken by a team of fieldworkers recruited and managed by PAN, most of whom were drawn from the organisations comprising the consortium. The questioning was guided by interview schedules. The interview responses were written up in detail by the respective interviewers and thereafter

subjected to systematic thematic analysis. Each interviewee gave their consent to be interviewed, and almost all interviewees agreed that what they said could be quoted in this report. To preserve anonymity, names of interviewees have not been included; and in some cases organisation names are not shown to further preserve anonymity.

As is clear from the above outline of research activities, this was a highly ambitious programme of work and, unsurprisingly, a number of practical difficulties were encountered in the course of conducting the research. Among the challenges which arose was the sheer quantity and range of fieldwork activities, in three different parts of the country, which was managed and co-ordinated by PAN. Gaining research access to criminal justice and health institutions, at both central and local levels, was sometimes a slow process, with various hurdles having to be overcome before officials and staff were satisfied that they had the requisite permission or authority to participate in the research. Conducting the interviews was itself sometimes challenging, as the interviewers were not experienced researchers, and opportunities for training were limited.

Overall, even in the face of the significant practical challenges, the research activities were successfully completed in line with the original proposal. It is particularly notable that, at 56, the total number of practitioners interviewed across the range of requisite agencies in the three provinces surpassed the target of 48. Most importantly, the interviews gave rise to a large quantity of extremely rich and vivid data, as will be demonstrated over the course of this report. This is particularly true of the interviews with self-advocates, in which the fieldworkers were highly effective in drawing out and exploring the respondents' varied views and experiences, notwithstanding the sensitivity of the issues discussed.

The factors contributing to the success of the research process include the dedication and hard work of the consortium members and fieldworkers, which itself reflects their recognition of the importance and potential value of the study. The tenacious, committed leadership provided by PAN throughout the study has also been critical to the project's success, as has been the support offered by the Ministry of Home Affairs. Crucially, while the Ministry of Home Affairs provided practical assistance in the form of facilitating research access and interview arrangements, it did not intervene in any way in the interviews themselves or in the analysis of the data, and thus the independence of the research was

not compromised. The support provided by the UK-based Prison Reform Trust and Institute for Criminal Policy Research, including through periodic visits to Lusaka, has also helped to ensure that most of the ambitious research objectives were realised.

#### **1.4 Structure of the report**

This report comprises six chapters. Following this introduction, Chapter two sets out the context of the study, including a brief overview of people with psychosocial and intellectual disabilities in Zambia; a brief overview of criminal justice in Zambia; and a discussion of what can be gleaned from international research and local sources of information about the prevalence of people with psychosocial and intellectual disabilities in the Zambian criminal justice system.

Over the remainder of the report, the intersection between psychosocial and intellectual disabilities and the criminal justice system is considered in close detail. Chapter three provides a review of the legislative and policy framework, which shapes the response of the criminal justice system to people with psychosocial and intellectual disabilities, and interview responses from senior stakeholders are also considered. Chapter four looks at the ways in which people with psychosocial and intellectual disabilities are dealt with by the criminal justice system from the perspectives of criminal justice and health practitioners. In Chapter five, the personal (and often painful) accounts of individuals with psychosocial and intellectual disabilities who have experienced the criminal justice system are presented. Chapter six concludes the report by reflecting upon the main findings of the research; outlining a series of recommendations for improving policy and practice; and considering the 'next steps' to be taken to support the implementation of the recommendations.

## CHAPTER 02

# Disability and criminal justice in Zambia

## *Understanding the context*

**T**his contextual chapter comprises three parts: first, a discussion of psychosocial and intellectual disabilities; secondly, an overview of the criminal justice system; thirdly, consideration of the prevalence of people with psychosocial and intellectual disabilities within the criminal justice system.

### 2.1 People with psychosocial and intellectual disabilities

A 2001 report by the World Health Organisation (WHO) notes that:

*...mental and behavioural disorders are found in people of all regions, all countries and all societies. They are present in women and men at all stages of the life course.*

Research cited by the WHO report has estimated that 450 million people across the world experience neuropsychiatric conditions, and that more than 25% of individuals develop one or more mental or behavioural disorders during their lifetimes. Prevalence of intellectual disability within the general population is difficult to assess. As noted by the WHO (2001), existing prevalence figures vary significantly because of differing definitions, methodologies and sample compositions. The overall prevalence is believed to be between 1% and 3%, and the rate of moderate, severe and profound intellectual disability is estimated at 0.3% (WHO, 2001).

Very little data are available in Zambia on the prevalence of people with psychosocial and intellectual disabilities in the general population. As in other



African countries, the availability of data is affected by a number of factors including, for example, the low priority accorded to mental health/psychosocial disabilities and intellectual disability, the stigma associated with these conditions, and lack of appropriately qualified healthcare personnel (Mayeya et al, 2004; Omar et al, 2010). Census data suggest that 2.7% of the population in Zambia is disabled, but this is considered to be an underestimate reflecting, in part, the high degree of stigma associated with disability generally and with psychosocial and intellectual disabilities, in particular. According to Mayeya et al (2004), the most recurring mental illnesses in Zambia are acute psychotic episodes, schizophrenia, affective disorders, alcohol related problems and organic brain syndromes; however, no prevalence data were reported in this study.

A recent report by the Mental Disability Advocacy Centre (MDAC) and MHUNZA (2014) notes that:

***...there are no official estimates of the number of people with mental health concerns in Zambia, and nor is there a system for the routine collection of data.***

It is observed, beyond this, that not only are national statistics lacking, but little interest has been shown in mental health concerns within academia and the media.

### ***Stigma and discrimination***

Within most societies across the world, people with mental disorders, such as psychosocial and intellectual disabilities, face marginalisation, stigma and discrimination in the social, economic and health spheres. This discrimination tends to reflect widespread misconceptions related to mental disorders (WHO, 2007a). For example, there are common misconceptions that individuals with psychosocial and intellectual disabilities are incapable of making decisions about matters that concern them, are unable to live full and active lives, and are a danger to the public. On the one hand, little support is provided to individuals with disabilities to support their inclusion in society; while on the other hand, there is a general intolerance of behaviour that deviates from the norm, which might be perceived as 'abnormal' and therefore challenging or disturbing. Stigma associated with psychosocial and intellectual disabilities, and behaviour associated with such conditions, can lead to abuse, rejection, condemnation and isolation, and can

exclude people from their families, communities and from necessary support and healthcare.

All the senior stakeholders and most of the criminal justice and health practitioners interviewed for this study said that within the general population there are deeply entrenched discriminatory attitudes towards people with psychosocial and intellectual disabilities. The senior stakeholders commented on various aspects of the disadvantage and discrimination experienced by such individuals, including negative and uninformed attitudes towards people with psychosocial and intellectual disability on the part of the general public; the kinds of derogatory and insulting terms used in referring to people with such disabilities; widespread assumptions that individuals with psychosocial and intellectual disabilities cannot reason or have nothing to contribute to society; and social exclusion and exclusion from public services and employment. Specific comments made included:

***[The public] shun such people, and people close the doors. Security are asked to throw out such people.***

Senior stakeholder, Ministry of Home Affairs

***We see it even with our small children, how they make fun of them. We see it in how they are treated by adults when we are walking in the streets. There is just no respect for people who are mentally challenged.***

Senior stakeholder, Human Rights Commission

***Most people with psychosocial disabilities lack opportunities for employment, housing and other social amenities.***

Senior stakeholder, Ministry of Health

***Many are the times they are left to roam around the streets, sometimes naked, while the community and family members remain unconcerned about their welfare.***

Senior stakeholder, Police Headquarters

Among the practitioners interviewed, three-quarters said they believed that, in general, people with psychosocial and intellectual disabilities are treated unfairly in society or are discriminated against. In their responses, practitioners

spoke about public attitudes towards people with psychosocial and intellectual disabilities that are based in fear, hostility and lack of knowledge, which can lead to violence and aggression against individuals with such disabilities:

***Discrimination comes in because people are scared of associating with them.***

Police respondent

***We receive complaints from people with mental illness, that they have water poured on them, they have been insulted and sometimes that they have been beaten.***

Police respondent

***Such people are discriminated against because they are considered to be harmful and very dangerous to other members of the society. Police respondent They are considered as if they are not human beings.***

Prison respondent

***They are treated unfairly, they are called names, 'chofunta' [mad person], whenever they approach someone to ask for something.***

Prison respondent

***People think they are demon possessed.***

Health respondent

***They are considered incurable and unmanageable... This leads to some people even wanting to kill them and also to them being tied up so that they cannot move around freely.***

Health respondent

As can be seen from the above responses, psychosocial and intellectual disabilities are poorly understood, and discrimination frequently occurs. Traditional attitudes prevail, especially in rural areas, where such disabilities can still be seen as a curse or punishment from God. The stigma and shame associated with psychosocial and intellectual disabilities often prevent families from seeking help, while children with such disabilities have the least chance of accessing education (Talbot, 2012). Conversely, according to Mayeya et al (2004), caring for mental ill health in old age

is viewed positively, as part of the duty and responsibility of the extended family to look after its older members. The report goes on to say that the extended family remains strong in Zambia and family is 'considered sacrosanct and the affairs of family members private.' However, as well as providing necessary support for family members with disabilities, such circumstances can also hide abusive relationships; for example, when disability is not well understood, or when there is gender-based violence, to the detriment of mental well-being, especially amongst women. A more recent report in four African countries including Zambia, by Omar et al (2010), found poor knowledge and understanding of mental illnesses amongst the general public.

***Provision for people with psychosocial or intellectual disabilities***

Although healthcare in Zambia has undergone something of a transformation in the last decade, psychosocial and intellectual disabilities have received little attention. The extremely limited provision of mental health services is set out clearly in the MDAC and MHUNZA report on Human Rights and Mental Health in Zambia (2014). It is noted in this report that 'mental health is nearly non-existent at the primary healthcare level' and that services 'are highly centralised', available 'only in eight hospitals across the country'. This renders services almost entirely inaccessible to most people in Zambia. In the absence of other forms of support, outpatient services are said to largely entail 'symptom management with cheap drugs'. Further, there is extremely limited scope for mental health concerns to be identified early and for effective community based interventions, which could help people with psychosocial and intellectual disabilities to participate fully in society.

There is a recognised shortage of psychiatrists, which reflects a global inequity in the distribution of skilled human resources for mental health'. It is often, therefore, only when a person's psychosocial disability is, or becomes, severe that family members or communities seek help, which may, in turn, lead to a psychiatric diagnosis and appropriate healthcare or support. In response to the shortage of psychiatrists, in 2010 the government introduced a Masters of Medicine in

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1 [http://www.who.int/features/factfiles/mental\\_health/mental\\_health\\_facts/en/index7.html](http://www.who.int/features/factfiles/mental_health/mental_health_facts/en/index7.html)

Psychiatry at the University of Zambia (Simenda, 2013). Nevertheless, Chainama Hills Hospital in Lusaka remains the only specialist psychiatric hospital in Zambia.

With respect to inpatient care, the MDAC and MHUNZA (2014) report observes that, in 2005, a total of 560 psychiatric beds had been identified in the entire country, which has a population of 13 million. Staffing of these services is very limited and comprises 'a total of five psychiatrists, two psychiatric social workers, two psychologists and no trained occupational therapist', all of whom are based in Lusaka. The inevitable consequence of this is that

***...despite the apparent high levels of dedication of the meagre staff, mental health care is inevitably limited: on any mental health ward there are one or two trained nurses on duty at any time:***

Psychiatric wards are, moreover, overcrowded, and

***In-patient psychiatry does two things: it contains people in decrepit dormitory wards, and it sedates people with high doses of psychiatric drugs***

(MDAC and MHUNZA, 2014).

Improvements to mental health services were listed as an objective of the National Health Strategic Plan 2011-15 and, in response, a joint report from ZAFOD and MHUNZA (2012) identified key elements for a community based mental health system. Underpinned by the principle of people with mental health problems being directly involved in how community based mental health services are both developed and delivered, the proposed system would build on existing community networks (such as peer support and support from family members and friends), and on community based resources (such as primary health care centres), rather than establish a new structure of service delivery. A comprehensive range of services and support is called for, including non-medical social support services; community based crisis prevention, response and rehabilitation; person centred planning and advocacy; and home based treatment and support services to help people with mental health problems to remain in their communities.

## 2.2 The criminal justice system in Zambia

Zambia has a dual legal system – that of common law, based on the English common law system, and customary law. Criminal matters are largely dealt with under common law. The main institutions of the criminal justice system are the police, the National Prosecution Authority, the judiciary, the Legal Aid Board and the prison service.

The Zambia Police Service falls within the remit of the Ministry of Home Affairs; it is headed by an Inspector General of Police and its headquarters are located in Lusaka, with regional headquarters located in each of the ten provinces. The service comprises 17,217 police officers and 994 civilian support staff<sup>2</sup>. A 2009 monograph by the Institute for Security Studies (ISS) estimates that the ideal complement is 27,000 officers; according to this benchmark, the service is significantly under-staffed. Reports on the use of excessive force by the police are not uncommon (see, for example, US State Department, 2012). Another concern is an inadequacy of investigative capacity within the police (ISS, 2009).

In 2010, responsibility for prosecuting criminal cases shifted from the Directorate of Public Prosecutions to the newly established National Prosecution Authority, a move that was intended to strengthen the independence of criminal prosecutions. However, cases continue to be taken by prosecutors from the Ministry of Home Affairs and the police, which are outside the jurisdiction of the National Prosecution Authority.

Zambia's courts system is made up of four tiers, at the top of which is the Supreme Court, which hears appeal cases only. Beneath the Supreme Court sits the High Court, which deals with the most serious criminal cases; while the subordinate (also known as magistrates') courts hear the majority of criminal cases. Local courts make up the lowest tier of the courts system, and generally administer customary law in relation to marriage, property and inheritance. According to the

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2 Kaputo W. Chisapa, Ministry of Home Affairs; personal correspondence, 15 January 2015.

Judiciary of Zambia Law Directory and Legal Calendar for 2014-2015, the judiciary comprise 12 Supreme Court judges, 38 High Court judges and 161 magistrates.

High Court judges should be lawyers of at least 10 years' standing; magistrates include both lawyers and non-lawyers. A long-standing problem faced by the criminal courts is their limited resourcing and capacity, resulting in large backlogs of cases year by year (ISS, 2009; OSISA, 2011). Legal representation for those who cannot afford to pay for representation is provided by the Legal Aid Board, but limited resourcing means that, in practice, only those facing the most serious charges, usually in the High Court, tend to be able to obtain representation. Only 30 Legal Aid Board lawyers were employed in 2014<sup>3</sup>.

Police and courts statistics, provided by the Ministry of Home Affairs to the steering committee for this study, show that in 2012, there were 88,655 offence reports received by the police, in relation to which there were 27,258 arrests. Table 2.1, below, provides the equivalent figures for all years from 2008 to 2012; for the years 2008-2010, data on outcomes of the cases in which arrests were made are also provided. As can be seen from the table, there was apparently a sharp drop in the number of arrests made between 2010 (57,896 arrests) and 2011 (26,035 arrests), but no explanation for this is available (it cannot be fully accounted for by a lesser fall in number of offence reports).

**Table 2.1: Police and courts data**

	Offences reported to police	Arrests made	Of all arrests, cases resulting in:		
			Convictions (inc discharges)	Trial awaited at end of year	Acquittals, dismissals or not proceeded with
2008	91,942	40,979	23,614	11,872	5,493
2009	90,214	47,632	28,511	11,590	7,531
2010	93,581	57,896	36,963	14,482	6,451

3 Davies Chikalanga, Ministry of Justice, personal correspondence, 12 January 2015.

	Offences reported to police	Arrests made	Of all arrests, cases resulting in:		
			Convictions (inc discharges)	Trial awaited at end of year	Acquittals, dismissals or not proceeded with
2011	80,613	26,035	-	-	-
2012	88,655	27,258	-	-	-

According to national prisons data collated by the International Centre for Prison Studies (ICPS) World Prison Brief,<sup>4</sup> in 2013 the prison estate in Zambia comprised 88 establishments, of which 54 were standard prisons, 33 open-air prisons, and one was a juvenile reformatory. The total prison population in 2014 is cited as 17,038, including those who are being held on remand, which equates to a prison population rate of 117 per 100,000 of national population. This means that Zambia has the 17th highest prison population rate out of 53 African states. The official capacity of the Zambian prison system is reported as 6,100; accordingly, the population of 17,038 results in an occupancy level of 279%. The ICPS data also show that, as of September 2013, the proportion of women prisoners was 1.0%, while the proportion of juvenile prisoners (that is, those aged under 18), was 2.5%. Almost one-quarter of the prison population (23.2%) were remand prisoners (that is, awaiting trial and judgment). In January 2015 there were 56 prisoners detained during His Excellency’s Pleasure (55 men and one woman); and 414 prisoners on death row (406 men and eight women)<sup>5</sup>. There is currently a moratorium on the use of the death penalty; although national statutes still uphold the sections that legalise it, no executions have been carried out in Zambia since 1996.

Table 2.2, below, shows the trend in the size of the prison population over the past six years. Overall, this period has seen a rise in the population of around 2,000

4 <http://www.prisonstudies.org/country/zambia>

5 Davies Chikalanga, Ministry of Justice and Kaputo W. Chisapa, Ministry of Home Affairs; personal correspondence, 12 and 15 January 2015, respectively.



prisoners from 2008 to 2013. The data in the table were provided to the steering committee for this study by the Ministry of Home Affairs.

**Table 2.2: Total prison population in Zambia, 2008-2013**

December 2008	15,483
December 2009	15,677
December 2010	15,767
December 2011	15,587
December 2012	16,113
December 2013	17,407

In a US State Department report on human rights in Zambia (2012), prison conditions were described as

***...harsh and life threatening due to outbreaks of disease, food and potable water shortages, gross overcrowding, and poor sanitation and medical care.***

Malnourishment was said to be a particular problem, with prisoners typically receiving

***...only one serving of cornmeal and beans per day, called a combined meal because it represented breakfast, lunch and dinner.***

The problem of overcrowding was described as especially severe in Lusaka Central Prison – designed for 200 prisoners, but holding over 1,500. The report also revealed that ‘juveniles often were held with adults and were victims of sexual abuse’.

### **2.3 Prevalence of people with psychosocial and intellectual disabilities within the criminal justice system**

It was noted at the start of this chapter that little information is available about the prevalence of people with psychosocial and intellectual disabilities within the general population. The assessment of the prevalence of disabilities among those who are caught up in the criminal justice system – whether as suspects,

defendants or sentenced offenders – poses even greater challenges than the assessment of prevalence in the general population.

Most information on the prevalence of mental health conditions and of intellectual disabilities within criminal justice settings derives from studies conducted in countries in the developed world. Even among these studies, however, wide variations in prevalence rates have been found, which in large part are likely to reflect differences in the methodologies used, and methodological difficulties encountered. A review by Loucks (2007) of studies on the prevalence of intellectual disabilities identified a number of methodological factors which affect research findings, including:

- The criteria used to determine intellectual disability
- The point at which screening for disabilities is undertaken
- The type of screening tools used
- Whether criminal justice staff or researchers administer screening tools.

A number of prevalence studies have relied on offenders being known to specialist mental health or intellectual disability services. However, even where there is a 'good' availability of services, relative to those in developing countries, not everyone with psychosocial or intellectual disabilities will be known to services or be in receipt of support or medical treatment (Loucks, 2007). Asking individuals to 'self-report' whether they have mental health or intellectual disabilities is another method of assessing prevalence, but can be unreliable for a number of reasons. These include where individuals do not wish to say they have a disability, for fear of ridicule or discrimination (and, especially within the criminal justice context, for fear of a more punitive response); do not know they have a particular condition; or believe they have a disability while failing to meet the criteria for clinical diagnosis (Loucks, 2007).

Notwithstanding the methodological challenges associated with assessments of prevalence of psychosocial and intellectual disabilities within criminal justice populations, a range of studies have undertaken this task. In England and Wales, a study by the Ministry of Justice (2013) found that 26% of women and 16% of men

said they had received treatment for a mental health problem in the year before they were imprisoned; and 10% of men and 30% of women have had a psychiatric hospital admission prior to being imprisoned (Department of Health, 2007). A World Health Organisation report (2007b) cites research that suggests at least one in nine of the total population of prisoners worldwide, which numbers nine million, experiences 'severe mental disorder', and notes that 'the percentage of prisoners who suffer from a mental health problem and/or drug dependence has been estimated to be 60-65%'. On the basis of her review of studies of prevalence of intellectual disabilities among criminal justice populations, Loucks (2007) concludes that the average estimates of prevalence of intellectual disability amongst offenders in the United Kingdom range between one and 10%. She also notes that 'the agreed figure in US-based research estimates about a 10% prevalence of intellectual disability in prisons'.

Very little research has been undertaken into the prevalence of psychosocial and intellectual disabilities within criminal justice populations in African countries. One review found that there had been no over-arching study of prevalence and patterns of mental disorders in Kenyan prisons (Mathai and Ndetai, 2013); while an earlier study of non-convicted remand prisoners in Nairobi in Kenya found a very high level of undiagnosed psychiatric morbidity among both women (84%) and men (77%) (Mucheru, 2006).

One Zambian-based investigation into prevalence was carried out at Lusaka Central Prison. This took the form of a survey of 206 prisoners, and involved a self-report methodology. The survey found that 63% of the surveyed prisoners had a current mental illness (Nseluke and Siziya, 2011). Marital status was found to have a significant association with mental illness, with married prisoners being 40% less likely to report having a mental illness compared to those who were separated or divorced, possibly pointing to the protective nature of family support.

#### ***Views on prevalence among study respondents***

Criminal justice personnel interviewed for this study were asked to give their views, based on their professional experience, on the prevalence of psychosocial and intellectual disabilities among those who are arrested, appear in court, and are held in prison. For the most part, prevalence was said to be low. For example, 11

out of 15 police respondents said that people with mental illness<sup>6</sup> are rarely or very rarely arrested and detained by the police, while two said this 'never' happens; and a question about arrest and detention of individuals with intellectual disabilities produced similar responses.

Similarly, eight out of nine court-based respondents reported that defendants with mental illness and those with intellectual disabilities appear only rarely or very rarely before the courts. Additionally, six out of the seven court-based respondents who gave an answer said that the courts rarely, very rarely or never receive notification from the police, hospital or prison that a person with a psychosocial or intellectual disability has been apprehended by the police and detained in hospital or in prison. Eight respondents from the Legal Aid Board also reported that people with psychosocial or intellectual disabilities are infrequently arrested and detained by the police, and infrequently appear in court.

Thirteen prison officers were asked in interview about how many prisoners in their respective prisons have mental health problems or intellectual disabilities; in response, most said that 'just a few' prisoners fall into these categories. When asked if they could estimate the actual numbers of mentally ill prisoners, those respondents who gave an answer suggested the figure was 10 (in the case of Kansheni Prison in Copperbelt), 33 (Lusaka Central Prison) and 38 or 39 (Livingstone Prison in Southern Province). Respondents were more uncertain when asked about the numbers of prisoners who have intellectual disabilities, but the estimates given ranged between four and 200.

Taking into account what is known from the international research literature about prevalence, it appears highly likely that the low prevalence rates reported by the criminal justice practitioners reveal a lack of awareness of psychosocial and intellectual disabilities and the absence of systems for identifying such disabilities, rather than genuinely low levels of disability among suspects, defendants and prisoners. The practitioners' awareness of, and attitudes towards, people with psychosocial and intellectual disabilities will be discussed in further detail in Chapter four.

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6 In the interviews with practitioners, the term 'mental illness' was generally used rather than 'psychosocial disability', on the basis that the former was likely to be a more familiar term for the respondents.

## CHAPTER 03

# Disability and criminal justice in Zambia

## *Legislative and policy framework*

**T**his chapter outlines the legislative and policy framework that shapes the way people with psychosocial and intellectual disabilities are dealt with by criminal justice services. The focus will be on those aspects which ameliorate disadvantage and those which serve to entrench disadvantage, whether through the nature of the legislation and other policy or through poor implementation.

As noted in Chapter one (1.3) of this report, interviews were undertaken with senior stakeholders from government and civil society organisations, including from the Ministries of Home Affairs, Health, Community Development Mother and Child Health, and Justice; the Prisons Service; Zambia Police Headquarters; the National Prosecution Authority; and Chainama Hills Hospital, and these will inform this chapter (see Appendix A for a full list of respondents). Respondents' views were sought on the adequacy and implications of national laws, policies and procedures affecting how individuals with psychosocial and intellectual disabilities are dealt with by criminal justice services; the extent and nature of discrimination and disadvantage experienced by these individuals; and suggestions for improvements that can be made.

There are seven sections in this chapter: section 3.1 introduces relevant aspects of the Constitution and legislative framework; this is followed by sections on police powers of apprehension, arrest and detention (3.2); pre-trial detention (3.3); criminal trials and legal representation (3.4); imprisonment and release (3.5); and

prisoners detained during His Excellency's Pleasure (3.6). The final section of this chapter (3.7) highlights the perspectives of senior stakeholders on national laws that protect or discriminate against people with psychosocial and intellectual disabilities in the criminal justice system, and their suggestions for ways in which criminal justice and wider public services can be improved for these individuals.

### 3.1 The Constitution and legislative framework

#### *The Constitution*

The Constitution of Zambia has the potential to protect and support the rights of people with disabilities, and has a direct bearing on the policies and practice that affect their daily lives. For example, whether as children they can go to school or, as adults, can find work, contribute to their local community and enjoy family life – and how they are dealt with should they come into contact with criminal justice services.

At the time of writing this report (March 2015), a new draft Constitution of Zambia was yet to be tabled before parliament, which may replace the existing Constitution (Amendment Act no. 18 of 1996). The draft Constitution has benefitted from a period of consultation, including detailed responses from members of the consortium for this study, namely: PAN, MHUNZA, ZAFOD, PRISCCA and LRF. It has also been informed by the United Nations Convention on the Rights of People with Disabilities (UNCRPD), which was ratified by the Zambian government in 2010.

The UNCRPD has both stimulated and witnessed a shift in how people with disabilities are perceived and is especially concerned with the inclusion in society of people with disabilities, and their legal rights. Its provisions seek to:

***...promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity***

(Section 1, UNCRPD).

To a large extent, this shift is reflected in the draft Constitution. In its current iteration (November 2014) the draft Constitution commits to upholding 'the human rights and fundamental freedoms of every person' (preamble), and includes

'human dignity, equity, social justice, equality and non-discrimination' in its national values, principles and economic policies (Part III, Article 8). The Bill of Rights, Part V of the draft Constitution, provides 'protection from discrimination' (Article 27) and 'protection from inhuman treatment' (Article 30); it states that 'all persons are equal before the law' (Article 43), and 'have the right to access justice' (Article 45). Further rights for persons with disabilities are set out in Article 64, and these include:

***Education and facilities that integrate the person into society***

***Access to... public facilities and services***

***Access... [to] assistive devices***

[The right to use] ***appropriate means of communication***

[The right to] ***'be addressed or referred to in an enactment or officially, publically, or privately, in a manner that is not demeaning, derogatory or discriminatory'***

***Equal opportunities... in economic and social activities***

[The right to] ***personal development and independent living'***.

The enforcement of the Bill of Rights holds the President to account by requiring him or her to report, each year, 'on the measures taken by the State in the realisation of the Bill of Rights' (Article 71).

Although the 1996 Constitution prohibits discrimination (Article 23) and inhuman and degrading treatment (Article 15), it precedes the UNCRPD by a number of years and is not, therefore, fully compliant with fundamental principles on the rights of people with disabilities.

***The Persons with Disabilities Act of 2012***

The Persons with Disabilities Act seeks to transmit obligations under UNCRPD into domestic law. Importantly, the Persons with Disabilities Act is a 'superior' Act, which states that:

***Subject to the Constitution, where there is any inconsistency between the provisions of any other written law impacting on the rights of persons with disabilities... the provisions of this Act shall prevail to the extent of any inconsistency (Section 3).***

This is a far reaching provision that has significant implications for the rights of people with disabilities, including those with psychosocial and intellectual disabilities caught up in the criminal justice system.

National laws that precede the Persons with Disabilities Act were enacted at a time when public policy towards, and the predominant view of, people with disabilities – especially those with psychosocial and intellectual disabilities, were that they were incapable of managing themselves or their own affairs, and they were frequently kept in institutions away from mainstream society. To ensure compliance with the Persons with Disabilities Act, national laws should be reviewed and, where necessary, revised accordingly. However, to be legally superseded, ‘any inconsistency’ with the Persons with Disabilities Act would need to be successfully contested in a court of law.

Under the provisions of the Persons with Disabilities Act, ‘a person with a disability shall enjoy legal capacity on an equal basis with others in all aspects of life’ and be afforded legal protection and participation in legal proceedings (Section 8). For people caught up in the criminal justice system:

- Subject to the Constitution, law enforcement agencies shall take into consideration the disability of a person on arrest, detention, trial or confinement of the person with disability and make reasonable accommodation for that person accordingly, including investigative and other preliminary stages of the matter (Section 9).
- The Ministry of Community Development, Mother and Child Health is responsible for formulating national policy on people with disabilities, and the Zambia Agency for Persons with Disabilities (ZAPD) has responsibility for coordinating its implementation. This includes acting as an advisory body to the Ministry and monitoring and evaluating implementation of the Act (Section 14).



In October 2013 the Zambian Federation of Disability Organisations (ZAFOD) called for the implementation of the Persons with Disabilities Act to be expedited, noting that only one 'Statutory Instrument' (or regulation) had been issued. ZAFOD went on to say:

***The Persons with Disabilities Act of 2012 is generally a good law but it needs further clarification and operationalisation through the passing of Statutory Instruments or regulations, which will give clearer guidelines on the implementation of some of its provisions. In its current state, the Act does not give guidelines on how certain provisions should be implemented. For instance, Part 2, section 8(1) simply states that persons with disabilities have got the right to enjoy legal capacity in all aspects of their life'. The 'how' is missing here. So, there is need for a Statutory Instrument or regulation on how to enjoy or exercise legal capacity (ZAFOD, 2013).***

One year on, the need to expedite the implementation of the Persons with Disabilities Act is further reflected in interviews with senior stakeholders for this study:

***Having ratified the convention [UNCRPD] and amended the [Persons with Disabilities] Act, it's time to look at the details. We need to look at how people with disabilities are treated across the whole criminal justice system, from the point of arrest, and introduce reforms, to ensure fairer treatment.***

Senior stakeholder, Ministry of Home Affairs

### ***Mental Disorders Act of 1951***

In addition to the Constitution and Persons with Disabilities Act, people with psychosocial disabilities, both within and outside of the criminal justice system, are affected by the Mental Disorders Act of 1951. The Mental Disorders Act is generally considered an archaic law that approaches mental health primarily on the basis that people who are considered to be 'mentally ill' should be removed from the community and placed in institutions. Further, it uses offensive language, such as 'mentally defective', 'idiots', 'feeble minded' and 'imbeciles'.

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1 Including during criminal justice proceedings.

Since 2008, two members of the consortium for this study, ZAFOD and MHUNZA, have called for the repeal of the Mental Disorders Act, advocating legal reform and compliance with the principles of the UNCRPD. The Mental Disorders Act has been under revision since 2011 and, at the time of writing this report, the Mental Health Bill is yet to be finalised. As it stands, the Bill sets out a community-based approach to mental health and provision for mental health services in prison (ZAFOD, 2014); it reflects UNCRPD, in part, by moving towards 'respect, autonomy, non-discrimination and the right to self-determination for people with mental health conditions' (ZAFOD, 2014), but retains problematic provisions on forced hospitalisation and a lack of recognition of legal capacity.

### ***Criminal justice***

Laws that directly affect how people are dealt with in the criminal justice system are listed below and, along with the Constitution, the Mental Disorders Act and the Persons with Disabilities Act, will be discussed in the remaining sections of this chapter, as they apply to the issues addressed in this report:

- Legal Aid Act (chapter 34)
- Penal Code Act (chapter 87)
- Criminal Procedure Code Act (chapter 88)
- Prisons Act (chapter 97)
- Zambia Police Act (chapter 107)

## **3.2 Police powers of apprehension, arrest and detention**

### ***Initial contact with the police***

People with psychosocial and intellectual disabilities who engage in, or who are alleged to have engaged in, offending behaviour are likely to come to the attention of the police in much the same way as their non-disabled peers. This group, however, risk further attention from the police for behaviour that is not necessarily connected with any alleged offence.

At the time of writing this report, three separate provisions make it lawful for the police to apprehend individuals due to behaviour that is perceived as 'challenging' and which may be associated with people with psychosocial and intellectual disabilities, but which might not be connected to any alleged offending. These provisions are the 1996 Constitution of Zambia (Article 13(1) (h)), which allows

the arrest of individuals who are 'reasonably suspected to be of unsound mind, addicted to drugs or alcohol, or a vagrant'; the Criminal Procedure Code Act (Section 27(b)), which empowers the police to arrest any person without a warrant 'who has no ostensible means of subsistence or who cannot give a satisfactory account of himself'; and the Mental Disorders Act, Section 7, which empowers the police to arrest a person found to be 'wandering at large'. Following arrest, the police are vested with broad discretion on how to proceed, including taking the person to a psychiatric hospital; see Arrest and Detention, below.

Stigma relating to psychosocial and intellectual disabilities, and ignorance of these disabilities and how they can affect an individual's behaviour, can foster misunderstanding and fear in the minds of individuals and communities, prompting them to call the police when they see behaviour that is perceived by them as different or challenging. As one respondent for this study said:

***Families, communities rush those with disabilities to the police when they see them doing something wrong.***

Senior stakeholder, MHUNZA

The Mental Disorders Act can bring people with psychosocial and intellectual disabilities into contact with the police through so-called 'voluntary admission' to hospital. While voluntary admission is not a criminal procedure, the police can be called upon to take an individual to hospital, in which case a court order under Section 7 of the Mental Disorders Act is required. Court orders can be issued:

***"...upon information or oaths that a person is mentally disordered or defective and is:***

- a. Dangerous to himself or to others; or***
- b. Wandering at large and unable to take care of himself"***

(Section 7, Mental Disorders Act).

Typically, such orders are sought when difficulties are encountered when taking an individual to hospital, for example, due to behaviour that is, or is perceived as being, aggressive or violent, and/or reluctance on the part of the individual to go to hospital.

Limited or lack of community services for people with psychosocial and intellectual disabilities, and lack of support for family members who act as caregivers, can precipitate voluntary admission to hospital, including the use of court orders, there being no obvious alternative.

One senior stakeholder noted that the court order can be abused by caregivers, who may exaggerate the 'danger' the individual presents either to themselves or to others (or both), in order to ensure that he or she is taken to hospital by the police. Compounded by stigma, fear and a lack of training this can, in turn, affect how the police approach and deal with the individual. One respondent said:

***We have to start with the caregivers. The trouble is that caregivers can overemphasise the problem to attract attention – 'he is so mad, so violent, we are scared', and then the police will go in full gear, tie the patient's hands and legs, under gun escort, and by doing so are actually aggravating their condition, and take the person to Chainama.***

Senior stakeholder, Legal Resources Foundation

Once the person has been taken to hospital, either directly by the police or by order of the court, the court is required to institute an inquiry into the circumstances surrounding the admission, and can order detention of 14 days for this purpose. If the inquiry takes longer than 14 days, the period of detention can be extended, 14 days at a time (Section 9, Mental Disorders Act), at the end of which a 'control order' can be issued ordering the person's further detention in a prescribed place, or placing them under the care of specified individuals or authorities (Section 13). There are a number of concerns with this procedure, and these include: a lack of clarity on how the inquiry should be conducted; what the grounds are for extending the 14 day period, or periods, of detention and for issuing the 'control order'; what the standing of the person is during the process of inquiry; and their right of appeal. In sum, these provisions can enable the detention of individuals solely on the grounds of their having a particular disability and no means of support.

### ***Arrest and detention***

When the police are called to an incident concerning alleged offending behaviour by an individual who has, or might have, psychosocial or intellectual disabilities, they have a wide range of powers to make an arrest, and seem able to exercise a

degree of discretion in how to proceed (Dissel, 2011). Powers invested in the police under Section 33(1) Criminal Procedure Code Act are largely subjective, in that the police must decide on the 'seriousness' of the case against the accused. Depending on the nature and circumstances of the alleged incident, whether the individual or their family members are known to the police, and the options open to them, the police may respond in different ways. For example, the individual might be taken to hospital (see Initial contact with the police, above); they might be arrested and charged, or arrested and released following a period in police detention; or they might be taken to their family home. While the scope for the police to exercise discretion may not be a problem in itself, the difficulty arises where discretion is exercised in a highly arbitrary and inconsistent manner. There appear to be no guidelines that help the police to decide how best to proceed or to determine whether the individual has psychosocial or intellectual disabilities, other than what they might be told by family members or members of the community.

Research undertaken by OSISA (2011) found that alleged offences such as 'conduct likely to cause a breach of the peace (conduct), idleness and loitering, and failure to obey a police officer' were likely to be resolved without recourse to court but were, nevertheless, a cause of police detention. These three offences alone reflect around a fifth of admissions into police detention. It is not unreasonable to consider that people with psychosocial and intellectual disabilities might make up a significant cohort of individuals arrested for such behaviour, given the very limited range of social support available to them in the community, and the casual discrimination many face on a daily basis.

People who are arrested and detained have procedural rights. These include the right to be informed promptly and in detail, in a language which they understand, of the nature and cause of the charge against them (1996 Constitution; Articles 13 and 18). They should be brought before the court 'without undue delay' (Article 18) and, unless the offence is 'one of a serious nature', this should happen within 24 hours of being taken into police custody; alternatively, they should be released on police bond for a 'reasonable amount'.

In interviews with senior stakeholders, most respondents considered aspects of police powers of arrest and detention for people with psychosocial and intellectual disabilities as problematic. This was especially so in terms of:

- Arbitrary or inconsistent practice:

***The police are empowered to arrest people with psychosocial disabilities seen to be a danger to themselves, others or even property for not more than 48hours. But some are arrested just because of their nature.***

Senior stakeholder, Ministry of Health

- Over-use of force and over-zealousness:

***The police tend to treat persons with disabilities in an inhumane manner, for example, tying them up for fear of danger to others in the cell.***

Senior stakeholder, Ministry of Justice

***It's easy for the police to manipulate the evidence against a person with disabilities, especially as they are often rejected by society.***

Senior stakeholder, Legal Aid Board

- Presumptions of guilt and of the need to institutionalise:

***The arrest is conducted in a way that presumes guilt.***

Senior stakeholder, Prisons Service

***The police misinterpret issues and favour institutionalisation. They won't listen and assume lack of capacity. They don't consider representation, negotiation, or explanation.***

Senior stakeholder, PRISCCA

- Lack of provision for assessment or consideration of needs prior to or at time of arrest:

***Expert evaluation at the point of arrest and possible referral for treatment could prevent people being caught up in the [criminal justice] system.***

Senior stakeholder, Legal Aid Board

- Limited efforts and/or ability to communicate with arrestees:

***Barriers to communication mean that people with disabilities may not understand or be informed of reasons for arrest and detention, as they should be.***

Senior stakeholder, ZAFOD

### ***Conditions and treatment in police custody***

Notwithstanding provisions in the Zambia Police Act (Section 18B) to ensure the general welfare and safeguarding of individuals taken into police custody, conditions for detainees and the ways in which they are dealt with are generally poor, and this is especially so for people with psychosocial and intellectual disabilities. As will be further considered in Chapter five, below, overcrowding is routine, as is a lack of hygiene, and access to healthcare facilities or staff is limited. Detainees frequently rely on family members to bring food, and clean water can be difficult to obtain.

Provisions under Section 18B of the Zambia Police Act require the custody officer to ensure:

- A person in police custody is treated in a decent and humane way
- A person in police custody who requires medical attention has access to medical facilities
- Police cells or other places used for the custody of persons are in clean and habitable conditions
- Necessary provisions and other facilities used by a person in custody are in a hygienic condition

Before a person is placed in police detention, they should be presented to the custody officer who, amongst other things, should record the state or condition of the person and make recommendations concerning their well-being, including any requirement for medical attention (Dissel, 2011).

***Police awareness and understanding of disability***

There was a widespread view amongst senior stakeholders that police officers lack knowledge and understanding of the needs of people with psychosocial and intellectual disabilities, and that they should receive training:

***To improve the situation, there should be a training programme for officers on human rights for those with disabilities, as has been done with regard to juveniles and women in the access to justice programme.***

Senior stakeholder, Ministry of Justice

***Capacity-building and training of the police is needed. Train the police... so that they know how to handle people with disabilities better.***

Senior stakeholder, Ministry of Community Development Mother and Child Health

***Improved training to help police to identify such cases may be helpful.***

Senior stakeholder, Ministry of Home Affairs

***The police should be educated on psychosocial and intellectual disabilities.***

Senior stakeholder, Ministry of Health

### **3.3 Pre-trial detention**

A major review of pre-trial detention (OSISA, 2011), found that while the Constitution and 'other legislation regulating the criminal justice system provides a sufficient framework for regulating pre-trial detention and fair trial rights', the 'majority' of people were detained beyond the legislative limit of 24 hours in police custody. The review found that the average time spent in police detention in 2011 was eight days (a welcome and significant reduction from 36 days in 2006); and for people remanded into custody from the courts, the average time spent in prison was 55 days, although there was a great deal of variation between prisons.

When individuals have, or are suspected of having had, psychosocial or intellectual disabilities at the time of the alleged offence, a medical assessment, in accordance with section 17 of the Criminal Procedure Code Act, is usually ordered by the courts (Msoni, 2013). Although the Criminal Procedure Code Act doesn't specify



whether or where an individual should be held while awaiting assessment, they are generally detained in prison or in prison hospital until an assessment is undertaken.

Currently, all assessments are conducted at Chainama Hills Hospital, which can only accommodate a limited number of prisoners. Prisoners awaiting assessment are generally transferred to Lusaka Central Prison. In March 2015 there were 65 remand prisoners awaiting assessment<sup>2</sup>, which is a slight reduction on the 71 remand prisoners awaiting assessment in September 2011 (Dissel, 2011). Individuals are kept at Chainama Hills Hospital for at least two weeks for the assessment; however, this can take much longer depending on the complexity of the case: for example, the medical condition of the individual concerned, availability of information from the police about the circumstances of the alleged offence, and 'history' of the individual (Msoni, 2013). According to prison authorities, assessments are generally completed within three to six months, and rarely take more than a year (Dissel, 2011).

Once an assessment has been undertaken, the individual should be returned to court; however, in addition to long periods of time in pre-trial detention waiting for a medical assessment, there can also be long delays in pre-trial detention following a medical assessment. In a recent case taken by the Legal Resources Chambers, it was found that the continued pre-trial detention of five individuals, who were being held at Chainama East Hospital Prison following medical assessment (Section 17, Criminal Procedure Code), was

***...illegal on account that they have not been afforded a fair hearing within reasonable time as is guaranteed by Article 18(1) of the Constitution. A wait or delay of between 9 and 35 years for petitioners to take plea cannot, in the circumstances of this case, be said to be reasonable'***

(K.Mwale, Legal Resources Chambers v D. Mjokwe, State Advocate; 2014/HP/0620).

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2 Phillip Sabuni, PAN; personal correspondence 31 March 2015.

Although a period of 35 years in pre-trial detention is extreme, individuals spending years in pre-trial detention are not isolated incidents, see Chapter five (5.6).

In interviews with senior stakeholders, lengthy delays in pre-trial detention, and the risk of becoming ‘forgotten’ or ‘lost’ in the system were raised as a particular concern:

***People [with psychosocial and intellectual disabilities] can be detained in custody for years awaiting trial if they don’t have relatives or others to pursue their case. It’s easy to forget a case.***

Senior stakeholder, Legal Aid Board

***Delays: persons with disabilities may be examined by a psychiatrist and sentenced during His Excellency’s Pleasure, but the process is long – it can take a long time to come to trial. Justice delayed is justice denied.***

Senior stakeholder, Ministry of Health

***The Criminal Procedure Code isn’t followed as people are abandoned at Chainama and rarely come back to complete the court process.***

Senior stakeholder, MHUNZA

Other aspects of pre-trial detention that senior stakeholders highlighted as being especially problematic for people with psychosocial and intellectual disabilities are:

- The arbitrariness or ad hoc nature of procedures:

***Arrangements are ad hoc; there are no clear, established procedures in place. Magistrates need training, and procedures to protect the rights of people with disabilities should be established.***

Senior stakeholder, Ministry of Justice

- Delayed or lack of assessment and response to needs:

***People with disabilities should be adequately assessed; otherwise some laws will not be properly enforced.***

Senior stakeholder, Legal Resources Foundation

- The harsh conditions of detention, which can aggravate health conditions or needs:

***People with disabilities are treated very harshly.***

Senior stakeholder, Ministry of Justice

***Conditions of detention can aggravate the condition of the individual.***

Senior stakeholder, Prison Service

### **3.4 Criminal trials and legal representation**

Discussion concerning defendants with psychosocial and intellectual disabilities tends to focus almost entirely on their capacity to stand trial and the ‘insanity’ defence. This perhaps reflects a lack of alternative approaches to dealing with defendants with psychosocial and intellectual disabilities, such as adjustments to help ensure their effective participation in court proceedings, as well as limited provision to identify all but those with the most severe or the most obvious conditions. However, the Persons with Disabilities Act and the advent of a more enlightened Constitution demand a different overall approach to defendants with psychosocial and intellectual disabilities, as was highlighted in interviews with senior stakeholders. A number of respondents raised concerns about the over-emphasis on the ‘medical model’ of disability, and the need to develop options for defendants with psychosocial and intellectual disabilities in keeping with the principles of inclusion and legal capacity. As one respondent said:

***The law in relation to disabilities needs to be changed, and stakeholders should facilitate the trial process for everyone in contact with criminal justice system.***

Senior stakeholder, MHUNZA

In the context of criminal court proceedings, being able to ‘enjoy legal capacity on an equal basis with others’ (Section 8, Persons with Disabilities Act) means that an

individual's capacity should be assumed, while providing the necessary 'reasonable accommodation' (Section 9) to help ensure their effective participation.

A number of senior stakeholders raised concerns about the stereotyping of defendants with psychosocial and intellectual disabilities as being inherently incapable of participating in court proceedings, while others drew attention to the lack of opportunity for them to express themselves, and the lack of any support to enable them to do so:

***People are stereotyped; it's assumed that they can't be reasoned with. Hearings are not made available. Professionals are not sensitive to needs; they think only of Chainama as the response.***

Senior stakeholder, Ministry of Home Affairs

***A person is first taken for examination to determine their level of insanity or capacity to stand trial. Most are not even given a chance to defend themselves.***

Senior stakeholder, Ministry of Justice

***People with disabilities are not given the opportunity to speak for themselves, especially if they are unrepresented. They are not taken seriously and their cases are delayed.***

Senior stakeholder, PRISCCA

***The process should be tailored to the needs of those with disabilities.***

Senior stakeholder, Legal Resources Foundation

One senior stakeholder suggested that mental health services should be involved from the outset of court proceedings to help ensure necessary 'reasonable accommodation', and to provide members of the judiciary with 'advance knowledge of needs'. Another said:

***Medical check-ups should be done before trial, rather than at the direction of the judge/magistrate. The judge/magistrate should then consider the doctor's report and ensure support.***

Not everyone, however, shared these concerns; one respondent said:

***The situation has improved. All files now have a certificate of fitness and all accused are examined before appearing in the High Court. Prosecutors are sceptical about defendants' claims of being unfit as some may be seeking special treatment.***

Senior stakeholder, National Prosecution Authority

Concerns about a lack of disability awareness, knowledge and understanding amongst lawyers, judges and magistrates were raised by most respondents, as was the need for information and training on psychosocial and intellectual disabilities:

***The lawyers themselves do not understand psychosocial and intellectual disabilities or how to deal with these matters.***

Senior stakeholder, Ministry of Justice

***The prosecution use derogatory and insulting terminology, for example, 'idiot' and 'imbecile'. They should be educated on mental health, and illnesses should be specified.***

Senior stakeholder, Chainama Hills Hospital

#### ***Making a proper defence, and the 'insanity' defence***

Individuals with psychosocial or intellectual disabilities whose condition is not known about or is not recognised during trial proceedings, and who chose not to disclose information about their condition, will be dealt with in court as any other accused person would be. For individuals whose ability to make [a proper defence] is in question, or who are deemed to have lacked criminal capacity at the time of committing the offence, the procedure for crimes that are punishable by imprisonment or death (which covers a range of offences from theft to murder) is outlined in the Criminal Procedure Code Act.

When the question arises that an accused person might be incapable of making 'a proper defence' (Section 160, Criminal Procedure Code Act), the court is obliged to [inquire into and determine the question as soon as it arises]. If the court subsequently finds the accused person incapable of making [a proper defence] (Section 161), and there is sufficient evidence to warrant a case against him or her, the individual is detained during His Excellency's Pleasure (Section 161(b)). It is

also possible under Section 161(b) to justify a 'special finding' under Section 167 (see below). If, however, the evidence would not justify a conviction or a 'special finding', the court 'shall acquit and discharge the accused' (Section 161(a)).

Where an accused person's ability to make a proper defence is not in question, evidence that he or she was 'insane' at the time of committing the offence may be given during trial proceedings (Section 167, the 'insanity' defence). If 'it appears to the court' that the accused 'did the act or made the omission', as charged, 'the court shall make a special finding to the effect that the accused was not guilty by reason of insanity'; and the individual is ordered by the court to be detained during His Excellency's Pleasure (Section 167); see Chapter three (3.6).

Although the Criminal Procedure Code Act does not specify that there should be a medical assessment to determine whether an individual is able to make 'a proper defence' or was 'insane' at the time of committing the offence, the courts have found this to be a requirement, and an assessment under Section 17, Criminal Procedure Code Act is generally (but not always) ordered (The People v Mwaba (1973) Z. R. 271 (H.C.)).

The consequences of an accused person being found incapable of making 'a proper defence' or to be 'insane' at the time of committing the offence are grave. Detention during His Excellency's Pleasure is indefinite and may therefore be disproportionate to the seriousness of the offence, and considerably longer than the sentence that would ordinarily be handed down for an individual whose capacity, or sanity at the time of the alleged offence, is not in question.

In interviews with senior stakeholders most respondents perceived problems in relation to an individual's capacity to make a proper defence, and the 'insanity' defence. One respondent summed it up thus:

***The process for declaring lack of capacity is unclear and can be abused by the courts and law enforcers. Those pleading insanity face the same problems, including slow assessment by doctors, lack of diagnostic tools, poor referral systems and poor coordination between players.***

Senior stakeholder, PRISCCA

Delays in securing medical assessments were again raised as a matter of concern, and the consequent impact on the length of time spent in pre-trial detention; see Chapter three (3.3):

***The lack of assessment facilities leads to delays and means people are detained for longer than necessary.***

Senior stakeholder, ZAFOD

The stigma associated with psychosocial and intellectual disabilities was again raised, as was the risk of people with such disabilities being ‘forgotten’ in the system:

***A plea of insanity often attracts stigma. Those who plead are often then forgotten and neglected in terms of care and medication.***

Senior stakeholder, Prison Service

### ***Legal representation***

In its current form, the Constitution does not entitle a person to legal aid, but states that everyone who is charged with a criminal offence shall ‘be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice’ (Article 18). The Legal Aid Act makes provision for legal aid and in criminal matters a person may apply for legal aid in the subordinate courts if they have insufficient means to engage a legal practitioner (Section 8).

When the court commits a person to trial before the High Court and considers that the accused has insufficient means to pay for a legal representative, the committing court must issue a legal aid certificate (Section 9). The High Court may also grant a legal aid certificate.

The Legal Aid Board mainly represents clients in the High Court and in the Supreme Court and, contrary to the provisions of the Legal Aid Act, seldom in the subordinate courts where the majority of criminal cases are heard. There is no provision for legal aid for individuals while in police detention.

There is no special provision whereby people with psychosocial and intellectual disabilities are accorded legal aid<sup>3</sup> and this can put them at a disadvantage in respect of legal representation on two main counts:

- Their ability to participate effectively in court proceedings and to defend themselves before the court might be diminished, due to the nature of their disability.
- They may not have the resources with which to engage legal representation<sup>4</sup> unless they are able to rely on financial support from family members or friends.

In interviews with senior stakeholders, all but five (who were uncertain) had concerns about legal representation. In particular, there were concerns that provision for legal aid is very limited and legal aid lawyers are over-stretched, meaning that many defendants (with or without disabilities) lack representation. Further, lawyers do not routinely undertake disability awareness training or specific communication training and are likely to struggle to represent and to communicate effectively with people with psychosocial and intellectual disabilities. One respondent said:

***The legal aid system does not have the capacity to take on [legal representation]; there are very few lawyers who are ready to provide legal aid. Lawyers are not trained in disability issues – this should be introduced as part of the curriculum for legal training.***

Senior stakeholder, Ministry of Justice

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3 Although this may change if the new draft Constitution (November 2014) is adopted.

4 According to UN Enable: 'disability can cause poverty by preventing the full participation of persons with disabilities in the economic and social life of their communities, especially if the appropriate supports and accommodations are not available; <http://www.un.org/disabilities/default.asp?id=1569>, 15 December 2014



The importance of training was further raised:

***Lawyers are overwhelmed by case-loads making it difficult to attend to each case, especially cases where the defendant can't understand or explain things easily.***

senior stakeholder

One senior stakeholder, from PRISCCA, highlighted the high cost of legal representation when legal aid is not available:

***The Legal Aid Board is too small... Most defendants at court don't have access to representation because of high costs and lack of legal aid... The Legal Aid Board should be extended, and should have special provision for people with disabilities.***

Senior stakeholder, PRISCCA

Notwithstanding the limited availability of legal aid, one respondent highlighted the importance of public education to help ensure access to justice:

***The community should be made aware of the free legal services being offered. Both the government and the private sector are not doing enough to convey this to the community. Legal representation is a right and should be accessed by all.***

Senior stakeholder, Legal Resources Foundation

The particular risk faced by defendants with psychosocial and intellectual disabilities of not being represented was raised:

***Where a person with disabilities is unrepresented, the court will say he lacks capacity to represent himself, without any proper assessment.***

Senior stakeholder, PRISCCA

While the following comment reflects the all-pervading prejudice faced by people with psychosocial and intellectual disabilities:

***In general, the public don't recognise the need for people with disabilities to have representation. Senior stakeholder, Ministry of Home Affairs***

### 3.5 Imprisonment and release

#### *Imprisonment*

The only prisoners with psychosocial or intellectual disabilities who are formally recognised as such are those either awaiting a medical assessment (Section 17, Criminal Procedure Code Act), or detained during His Excellency's Pleasure (Dissel, 2011).

In addition, prisons will hold remand and convicted prisoners whose psychosocial or intellectual disability may not have been recognised (for example, if their condition is mild), and prisoners whose mental health may have deteriorated during their time in detention.

Section 18 of the Prisons Act states that prisoners should, where possible, be subject to a medical screening on admission into prison and any physical and 'mental' disabilities should be identified (Dissel, 2011). However, a study by PRISCCA, ARASA and Human Rights Watch (2010) found that there was almost no medical screening undertaken.

All prisoners are required to work in prison, and some prisoners are sentenced by the courts to hard labour. Prison Rule 147 states that a medical officer should determine whether a prisoner is fit for work and the type of work that might be suitable, and prisoners with a medical condition are not expected to work (Section 75, Prisons Act).

Apart from stating that 'mentally ill' prisoners should be segregated from other categories of prisoners, the Prisons Act says nothing about how they should be dealt with or about their treatment or care (Section 60) and makes no mention of prisoners with disabilities. Further, it would appear there is little or no guidance for prison staff.

A number of reports and studies in recent years have highlighted the harsh physical conditions, poor infrastructure and overcrowding experienced in prisons (see, for example, PRISCCA et al, 2010; Dissel, 2011; OSISA, 2011; US State Department, 2012), and comments by senior stakeholders for this study reflected these problems. For example, respondents raised particular concerns with overcrowding, poor infrastructure, poor sanitary conditions and ventilation, and

inadequate food (similar concerns were also raised by self-advocates interviewed for this study, see Chapter five). Although these problems affect all prisoners, most senior stakeholders said they were harder for those with psychosocial and intellectual disabilities to endure:

***All prisoners face challenges and these are likely to be worse for those with disabilities, who must also face discrimination in prison. They are a low priority for government.***

Senior stakeholder, Legal Aid Board

***Conditions, facilities and infrastructure are very bad. It's a matter of survival for prisoners; for those with disabilities it is even worse.***

Senior stakeholder, Ministry of Home Affairs

***Prison conditions are very poor; prisons are overcrowded and under-staffed. Prisoners do not have access to three meals a day; there is poor ventilation, leading to spread of disease; prison uniforms are rags. Conditions are worse for those with disabilities.***

Senior stakeholder, PRISCCA

The risk of bullying and intimidation of prisoners with psychosocial and intellectual disabilities was also raised:

***There is aggression, bullying – condoned by the authorities.***

Senior stakeholder, Prison Service

Two senior stakeholders, from the Ministry of Home Affairs and the Ministry of Health, called for 'more non-custodial measures' and a 'reduced use of detention' for people with psychosocial and intellectual disabilities. A number of respondents highlighted a lack of facilities for such prisoners, and some suggested that there should be separate facilities:

***There is a lack of facilities for people with disabilities who are housed in one cell within a prison.***

Senior stakeholder, Ministry of Home Affairs

***They should have separate cells and be evaluated by psychiatrists.***

Senior stakeholder, Legal Aid Board

Although 'separate facilities' might provide a pragmatic solution to immediate difficulties, for example, if the health, safety or wellbeing of an individual with psychosocial or intellectual disabilities were at risk – or if their behaviour presented a risk to others, separate facilities would not, as a long term solution, be in keeping with the principles of the UNCRPD or the Persons with Disabilities Act (see Chapter six (6.1).

Almost all senior stakeholders highlighted the need for training, information and guidance for prison officers, and this reflects similar concerns raised in relation to prison officers, lawyers and members of the judiciary.

### ***Prison healthcare***

In 2004 the Prisons Act was amended to provide for a Prisons Health Service. Although this commitment has not been fully realised (Dissel, 2011), the forthcoming Mental Health Bill makes provision for mental health services in prison.

Senior stakeholders were asked about healthcare in the criminal justice system more generally and most highlighted problems – their main concern being a lack of health facilities, personnel and medical supplies. It was, however, pointed out that as healthcare provision is limited within the general population it is likely to be even more limited within the criminal justice system:

***We are grappling with health in everyday life [in the community] so it will be even more difficult in prison. There are a lack of facilities, personnel, and programmes. The government needs to invest.***

Senior stakeholder, Ministry of Home Affairs

While one senior stakeholder from the Prison Service noted that 'offenders are viewed as second class citizens within the health system.'

The need for improved healthcare across the criminal justice system and in prisons, in particular, was highlighted:

***Healthcare is not comprehensive, especially for those with disabilities. Healthcare should include counselling, physiotherapy and occupational therapy. There should be medication, and those with disabilities shouldn't be treated under general healthcare. Senior stakeholder, Ministry of Community Development Mother and Child Health***

***The number of prison-based clinics is very low: 21 clinics to 87 prisons. There is one doctor to visit all 87 prisons; 25 prison health workers; very little input from the Ministry of Health. Prison clinics are poorly stocked and lack diagnostic equipment. Senior stakeholder, PRISCCA***

Only one respondent said that healthcare was 'adequate':

***Healthcare is adequate. The criminal justice system does not provide health care but it does facilitate. There are mental health units in all general hospitals and Chainama hospital is the biggest hospital catering for mental health services, and has a number of qualified personnel. Senior stakeholder, Ministry of Justice***

### ***Release from prison***

Senior stakeholders were asked what happens when people with psychosocial or intellectual disabilities are released from prison and return to live the community, and all respondents said there were difficulties. Concerns focused on stigma and lack of acceptance of former prisoners within communities and families, which impedes reintegration and can lead to reoffending. This was said to apply to all former prisoners, and especially those with psychosocial and intellectual disabilities:

***Most people with disabilities are forgotten by their families and cannot be integrated in a community where they are not known. Senior stakeholder, ZAFOD***

***The main problem is acceptance by the community. They often end up alone, rejected even by their families and some reoffend to get a place to sleep. They are sometimes blamed for anything going wrong in the community.***

Senior stakeholder, Ministry of Justice

***Relatives aren't keen to look after people after release. There's stigma and unemployment, and poverty causes reoffending.***

Senior stakeholder, Chainama Hills Hospital

***Reintegration is difficult for all prisoners and especially those with disabilities.***

Senior stakeholder, National Prosecution Authority

Senior stakeholders suggested a number of ways in which improvements could be made to assist individuals to prepare for their release from prison and reintegration into the community, including, the provision of rehabilitation services and support within the criminal justice system, employment opportunities on release from prison, and the provision of half-way houses:

***Very little support is provided for those with disabilities and follow-up is lacking. People should be given life-skills to be reintegrated in the community.***

Senior stakeholder, Prisons service

***Problems could be eased if prisoners received an allowance, as they are supposed to, for the work they do in prison.***

Senior stakeholder, National Prosecution Authority

***There should be half-way houses and foster-care houses at which released prisoners can receive medication, training, therapy, and help to become self-reliant. Otherwise problems are brought from prisons to the community.***

And the need for family support and public education was also raised:

***Education and awareness activities are needed for families and communities to encourage more acceptance. Senior stakeholder, Ministry of Justice.***

### **3.6 Prisoners detained during His Excellency's Pleasure**

When an accused person is found incapable of making 'a proper defence' (Section 160, Criminal Procedure Code Act) or has been found 'insane' at the time of committing the offence (Section 167, the 'insanity defence'), and there is sufficient evidence to warrant a case against them, they must be detained during His Excellency's Pleasure at 'any mental institution, prison or other place where facilities exist for the detention of persons' (Section 163); see Chapter three (3.4).

Once it has been determined that an individual is unfit to make his or her defence (Sections 160/161, Criminal Procedure Code Act) or was 'insane' at the time of the offence (Section 167), then they must be detained during His Excellency's Pleasure at 'any mental institution, prison or other place where facilities exist for the detention of persons' (Section 163). The officer in charge of the place where the person is detained should submit a report to the President on the condition of the individual 'at intervals not exceeding six months' (Section 163). The report is based on an assessment by qualified medical personnel, usually a psychiatrist, who may recommend that the prisoner is released if their mental health condition has improved sufficiently (Dissel, 2011). The President may order a discharge at any time, but is not bound by the recommendation made. A discharge may be absolute or conditional. If conditional, the order can be revoked and the person re-admitted to detention (Section 164). There is no provision for appeal against the President's decision (Dissel, 2011).

Notwithstanding the requirement for regular reviews, individuals detained during His Excellency's Pleasure can, in reality, remain in custody for very long periods of time. Such was the lack of any routine review process that some senior stakeholders said detention during His Excellency's Pleasure was, in effect, a life sentence. One reason for the lack of reviews is the limited availability of qualified medical personnel, upon whose assessment the review depends. In practice, this means that some prisoners are denied the assessment and review that could

precipitate their release. Interviews with senior stakeholders identified an urgent need for the effective implementation of the requirement for regular, six-monthly reviews of people detained during His Excellency's Pleasure, as required by Section 163, Criminal Procedure Code Act:

***Regular reports on progress are lacking, meaning people may serve for life.***

Senior stakeholder, Prisons Service

***Those sentenced during His Excellency's Pleasure end up in prison for life; there is no review being carried out. A regular review programme should be introduced.***

Senior stakeholder, Ministry of Justice

***After sentencing during His Excellency's Pleasure there is no follow-up... it is an indirect life sentence. There should be assessments, with recommendations sent to the President. Delays mean that those held during His Excellency's Pleasure may die in detention.***

Senior stakeholder, PRISCCA

***Detention during His Excellency's Pleasure is very unfair, as it is indefinite; release is only as the President decides/thinks of it. This provision should be removed or people should only be detained until they are found by a medical officer to be sane or able to understand their actions.***

Senior stakeholder, Legal Aid Board

The quality of support, care and treatment for people detained during His Excellency's Pleasure were also said by senior stakeholders to be poor, which reflects limited healthcare facilities in prison, more generally, and in other institutions in which detainees are held:

***The quality of care and treatment [of prisoners detained during His Excellency's Pleasure] is poor. There are very few nurses in prisons. Mental health nurses and occupational therapists should be employed.***

Senior stakeholder, Prisons Service



The length of time spent in detention during His Excellency's Pleasure means there are particular challenges for individuals upon their release. In addition to the stigma of psychosocial or intellectual disabilities, and of being held in detention, the long periods of time spent in prison often means that contact with family members and friends is harder to maintain. In 2011, Dissel reported that the Prisons Service has worked with the Department of Social Development to try and trace the relatives of such prisoners, and to prepare family members for their release. One respondent from the Ministry of Health said:

The process [by which a person detained during His Excellency's Pleasure is released] is long and there is a very big challenge with regards to reintegration as family members may not readily accept them. There is a need to have civil rehabilitation facilities, without police officers, to help them get back into society.

In short, individuals detained during His Excellency's Pleasure seem to spend longer in pre-trial detention, due to time spent awaiting an initial medical assessment (Section 17, Criminal Procedure Code Act) than other alleged offenders do; are at greater risk of becoming 'lost' in the system, due to the length of time spent in pre-trial detention; and, once detained, find it harder to secure their release from prison due to limitations of the review process, without which individuals cannot be recommended for release. Further, while in prison little attention is paid to the care and support needs of individuals with psychosocial and intellectual disabilities, and they seem more likely than other prisoners to lose contact with family and friends, and, therefore, the benefits of staples such as food and clothing that such contact brings.

As stated in Chapter two (2.2), in January 2015 there were 56 prisoners detained during His Excellency's Pleasure (55 men and one woman)<sup>5</sup>.

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5 Kaputo W. Chisapa, Ministry of Home Affairs; personal correspondence, 15 January 2015.

### 3.7 Laws that protect or discriminate, and suggestions for change

#### ***Laws that protect or discriminate***

The extent to which national laws protect the rights of people with disabilities in the criminal justice system or discriminate against or disadvantage them, was explored with senior stakeholders, and there was a mixed response. While the views expressed are by no means a systematic critical analysis of national laws, the different perspectives of respondents help to demonstrate where greater clarity might be needed and attention focused in developing policy and operational guidelines.

Perhaps unsurprisingly, the Persons with Disabilities Act was most often cited as protecting and upholding the rights of people with disabilities in the criminal justice system:

***The Persons with Disabilities Act 2012 domesticated the UN Convention. Rights are comprehensive under this Act and people with disabilities are provided with adequate recourse.***

Senior stakeholder, Ministry of Home Affairs

However, delays in implementation were raised as a matter of concern, and a number of senior stakeholders said that national laws needed to be brought into line with UNCRPD and the Persons with Disabilities Act. One respondent said:

***Having ratified the convention [UNCRPD] and amended the [Persons with Disabilities] Act, it's time to look at the details. We need to look at how people with disabilities are treated across the whole criminal justice system, from the point of arrest, and introduce reforms, to ensure fairer treatment.***

Senior stakeholder, Ministry of Home Affairs

Two respondents, from ZAFOD and PRISCCA, said that national laws are generally outdated; use 'dehumanising terminology'; 'tend to assume lack of capacity'; are 'not in line with international conventions such as UNCRPD', and need 'to be revised' accordingly. Of particular concern was the 'insanity' defence; see Chapter

three (3.4). The Mental Disorders Act was most cited for its outdated approach and derogatory terminology:

***The Mental Disorders Act 1951 is not sensitive; the use of terms like idiots, imbeciles, and feeble-minded is very discriminatory.***

Senior stakeholder, Ministry of Health

***The Mental Disorders Act needs to be reviewed to incorporate issues of disabilities and to improve how people with disabilities are handled.***

Senior stakeholder, Ministry of Home Affairs

Senior stakeholders variously described laws, or sections therein, as being neutral, protective or discriminatory, and this was especially so in regard to the Criminal Procedure Code Act:

***Laws such as the Criminal Procedure Code Act discriminate against those with disabilities by not giving them the chance to defend themselves.***

Senior stakeholder, Ministry of Justice

***The Criminal Procedure Code is rather outdated; amendments have not addressed the needs of people with disabilities and it doesn't address how people with disabilities should be treated at court.***

Senior stakeholder, Legal Aid Board

***Laws are adequate. For example the Criminal Procedure Code Act is very detailed and sets out the procedures; this is what is mainly used in cases involving people with disabilities.***

Senior stakeholder, National Prosecution Authority

The Prisons Act was described by one senior stakeholder as being:

***...too general; it isn't specific on how people with disabilities should be treated, it assumes everyone is able-bodied. This means officers have to guess. There is a lack of specificity that may disadvantage people with disabilities.***

Senior stakeholder, Ministry of Home Affairs

It is noteworthy that senior stakeholders frequently raised the challenge of common interpretation and implementation, rather than an inadequacy of the particular laws themselves. The need to review and revise relevant laws in light of the ratification of UNCRPD and the Persons with Disabilities Act, and the need for operational guidance were also raised:

***Yes, there are some pieces of legislation [that protect]... But not all are applied adequately. These laws need to be strengthened and people made aware of them.***

Senior stakeholder, Legal Resources Foundation

***The Constitution of 1996 prohibits abuse of people with disabilities. National laws are not discriminatory, but practices might differ.***

Senior stakeholder, Ministry of Home Affairs

***The law is drafted in such a way that it doesn't directly or indirectly discriminate against anyone.***

Senior stakeholder, National Prosecution Authority

### ***Suggestions for change***

Senior stakeholders were asked how the criminal justice system might be improved for people with psychosocial and intellectual disabilities, and what the barriers to improvement might be.

Almost all respondents cited the legislative and policy framework as a route to improving arrangements for people with disabilities. Recommendations included reviewing and updating national laws so they are made compliant with UNCRPD and the Persons with Disabilities Act, and ensuring that national laws are properly implemented and enforced through the development of clear policies and guidelines. A smaller number of senior stakeholders either highlighted the need for improved collaborative working across and between different ministries, or cited a lack of collaboration as a barrier; and the importance of an 'end-to-end' approach, from the point of arrest through to release from prison was raised:

***To improve things, there should be specific policies and procedures linked to other institutions and parts of the criminal justice system. Prisons alone cannot bring about changes.***

Senior stakeholder, Ministry of Home Affairs

***Policies and procedures for meeting the needs of people with disabilities are inadequate... Police, health institutions and the courts should cooperate more so cases progress expeditiously.***

***Improved referral between agencies is needed, including closer cooperation between [government ministries], for example, through an inter-ministerial committee.***

Senior stakeholder, PRISCCA

***The government needs to establish clear policy in this area... Reasonable accommodation needs to be made within the criminal justice system for those with disabilities. Existing laws protecting their rights need to be strengthened and adequately applied, and people need to be made aware of them.***

Senior stakeholder, Legal Resources Foundation

One respondent highlighted a forthcoming programme of work:

***The Access to Justice Programme is to undertake work with people with disabilities as it has done for juveniles and women. People with disabilities are an even more vulnerable group.***

Senior stakeholder, Ministry of Justice

Workforce development was identified by almost all senior stakeholders as a way of improving the situation, with many pointing to the absence of any training as a barrier to improvement. Ideas for training included information about procedures on how people with disabilities should be dealt with, as well as awareness training on particular conditions:

***The main barriers to improvement are a lack of skills in handling people with disabilities, so training is needed.***

Senior stakeholder, Community Development Mother and Child Health

Linked to the need for training, and again raised by most respondents, were the stigma and discrimination faced by people with disabilities both within and

outside of the criminal justice system. So pervasive is the prejudice, as reported by respondents, that one senior stakeholder said:

***There's a need for change in society. People need more awareness and to be informed about the different challenges faced by people with disabilities.***

Senior stakeholder, Legal Aid Board

Smaller numbers of senior stakeholders referred to the need for specialist provision for people with psychosocial and intellectual disabilities in the justice system; for better healthcare facilities more generally; and decentralised mental health services to help reduce reliance on centralised assessment facilities, which are currently limited to Chainama Hills Hospital, in Lusaka.

Respondents made particular recommendations concerning the release from prison of individuals with psychosocial and intellectual disabilities; for example, preparation for release through 'life skills' and work-based training, and 'half-way houses' that would assist with their reintegration into society.

The need for improved data collection and statistics (including on the number of people with disabilities in the criminal justice system), and the importance of an evidence-based response to challenges faced, were discussed, as was the need to focus on rehabilitation rather than just punishment.

Although only raised by three respondents, limited resources and 'a lack of political will' were identified as barriers to improvement:

***The main barriers are lack of economic and political will; and low prioritisation of access to justice for those with disabilities as they are seen as second class citizens.***

Senior stakeholder, Legal Resources Foundation

While not wanting to underestimate the challenge of limited resources, one respondent concluded their interview by saying:

***Prioritisation is very important. Huge budgets aren't needed; progress can be bit by bit.***

## CHAPTER 04

# People with psychosocial and intellectual disabilities within the criminal justice system

## *Practitioners' views and experiences*

**T**his chapter summarises practitioners' accounts, based on their own professional experiences, of how people with psychosocial and intellectual disabilities are dealt with by the criminal justice system and, particularly, of shortcomings in provision and how these shortcomings might be addressed. As noted in Chapter one of this report, 56 practitioner respondents were interviewed for this study across the three provinces of Lusaka, Copperbelt and Southern. Forty seven of the sample were from criminal justice agencies: namely, the police (15 respondents), courts (nine respondents, of whom seven were magistrates and two were clerks), Legal Aid Board (eight respondents), and the prisons (13 respondents, including one from a prison hospital). The remaining 11 respondents were hospital-based mental health practitioners, for the most part, psychiatric nurses (See Appendix A for a full list of respondents).

### **4.1 Practitioners' awareness and recognition of people with psychosocial and intellectual disabilities**

As reported in Chapter two, most of the practitioners interviewed for this study were of the view that people with psychosocial and intellectual disabilities only rarely enter the criminal justice system, which might suggest a lack of awareness of disability and/or lack of systems for identifying suspects', defendants' and prisoners' needs. When explicitly asked about how they know if someone has

a mental illness or an intellectual disability, respondents tended to talk about recognising these problems through their observations of individuals' behaviour or general demeanour. For example, comments on recognising mental health problems variously referred to 'the way the person expresses him/herself', 'aggression', 'the way in which they conduct themselves', 'behaviour being exhibited', 'those that look dirty and are very smelly' and 'the way they relate with others'. When asked about how they would recognise if someone has an intellectual disability, respondents again referred to cues from behaviour but also, more commonly, referred to evidence of difficulties or being 'slow' in their understanding, speaking or learning.

Thus it is evident that recognition and identification of disabilities is very largely a matter of the perception and judgment of the officer interacting with the individual rather than any kind of routine or systematised assessment. This would appear to apply within prisons as in other parts of the criminal justice system, despite the provision of Section 18 of the Prisons Act providing that every prisoner should, upon admission, be examined by a medical officer, see Chapter three (3.5).

Again, as reported in Chapter two, practitioners appeared to be aware that people with psychosocial and intellectual disabilities experience disadvantage and discrimination in society as a whole. Respondents, however, had more mixed views on the issue of discrimination within the criminal justice system. A little over one-quarter of respondents (16 out of 56) said people with psychosocial and intellectual disabilities are treated unfairly or discriminated against within the criminal justice system; while the majority of respondents (32 out of 56) disputed the existence of unfair or discriminatory treatment of this kind, although this did not preclude the recognition that some aspects of criminal justice pose particular problems for individuals with disabilities.

Practitioners were asked about the existence and usefulness of local guidelines or policies within their organisations that help them to deal with people with mental illness or intellectual disabilities. These questions appeared to be poorly understood, as respondents tended to reply with reference to national rather than local guidelines or policies (for example, criminal justice legislation, or service-specific provision such as the Zambia Police Mission Statement or the Magistrates' Handbook) and, in some cases, with reference to general principles. A very small number of references to local guidance were made; for example, two prison



officers said that they received 'verbal instructions from the hospital' which they found 'very helpful'. The fact that most respondents appeared to misunderstand the question about guidance suggests that there are no provincial or local policies to guide operational aspects of dealing with people with psychosocial and intellectual disabilities; or, if such guidance does exist, practitioners are unaware of it and it is not being applied.

Practitioners were also asked in interview about what words are used to refer to people with psychosocial and intellectual disabilities within their respective agencies. In talking about the words used for those who have mental health problems, some respondents cited terms such as 'insane', 'mentally challenged' or 'mentally disturbed'. Others said that no specific terms are used, but that those with mental health problems are referred to in the same way as those without; that is, as 'patients', 'clients' or by their names. One police respondent said that the police refer to people with mental health problems as 'Mic Poppa', as a kind of 'police language' used so that others do not understand what is being said. A few respondents said that the terms 'imbecile' or 'idiot' are used as provided for in the law (that is, the Mental Disorders Act 1951). The following are some of the other terms that respondents said are used to refer to people with mental health problems:

- Bo funta
- Mental case
- Mokomoko
- Ba psychiatric
- Cell 1 – referring to the cell where inmates with mental health problems and other needs are kept.

In relation to people with intellectual disabilities, respondents tended to say that no special words are used, but some cited terms such as 'physically challenged', 'handicapped', 'disabled', 'slow learners' and 'mentally retarded'.

Many of the words used by practitioners to describe people with psychosocial and intellectual disabilities would be considered offensive by individuals with such disabilities. Family members of people with psychosocial and intellectual disabilities, and people who work in disability rights NGOs and in mental health services, amongst others, may also find such language offensive. Although some

respondents seemed to use terms such as 'Cell 1' and 'Mic Poppa' to avoid the use of derogatory language, the continued use of such terms reflect society's attitude towards people with disabilities, which is often prejudiced and discriminatory.

#### **4.2 Policing of people with psychosocial and intellectual disabilities**

Police responses to individuals with psychosocial and intellectual disabilities should be understood in the context of the traditional attitudes to disability that still prevail in many parts of Zambia, and particularly in rural areas. Police respondents were asked if the police are ever called to incidents involving people with mental illness or intellectual disabilities due to behaviour which is perceived as 'difficult' or 'challenging' but does not involve an alleged offence, and 13 out of the 15 police respondents said they were. The following examples were given of what such a scenario might involve:

*There was a woman who took off her clothes and she was taken by the police, not to be detained but to keep her before taking her to Chainama.*

*A parent may walk in and say, 'I have a son who smokes, I need your help'.*

*Sometimes they are violent and it could have happened in the family and we are called to intervene in the situation. In other circumstances they just loiter around.*

*When they are uncontrollable.*

*Members of the public call on the police to assist where such persons are causing disturbances.*

*Members of the public, whenever they see someone behave in a strange way, they rush to the police.*

In these kinds of situations, according to the respondents, the police would seek to identify whether or not a criminal offence has been committed and the nature of such an offence, and may then carry out an arrest. Most respondents said that

if the decision is taken not to arrest the individual, the police will seek medical treatment for the individual. The police also talked about trying to address the situation by other means, for example, by telling the individual to come back the next day to allow time for matters to be assessed, contacting families for help, or holding the individual overnight to defuse the situation.

Police respondents were asked what they perceived were the main problems faced by people with psychosocial and intellectual disabilities when they have been arrested or detained by the police. Some respondents said that such individuals do not face any particular problem or are not detained, while others were of the view that such individuals themselves cause problems for the police, for example, by being violent or aggressive. Other police respondents, however, acknowledged that suspects with psychosocial or intellectual disabilities face problems when held by the police: for example, being 'beaten by their fellow inmates'; going 'for days without food' because they find it difficult to eat; 'getting very sick while in detention'; and being 'slow in understanding what is being explained to them'. Almost all of the eight respondents from the Legal Aid Board, when asked about the experiences of people with psychosocial or intellectual disabilities who are arrested or detained by the police, could identify problems faced by this group of suspects. In particular, the Legal Aid Board respondents spoke about difficulties of communication and understanding, and police neglect or mistreatment of these suspects.

Both police and the Legal Aid Board respondents were asked if individuals with psychosocial or intellectual disabilities are more or less likely than people without such disabilities to be released on police bond. Around half of respondents said there is 'no difference' in practice concerning arrangements for police bond, while the remainder were equally divided between the view that people with psychosocial or intellectual disabilities are more likely to be released on police bond and that they are less likely to be released on police bond. It should be noted that release on police bond can be difficult for any suspect to achieve, for a number of reasons – including the high value of bonds set, a lack of awareness of the right to be released on a bond, and a prevailing view amongst the police that individuals will abscond.

### 4.3 **Problems faced by defendants with psychosocial or intellectual disabilities, as perceived by court and Legal Aid Board respondents**

The nine court respondents were asked about the problems faced by people with psychosocial and intellectual disabilities at court. Most of the difficulties reported concerned understanding or communication, and similar issues were also raised by Legal Aid Board respondents. Occasional reference was also made to delays in court proceedings involving defendants with such disabilities. Some of the typical comments included:

***Failure to conduct themselves properly and failure to give a good statement.***

Court respondent

***[They have difficulties] answering questions. Behaving themselves in an orderly manner.***

Court respondent

***They can't comprehend [questions]; they are not aware of the environment when they are in court.***

Court respondent

***Not knowing what is going on during the court proceeding.***

Legal Aid Board respondent

A notable response from one Legal Aid Board respondent pointed to a lack of willingness, on the part of legal professionals, to give people with psychosocial or intellectual disabilities additional support at court – even, quite simply, the additional time they may need to express themselves:

***Sometimes lawyers and prosecutors fail to exercise patience to allow the people with intellectual disabilities to tell their story. Because they have difficulties in narrating their side, this disadvantages them a lot. Legal Aid Board respondent***

When asked if individuals with psychosocial or intellectual disabilities are more or less likely than others to receive bail at court, two court respondents said people with disabilities were 'more likely' to receive bail, three that they were 'less likely' and one that there was 'no difference'; the others said that it depended on the defendant or charges faced. As noted above for police bond, bail at court can also be difficult for defendants, generally, to obtain and for similar reasons, being: the high bail amounts set, because individuals are often unaware of the right to bail, and a prevailing view that individuals will abscond.

#### **4.4 Problems faced by prisoners with psychosocial or intellectual disabilities, as perceived by prison and Legal Aid Board respondents**

When asked about the difficulties faced by prisoners with psychosocial or intellectual disabilities, a number of themes emerged from interviews with the 13 prison and eight Legal Aid Board respondents; although a small number suggested that prisoners with disabilities do not face any particular problems. The main themes that emerged were:

- Poor infrastructure and limited or non-existent services (such as rehabilitation provision), which affect all prisoners and particularly those with disabilities:

***The general environment is difficult to live in.***

Prison respondent

***In terms of their accommodation, it's not conducive for a human being.***

Prison respondent

***There are no proper rehabilitation programmes and there are no counsellors.***

Prison respondent

- Understanding and communication difficulties, which, for many individuals with psychosocial or intellectual disabilities, is a feature of their experience of all parts of the criminal justice system:

***They have difficulties in giving instructions.***

Legal Aid Board respondent

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***They fail to explain their situation and because of that they are ill-treated. They also fail to communicate with prison authorities.***

Legal Aid Board respondent

- Stigma, neglect and abuse, whether by other prisoners, officers or family members:

***Rejection from officers; stigma and discrimination from fellow inmates; lack of moral support.***

Prison respondent

***Most of them are ill-treated by other prisoners ... and they fail to protect themselves.***

Legal Aid Board respondent

- Lack of recognition of needs and, consequently, a lack of tailored response to needs on the part of the authorities:

***The environment is not that conducive for them ...Every prisoner is almost kept the same regardless of their mental standing.***

Prison respondent

***Sometimes it is very difficult to be noticed among other prisoners and therefore they suffer more than others who are 'normal'.***

Legal Aid Board respondent

***They don't get the help they need...they are not helped by being placed in prisons with the 'normal' people.***

Legal Aid Board respondent

#### **4.5 Health practitioners' perceptions, and access to healthcare**

The 11 (hospital-based) mental health practitioners interviewed for this study were asked to describe what they see as the main problems for people with psychosocial or intellectual disabilities who are caught up in the criminal justice system. Their comments reflect many of the issues raised by criminal justice practitioners, and

particularly focused on the general stigma and neglect experienced by people with psychosocial and intellectual disabilities both within and outside of the criminal justice system. For example, respondents spoke of:

***Unfair treatment from different angles due to the negative perception of these individuals by society generally.***

***[The criminal justice system's failure to be] supportive to these individuals, such that due to their state it is difficult to be believed, and at times they even plead guilty when they are innocent.***

***Relatives [who] dump them at hospitals, police stations or courts, which prolongs their recovery.***

Criminal justice practitioners were asked if they are able to obtain medical help if they think a person may have a mental illness or intellectual disability. While their answers present a relatively positive picture of the situation, responses should be taken in the context of general mental health care in Zambia, which is chronically under resourced and highly centralised, and dominated by in-patient care and pharmacology, with patients frequently held in decrepit and overcrowded dormitory wards (MDAC and MHUNZA, 2014). Further, the three Provinces in which interviews were undertaken for this study – namely Lusaka, Copper Belt and Southern – each have facilities for mental health care that would not be available across Zambia.

Table 4.1 (which excludes missing responses) shows that most respondents from each agency, including all police and all prison respondents, said that individuals can get medical help. When asked about the type of medical help sought, most respondents said that individuals are referred to a local hospital or clinic. All but eight respondents said that medical help can be immediately or quickly accessed; others noted that there are sometimes or often delays in accessing help, for example, because of transport difficulties.

**Table 4.1: Access to medical help for people with psychosocial and intellectual disabilities: criminal justice practitioners' views**

Type of agency	Can you get medical help for someone with psychosocial and intellectual disabilities?				Total
	<i>Don't Know</i>	<i>Yes</i>	<i>Sometimes</i>	<i>Other</i>	
Police	0	15	0	0	15
Court	0	5	2	1	8
Prison	0	13	0	0	13
LAB	1	5	2	0	8
Total	1	38	4	1	44

The (hospital-based) mental health practitioners were asked about the challenges encountered when they receive referrals to their services from criminal justice agencies. Challenges associated with referrals from the police were said to include poor provision of information or documentation about the individual, and the excessive use of force by police was also mentioned. Referrals from courts, as from the police, were also said to be hindered by lack of information about the circumstances of the case, and some practical difficulties associated with referrals were noted: for example, limited provision for holding individuals securely and poor compliance with referral procedures. With respect to referrals to health services from prisons, a lack of information was again raised, and limited transportation was also mentioned.

Health respondents were also asked about the availability of healthcare treatment or support for people with mental illness or intellectual disabilities detained at police stations, at court, or in prison. Seven of the health respondents said that no medical treatment is made available to police detainees, but others mentioned the availability of psychological support and/or medication. Medical treatment



at court was variously said to involve psychological support, medication or to be absent; and similar comments were made about medical treatment in prison.

#### **4.6 Juveniles and women**

The interviews with practitioners sought to explore the particular circumstances of both juveniles (those aged under 18 years) and women with psychosocial or intellectual disabilities who are caught up in the criminal justice system. However, information elicited from the interview questions was limited.

For example, when asked about the problems faced by juveniles with psychosocial or intellectual disabilities in the criminal justice system, many respondents referred to types of offending behaviour with which juveniles are associated. Other respondents commented that they do not know about juveniles, or that juveniles with psychosocial or intellectual disabilities do not face specific problems. Some respondents, however, did identify certain problems faced by juveniles, and largely spoke about problems of neglect and abuse by adults, noting, for example, that juveniles in custody are 'easily intimidated', or are frequently abused because they are made to share cells with adults. Others referred to lack of 'support mechanisms'; problems with communication, which can result in juveniles 'being punished for things they did not do'; and abandonment by families. Most respondents were unaware of the existence of any specific guidelines or policies relating to juveniles with mental illness or intellectual disabilities, but there were very occasional mentions of special provision for juveniles; for example:

***We treat them the same way we treat adults but with more special treatment because they are children. We have psychological counsellors who come in and talk to juveniles.***

Police respondent

***The law provides that juveniles be helped throughout the process of trial.... They are treated with special care. Even where a juvenile is trying to ask a question and is having problems with how to ask, the court will assist.***

Court respondent

As with the equivalent question about juveniles, when asked what problems are faced by women with psychosocial or intellectual disabilities in the criminal justice system, many respondents spoke about women's offending behaviour, or said they did not know about women, or that women with psychosocial or intellectual disabilities do not face particular difficulties. Many respondents spoke about women with such disabilities as victims of abuse (physical and sexual), and it was unclear to what extent they were referring to victimisation within the criminal justice system or more broadly. Comments that focused more explicitly on problems faced by women with psychosocial or intellectual disabilities within criminal justice largely concerned lack of separate provision for women; the inadequate physical environment and sanitation; abuse from other suspects or prisoners and from criminal justice personnel; and the pain of separation from their family. Only four respondents said that they were aware of policies or guidelines especially for women, of whom two mentioned the Penal Code and the other two did not name any specific guidelines.

#### **4.7 Addressing problems and improving practice**

All the practitioner respondents were asked how the circumstances of suspects, defendants and prisoners with psychosocial and intellectual disabilities could be improved, and what the respondents believed they could themselves do to help address the problems faced by these individuals.

The response most frequently given by respondents in reply to these questions was the need for more and improved facilities and specialist provision for people with mental illness and intellectual disabilities. This was mentioned by 29 out of 56 respondents; specific comments called for separate detention facilities at police stations for people with psychosocial and intellectual disabilities; the provision of 'more user-friendly court facilities'; more legal representation; and provision of food supplements.

Twenty two respondents spoke of the need for training, disability awareness-raising and/or guidance for criminal justice professionals; including, for example, training of police officers 'to deal with mental people'; mandatory training for

judges on mental disorders; provision of guidelines; and general 'sensitisation' of criminal justice staff.

Twenty respondents, including 10 of the 11 health practitioners, talked about the need for education, awareness-raising and sensitisation on psychosocial and intellectual disabilities across the wider community. One health respondent said:

[There will be improvement] ***only when the community and government join efforts and realise that ...they need to make sure that the environment is conducive for their rehabilitation rather than making the situation worse by stigma and neglect.***

Health respondent

Nine respondents (including at least one from each agency) called for some kind of change in government action, policy or the law in order to improve the situation of people with psychosocial and intellectual disabilities: for example, arguing for 'specific laws as regard to how to treat the mentally and intellectually disabled' and that 'government, especially the judiciary, should put in measures to see how to review such cases.'

Seven respondents (from the police, courts and the Legal Aid Board) said that there should be changes to criminal justice systems or processes to reduce delays and excessive use of detention of people with mental illness or intellectual disabilities.

And four spoke of the need for greater knowledge about psychosocial and intellectual disabilities and the implications of these conditions for the criminal justice system; for example:

***We should take a survey with the Ministry of Health so that they can tell us the statistics of these people, and we should know what brings about this illness.***

Police respondent

The themes outlined above were also reflected in respondents' answers to the questions 'What would most help you in your work when dealing with people with mental illness or intellectual disabilities?' and 'Thinking about what you have

told me, if you could change one thing to improve the lives of people with mental illness or intellectual disabilities, what would it be?' More specifically, it should be noted that almost half (26) of all 56 respondents, when asked what would help them in their work, referred to training or education for themselves and/or their colleagues. This response was common across all agency types, and particularly the police: of 15 police respondents, 11 referred to training or education in response to this specific question. When asked if they had ever received training of this kind, a majority said they had not, with only 15 (around one quarter) saying that they had. The responses to this question are summarised in Table 4.2, which shows that no Legal Aid Board or prison respondents said they had received such training, while most of the health practitioners (unsurprisingly, given that they work specifically in mental health services) said that they have had training.

**Table 4.2: Respondents' receipt of training to help them work with people with psychosocial and intellectual disabilities**

	Have you had training to help you work with people with psychosocial and intellectual disabilities?			Total
	yes	no	other	
Police	4	11	0	15
Court	2	6	1	9
Prison	0	12	1	13
LAB	0	8	0	8
Health	9	2	0	11
Total	15	39	2	56

Respondents were also asked if they were aware of any examples of good practice or 'good news' stories where they work concerning people with mental health problems or intellectual disabilities. A little over half of respondents (30 of the 56) said they were aware, but their responses tended to be very generic and for

this reason do not offer significant learning. However, some specific examples were mentioned, including the role of NGOs in providing support for people with psychosocial and intellectual disabilities; the provision of a garden in which mentally ill prisoners can work; the introduction of an education department in a prison; and work to build relationships of trust with patients in mental health services and their relatives.

## CHAPTER 05

# Individual experiences of the criminal justice system

## *Self-advocates and family members accounts, and illustrative studies*

**T**his chapter presents the direct accounts of individuals with psychosocial or intellectual disabilities who had found themselves caught up in the criminal justice system; these individuals are referred to here as 'self-advocates'. This chapter also includes an account of the experiences and perspectives of some family members of people with psychosocial and intellectual disabilities who have been in the criminal justice system, and a number of illustrative studies.

A total of 29 self-advocates with disabilities were interviewed for this study; their ages ranged between 19 and 60. Although the precise nature of self-advocates disabilities is not available, they were generally described by the interviewers as having 'psychosocial' or 'mental' disabilities. One self-advocate was said to have a physical disability. It had been hoped to compare the experiences of men and women self-advocates, but this has not proved possible, and only one woman was interviewed. All 29 self-advocates had experience of being arrested by the police and detained in a police cell, and all but two had experience of prison.

Ten self-advocates were in prison at the time of the interview, and a further 15 were being held at Chainama East Hospital Prison; the remaining four were interviewed in the community. Of those in custody (prison or prison hospital) at the time of the interview, all said that they were either being held on remand (14) or during His

Excellency's Pleasure (11). All interviews were conducted in Lusaka and Southern provinces.

For the purposes of comparing the experiences of people with and without disabilities, an additional three interviews were conducted with individuals who had been in the criminal justice system but who did not have disabilities. The small size of this comparator group limits the extent to which conclusions can be drawn about any differences in experience – and it should be noted that some of the personal accounts from people both with and without disabilities are common to both groups, such as the harsh physical conditions experienced. However, where relevant, the comments of the respondents without disabilities will be considered in this chapter.

## **5.1 Experiences of the police**

Self-advocates were asked about many different aspects of their experiences of the police, including about what had happened at the point at which they were suspected of having committed an offence. Eleven of the 29 respondents said that they were brought to the police station by the police themselves or other authorities; seven said that relatives had taken them to police; five that the 'neighbourhood watch' and three that members of the general public or local community had done so. (The remainder mentioned others who had taken them to the police or did not know who had done so.)

The vast majority of self-advocates said that they were taken to the police under suspicion of having committed an offence, including assault, theft, drugs and murder; and it is noteworthy that more than half said they were taken to the police by either family or community members. Whether this reflects the general pattern of how alleged offenders first come into contact with the police or is more likely to be the case for people with psychosocial or intellectual disabilities, is not known; see, for example, Chapter three (3.2). It is further noteworthy that around one-sixth of the respondents (five of the 29) said that they did not know why they were taken to the police station. The majority of the respondents, 17 of the 29, had only

once been taken to a police station, while three said that this had happened on more than ten occasions.

Self-advocates were asked what it had been like to be at the police station and to be held in a police cell. They were also asked whether any 'good things' had happened to them when they were at the police station, and any 'bad things'. A small number of self-advocates described their experiences of being at the police station in broadly neutral terms: for example, commenting that 'everything was OK'; 'food was provided'; 'I was made to explain what had happened'; and 'I had been at the police several times so I was known'. Three of the respondents said that 'good things' had happened at the police station, namely:

***The police officers on duty would make us clean the place and maintain good hygiene to prevent disease outbreak.***  
***I received a lot of support from family.***

When asked about 'good things' that had happened, one self-advocate said it was good that he had not been 'manhandled and flogged by the police', which appears to suggest that he had expected a level of abuse, perhaps on the basis of prior experience.

However, the large majority of self-advocates spoke of having suffered very significantly at the police station, and 25 of the 29 said that 'bad things' had happened. In respondents' accounts of the harmful aspects of their experiences of the police, and the 'bad things' which had happened, five themes were prominent, and these are shown in Box 5.1.



**Box 5.1: Accounts of negative experiences at the police station**

<p><b>Harsh physical conditions – highly inadequate provision for sleeping, overcrowding and poor sanitary conditions</b></p> <ul style="list-style-type: none"> <li>• <i>Over-crowding was another problem resulting in inmates spending the night in a sitting position.</i></li> <li>• <i>The police cell had no good toiletry facility and also sleeping on the floor was a challenge to me due to a leg injury.</i></li> <li>• <i>I once spent three sleepless nights because there was no space for me. We would sleep on reed mats.</i></li> <li>• <i>Mosquitoes, dirty environment, bad conditions and too cold.</i></li> </ul>
<p><b>Physical abuse by police officers</b></p> <ul style="list-style-type: none"> <li>• <i>I was tortured by the police officers.</i></li> <li>• <i>I was brutally beaten by the police officers before they could even get a statement from me.</i></li> <li>• <i>I was beaten, slapped and taken in to police cells.</i></li> </ul>
<p><b>Food shortages or being denied food</b></p> <ul style="list-style-type: none"> <li>• <i>I was denied food, water and had no access to the rest room.</i></li> <li>• <i>I was only given one meal a day - a piece of bread with Zigolo Sugar Solution.</i></li> <li>• <i>There was not enough food as we scrambled for the little food that was served.</i></li> </ul>
<p><b>Fighting and physical abuse among detainees</b></p> <ul style="list-style-type: none"> <li>• <i>I was bitten because I bit someone.</i></li> <li>• <i>Old inmates mock and beat new ones.</i></li> <li>• <i>I was brutally beaten by other cellmates.</i></li> </ul>
<p><b>No opportunity to give their own accounts</b></p> <ul style="list-style-type: none"> <li>• <i>I was not given an opportunity to defend myself – the police are brutal.</i></li> </ul>
<p><b>Not understanding what was happening</b></p> <ul style="list-style-type: none"> <li>• <i>When I reached the police station people were talking but I didn't understand what they were trying to say. I was in a confused state and cannot tell exactly what was happening.</i></li> </ul>

Self-advocates were asked about the extent to which they received help of various kinds when they were at the police station, and their responses are summarised in Table 5.1, below. Here it can be seen that the large majority of respondents said that they received help from friends or family; often this help was said to take the form of food brought to the police station by relatives. In contrast, only five respondents said that they had received medical help at the police station, although nine indicated that this was because they had not wanted or needed such help. Others said that medical help (most often, treatment for physical complaints) was something they had wanted but was not forthcoming. One respondent said that he would have liked to be assessed and put on treatment; while another said, ‘Medicine would have helped me because I was failing to talk.’

Six respondents said they received legal help, of whom most said that this was provided by the Legal Aid Board. Most others said that they wanted or needed legal help but that this was not provided – such as one respondent who said that the only help he received was ‘a little legal advice from my cellmates’. Seven respondents said that they received help to understand what was happening at the police station, although five said they did not want or need such help. When asked about their levels of understanding, 13 and 20 respondents, respectively, said that they did not understand what was happening at the police station and did not understand what would happen after they left.

**Table 5.1: Extent of help received at the police station**

Type of help received at the police station	Help received	No help received	Mixed/partially received	Help not wanted or needed	Don't know or nil response
Medical help	5	15	-	9	-
Legal help	6	18	3	2	-
Help with understanding	7	14	2	5	1
Help from friends or family	23	6	-	-	-

## 5.2 Experiences of the courts

Of the 29 self-advocates, 26 had experience of attending court as a defendant. Self-advocates were asked to describe what it was like when they went to court, and whether any 'good things' and any 'bad things' happened when they were at court. Compared to how they had spoken about their experiences of the police, respondents were more likely to describe their experiences of court in broadly neutral or even mildly positive terms, and ten of the 26 said that 'good things' had happened at court. Neutral or positive comments on court experiences include the following:

- *The atmosphere was a bit friendly as the cops guided me accordingly, and the court clerks were also accommodating, as they did not look down on me during the process.*
- *I was made to stand and they read the charge for me.*
- *The trials were fairly done.*

Notwithstanding these more positive comments, however, most self-advocates did have critical comments to make about court, and 17 of the 26 said that 'bad things' had happened at court. The main themes that emerged in these negative comments are presented in Box 5.2, below.

### Box 5.2: Accounts of negative experiences at court

#### Unfair procedure or outcomes, particularly where proceedings resulted in detention during His Excellency's Pleasure

- *My case was mishandled. I was jailed without being found guilty.*
- *[The bad thing at court was] being referred to Chainama East [Hospital Prison] which has made my stay in prison indefinite.*
- *I was not given an audience as I was referred to Chainama Hospital for assessments before I could defend myself.. The courts recommended that I am detained during His Excellency's Pleasure and I have been in Chainama for four years now.*
- *[The bad thing at court was] not being heard.*
- *Up to now, each time I appear in court I don't see the people who accused me.*

<b>A frightening experience</b>
<ul style="list-style-type: none"><li>• <i>It was a scary environment as [there were] a lot of men in uniform.</i></li><li>• <i>The environment is threatening.</i></li><li>• <i>Delays and adjournments</i></li><li>• <i>There were too many adjournments.</i></li><li>• <i>I have not been sentenced up to now. The whole process has been really delayed.</i></li></ul>
<b>Not understanding what was happening</b>
<ul style="list-style-type: none"><li>• <i>When I was about to appear in the dock, one police officer just came and grabbed me by my hand and told me that I will appear next time. He told me that I was going to the prison. I didn't understand that.</i></li><li>• <i>I asked my brother to explain what was happening but he didn't. I went to the High Court again and they didn't explain anything and later there was a judgement by a female judge who said I should be held during His Excellency's Pleasure.</i></li></ul>

Respondents' answers, when asked about whether they received various kinds of help at court, are summarised in Table 5.2. This presents a mixed picture of the nature of help received or not, with, for example, a majority of respondents (18 out of 26) saying that they either received medical help or did not require it, and a similar proportion (17 out of 26) saying that they received or did not require help with understanding. A little over half of the respondents said they had help from friends or family. And half of the respondents reported receiving legal help, including three who said they received legal assistance at some points but not at others (two of the latter said they received help through legal aid when appearing at the High Court but not at magistrates' courts). Another respondent who reported receiving legal help qualified this by saying that he could not understand what the lawyer was saying because he was using English. Contrasting accounts of the availability of legal help are presented in Box 5.3.

**Table 5.2: Extent of help received at court (those with experience of court only)**

Type of help received at court	Help received	No help received	Mixed/ partially received	Help not wanted or needed	Don't know or nil response
Medical help	11	8	-	7	-
Legal help	10	13	3	-	-
Help with understanding	16	8	-	1	1
Help from friends or family	14	12	-	-	-

**Box 5.3: Contrasting accounts of access to legal help**

Legal help received
<ul style="list-style-type: none"> <li>• <i>There was someone who was explaining things for me. I think he was a lawyer.</i></li> <li>• <i>The lawyer helped to convince the court that when I committed the crime I was not in the right state of mind. I have not been to court since then.</i></li> <li>• <i>I managed to get a lawyer from legal aid. My Auntie facilitated that process.</i></li> </ul>
Legal help not received
<ul style="list-style-type: none"> <li>• <i>I wanted to be assisted to be released since I was not found guilty, but the court only established that I had a psychosocial problem... I would have liked legal assistance.</i></li> <li>• <i>There was no legal help rendered to me. It is very difficult to get lawyers in Solwezi... It would have been good for me to have a lawyer to represent me in the courts of law and also to give me some legal advice.</i></li> <li>• <i>I would have loved to have a lawyer.</i></li> </ul>

### 5.3 Experiences of prison

As noted above, 27 of the self-advocates had spent time in prison, of whom all but two were in custody (in prison or prison hospital, and either on remand or being held during His Excellency’s Pleasure) at the time of the interview. The vast majority (22) had been to prison once only. Four had been to prison between two and four times; and one had been in prison more than ten times. The lengths of time that respondents had spent in prison and/or prison hospital to date (those currently in custody only) are shown in Table 5.3, broken down by prisoner status.

As detention during His Excellency’s Pleasure is indefinite, the lengthy terms served to date by prisoners so detained is not unexpected; that nine of the remand prisoners have spent at least one year on remand, of whom five have been on remand for at least two years, is of particular concern and reflects the long periods that people, especially those with psychosocial and intellectual disabilities, can spend in pre-trial detention (see, for example, OSISA, 2011).

**Table 5.3: Lengths of time respondents have spent in prison/ prison hospital to date (current prisoners only)**

	Prisoners on remand	Prisoners detained during HEP
Don't know	1	-
Under 1 year	4	-
12-23 months	4	1
24 months to under 5 years	5	7
5 to 10 years	-	3
Total	14	11

When asked what it was like to be in prison, most self-advocates described very negative aspects of prison life. In reply to the question of whether 'bad things' had happened to them in prison, the large majority of those with prison experience

said that bad things had happened to them. However, nine respondents said that ‘good things’ had happened and talked about, for example, having learned bricklaying and electrical skills, ‘watching television’, ‘learning about ... the justice system’ and ‘being in the prison cells without any conflicts’.

Box 5.4 presents the main themes to emerge in respondents’ accounts of the negative aspects of prison life.

**Box 5.4: Accounts of negative experiences of prison**

<b>Poor physical conditions, particularly in terms of provision for sleeping, overcrowding, and lice infestation</b>
<ul style="list-style-type: none"> <li>• <i>The prison was overcrowded and infested with lice.</i></li> <li>• <i>The sleeping arrangement is unbelievable</i></li> <li>• <i>There are no blankets and so much congestion in remand prison.</i></li> <li>• <i>A lot of congestion in the prison and this makes the sleeping very uncomfortable. No beddings thus it is so cold.</i></li> <li>• <i>Especially sleeping is difficult; I just sleep on one side.</i></li> </ul>
<b>Limited or poor quality food</b>
<ul style="list-style-type: none"> <li>• <i>The food in this prison is not good enough for the prisoners. The beans are not well prepared as it is half cooked and smelly.</i></li> <li>• <i>Food is a problem.</i></li> <li>• <i>Bad experience due to the hunger.</i></li> </ul>
<b>Physical abuse by other prisoners</b>
<ul style="list-style-type: none"> <li>• <i>When you are being assaulted there is no one to help.</i></li> <li>• <i>I endured beatings and bullying especially from the prison captains [prisoners who have been given a level of authority over others].</i></li> <li>• <i>I was once strangled by my fellow inmate when he had a relapse.</i></li> <li>• <i>Mistreatment (physical or not) by prison staff</i></li> <li>• <i>Beatings from the prison officers.</i></li> <li>• <i>There is ill-treatment from prison warders.</i></li> </ul>
<b>Poor or absent medical treatment</b>

- *The sanitary conditions are not OK. My skin infection is becoming worse.*
- *I got sick in the prison because my medication was finished.*

While experiences of physical abuse (from staff and fellow-prisoners) were referred to by a number of self-advocates in their general comments, they were also explicitly asked if they had experienced bullying or people being nasty to them in prison; 16 respondents said this had happened to them, while 12 said they had not been bullied (and one did not answer). Also noteworthy with respect to comments on 'bad things' experienced in prison generally, and 'bullying' more specifically, was that respondents currently at Chainama East Hospital Prison were less inclined to say that they had had such experiences than those from other prisons. For example, only four out of 15 prisoners from Chainama East Hospital Prison said they had been bullied, while 6 said they had not been bullied and a further 5 said that they had been bullied in other prisons, but not since they had been in Chainama East Hospital Prison.

Self-advocates were asked what they did in prison during the day. The most common responses were that time was spent doing 'nothing' (or 'sitting' or 'loitering around', as some expressed it), watching television, cleaning, and playing draughts. Other activities mentioned were gardening, religious worship and prayer, 'digging ditches' and working as a tailor.

Self-advocates accounts of their access to different kinds of help while in prison are summarised in Table 5.4. This table shows that the large majority of respondents reported being able to access medical help in prison. Most respondents currently in prison hospital reported receiving psychiatric treatment of some kind; the others tended to say that they received medication as required, but did not specify the nature of this medication. Few respondents said that they had received, while in prison, any legal help or help with understanding their situation. Several emphasised that they were keen to have legal help, but found it impossible to access this. Around half the respondents spoke of receiving help from friends and family, usually in the form of visits and provision of food. Some, in contrast, spoke of having lost contact with family and receiving no visits or support as a result. Few specific comments were made about either the provision



or absence of help with resettlement in the community following release from prison, although some said that counselling was offered.

**Table 5.4: Extent of help received in prison (those with prison experience only)**

Type of help received in prison	Help received	No help received	Mixed/ partially received	Help not wanted or needed	Don't know or nil response
Medical help	22	3	2	-	-
Legal help	4	17	3	1	2
Help with understanding	7	15	-	3	2
Help from friends or family	11	12	3	1	-
Help with resettlement	7	9	1	-	10

#### 5.4 Self-advocates with and without disabilities

As noted above, in addition to the 29 self-advocates with disabilities who were interviewed for the study, three self-advocates who did not have disabilities were interviewed. All three of these interviews were conducted in prison, where one was being held on remand and two under sentence. (To avoid confusion between self-advocates with and without disabilities, the three self-advocates without disabilities will be referred to as 'prisoners' in this section.) Because of the very limited number of interviews with prisoners, it is difficult to identify which aspects of the self-advocates' experiences described above are related to their disabilities, and which are common to all individuals, with or without disabilities, who enter the criminal justice system.

The three interviews with prisoners raised many of the same issues as those which arose in interviews with self-advocates. For example, prisoners referred to the very harsh conditions of police detention and in prison:

***Conditions in the [police] cells were bad with no proper ventilation. The police cell I was in was fully packed.***

***It is hell [in prison], in that there is poor sanitation, contaminated drinking water, and we use the dirty toilets. We are packed in small cells, for instance a cell with capacity for 20-30 is occupied by 100-120 prisoners, and some inmates sleep while standing.***

They also spoke of limited access to legal help at the police station and at court. The individual who was on remand at the time of the interview stated that he had been struggling to understand what was happening in his case. He said:

***I would have loved to be notified what is happening to my case, but there has never been any communication, not even a call from the lawyer.***

Notwithstanding the commonalities in the accounts of the self-advocates and the prisoner respondents, there is some evidence from the interviews with self-advocates that their disabilities have a large, negative impact on their experiences of and progress through the criminal justice system. There are two main ways in which this applies.

First, comments from many of the self-advocates with disabilities suggest that poor conditions of police and prison detention – not only in terms of the harsh physical environment, but also in terms of incidents of violence and abuse among officers and detainees alike, and the lack of access to medical help and other forms of social support – can exacerbate pre-existing needs and vulnerabilities. And, at the same time, pre-existing needs and vulnerabilities can make the experience of poor conditions and abusive relationships more difficult to bear. The following are among self-advocates' comments, which illustrate this kind of interplay:

***Due to the state I was in, the police could not understand my behaviour and ended up detaining me for one week... Due to the psychotic state I***

***was in, I spent most of the day and night standing. I failed to sit down even when I was told to do so. I was confused.***

***I was in a mental crisis and brutally beaten. I cannot remember what happened ... I was ill-treated [at the police station]. Life was hard and I was starved. Everything was in one place including the toilet. I regained consciousness in the cell and realised I had a swollen leg. I didn't know why I was there.***

***[In prison] so-called normal people tell you that you are mad and it feels bad.***

***When under punishment [in prison], I was starved and had no medication while I was kept in the guard room.***

Secondly, as illustrated over the course of this chapter thus far, self-advocates' accounts of their experiences of the criminal justice system show that they were often unable to exercise their legal rights, not only because of the structural constraints of an overburdened and under-resourced system, but also because of their own difficulties understanding the justice process and communicating with the authorities. On the basis of the interview material alone it is not possible to make any kind of objective assessment of the fairness or otherwise of the criminal justice procedures and outcomes to which these individuals were subject; but what is clear is that these procedures and outcomes were often experienced as entirely arbitrary, inexplicable and unfair, as well as grindingly slow. Self-advocates' sense of their own powerlessness, and of the criminal justice system's unremitting power over them, is apparent from remarks they made at various points in the interviews, including direct pleas for help, which several made of the interviewers:

***I would have liked the police to understand my situation and counsel me. Instead they called me a 'Chainama case'.***

***I have no lawyer; in fact I need you to find me a lawyer to represent me in this case.***

***They called my name and asked if it was me who killed this person, I did not answer; this is how they sent me to Chainama.***

***Are you going to take me out of this place?***

***The police are bad people. I really want to go home but they can't allow me. They just want to fight with me. It's not right ... I don't like it here [in the prison]. They are not my friends. I want to go home.***

***[I have] no information as to when I will be released. Most people from the HEP section<sup>1</sup> died because of poorer conditions than those in the other sections.***

## **5.5 Family members' perspectives**

To supplement the information from interviews with self-advocates, a small number of interviews were held with family members of people with psychosocial or intellectual disabilities who had been in the criminal justice system. Six family members were interviewed: three mothers, two fathers and one brother of individuals with psychosocial or intellectual disabilities. Additionally, a focus group was held with seven family members of individuals with disabilities: namely, one wife, three mothers and three sons.

Some themes emerged from these family member discussions which echoed what was said by self-advocates. Family members' spoke of delays in the progress of proceedings; one father, for example, said that the court process was 'too slow' and that his son was held on remand for a year and a half. Another father said that his son's case was adjourned eight times in eight months; and in the ninth month his son was acquitted. Most family members said that medical treatment and support to address their relatives' disabilities was not forthcoming within the criminal justice system. Further, some family members described active mistreatment of their relatives by criminal justice professionals:

***[My son] was detained and beaten [by the police].***

***He was badly beaten and the police even denied relatives to take food to him because they labelled him as a thief... The police should not have beaten him the way they did because that caused his mental illness.***

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<sup>1</sup> Where prisoners are detained during His Excellency's Pleasure

***The conduct of the officer in charge was bad. He held information from us about what was happening and was biased.***

The poor way in which many of their relatives were dealt with by the criminal justice system was linked by several of the family members to prevailing social attitudes. The police and others in the criminal justice system, it was said, were reflecting in their behaviour the contempt, stigma and fear attached to people with psychosocial and intellectual disabilities across much of society:

***When you look at the attitude of the police it can be bad for everyone. But when a person has a label, stigma because of their problems, it is worse.... It's ignorance; they [the police] don't understand people with mental disability. And it's the same for prison warders. They are also human beings; they have their own feelings and their own fear. Society has its norms, this is normal; they don't know what to do. I don't blame them.***

***The police are scared of mentally sick people. Once, the policeman said, 'If he touches me I will shoot him with a gun.' They are not kind.***

***Starting with the police, they should be trained to understand persons with psycho-social disabilities. They should be made aware that they are likely to deal with people with different disabilities in the course of their work... Stigma and discrimination does not seem to lessen. It will take a lot of concerted effort to bring about awareness.***

From the family members' perspectives, prevailing negative attitudes toward disability are manifest also in the lack of health and social care provision for people with psychosocial and intellectual disabilities in the community:

***Every clinic should have mental health help, but the [qualified staff] aren't there. Mental health services should be at each clinic, like HIV.***

***And it's not just about medication, there are other things. The medical staff should spend more time talking to the person, not just say, 'here's your drugs. Next!'***

***There should be services in the community, rehabilitation responses as close to home as possible.***

***There should be things for people to do during the day. My mum, she feels that she is not welcomed by society.***

The implications of this lack of provision appear to be two-fold: first, in the absence of community services to support well-being, individuals with psychosocial and intellectual disabilities are more prone to crisis, which in turn can lead to arrest and detention by the police; and second, for their part, the police then have little alternative to either pursuing criminal prosecution or seeking admission for inpatient psychiatric treatment:

***The police will say to us: 'Go and get a court order [for hospital treatment].'***

***When a person is very violent there is a law that says you can get a court order and that person is taken to hospital. When [the police] came for my son they lifted him like a goat, they tied his hand and legs to a gun the way a goat is carried. My husband and I said to ourselves, 'What have we done? Why do they treat him in such a way?' They think they can do anything, which is why some families keep people shut in the house.***

***Is there a way that the criminal justice system or anyone else would provide psychological and psychosocial help to my brother because he becomes violent at times? ... He is a danger and he is capable of killing someone.***

Some family members also stressed that they themselves did not have relevant knowledge or understanding about how best to help their relatives:

***When I took my son to Chainama I was also stressed and I needed help – the care givers need to know what to do.***

***I went to Chainama to find out about my mum's illness, I wanted to know, but they had lost all the forms. We need systems and structures and linkages across. Care givers need information about the conditions.***

Notwithstanding the array of family members' concerns about their relatives' experiences of the criminal justice system, some family members had positive comments to make. For example, one respondent said that the police, court and prison had acted 'professionally' towards his brother, and that a lawyer had been provided through legal aid; however, this respondent did complain that his brother received food only once a day in the prison. In general, family members were less critical of the courts than of the police or prisons, as was also true of the self-advocates. The only specific aspect of the court process which was criticised was its slowness, and one respondent noted approvingly that the court had referred his son for a medical examination.

## 5.6 Illustrative studies

The final section of this chapter presents short summaries of a number of cases involving individuals with psychosocial disabilities who have been caught up in the criminal justice system. These illustrative studies, which are drawn from material held by the Paralegal Alliance Network, the Legal Resources Foundation, a written judgement (in the case of Anaenyi and others), and a report by consultant psychiatrist Dr Msoni (2013), provide insight into how some of the issues discussed above are played out as individuals progress through the system. Studies three to seven illustrate ways in which people can simply become 'lost' within the criminal justice system for years and even decades, with devastating effects for the individuals involved. In contrast, studies eight and nine provide positive examples of practice within the criminal justice process.

### ***Study 1: HCV v IP: Use of derogatory terminology at court***

- *An order was made by a subordinate court for a medical report upon a 31-year-old woman known to psychiatric services and who had a diagnosis of bipolar disorder. She was an undergraduate university student, in her third year of a bachelor's degree in education. At the time of the court hearing she was asymptomatic and had been so for several months.*
- *The woman was referred to as an 'imbecile' in court despite repeated requests to the court that the 'learned persons' desist from using this term.*
- *Prosecutor: 'Can you now submit to the court your findings on this imbecile?'*
- *Doctor: 'May we not refer to her as an imbecile!'*
- *Source: Msoni (2013)*

**Study 2: The people vs BK: Imposition of detention during His Excellency's Pleasure for a minor offence and without a medical examination**

- *BK, a 32-year-old man, was sentenced to detention during His Excellency's Pleasure under by a subordinate court for 'insulting' a female police officer. He claimed to have been drunk at the time of the alleged offence and thought that the officer was 'just an ordinary woman and I was passing amorous remarks'.*
- *Without any medical evaluation, BK was admitted to Livingstone Prison during His Excellency's Pleasure, where three consecutive bi-annual reviews revealed no evidence of mental illness or need for psychotropic medication. He was eventually recommended for release.*
- *Source: Msoni (2013)*

**Study 3: The People vs RC: Defendant held in general prison on remand pending treatment**

- *RC was a 25-year-old male who was unable to complete school because an illness set in. He had developed delusions that his father was against him and heard voices saying, 'If he continues troubling you, kill him.' RC did kill his father and remained at the side of the body until discovered three days later. A diagnosis of schizophrenic illness was made and treatment commenced.*
- *The report to the High Court upon RC, dated March 2009, recommended that he needed further treatment, care and rehabilitation. RC has not yet appeared before the High Court and remains a remandee in a general prison where he is most likely not receiving the treatment and management he needs, making his condition deteriorate and less amenable to treatment as time passes.*
- *Source: Msoni (2013)*



**Study 4: The People vs KM: Defendant held on remand pending medical examination**

- *KM is facing a murder charge, following his arrest in appearance for plea in October 2006. An order was issued for a mental examination in accordance with Section 17 of the Criminal Procedure Code. However, he was not admitted to Chainama for the examination until 2013 (seven years later). Doctors have informed the Legal Resources Foundation (LRF) that his health has deteriorated because he has not been receiving medication. LRF are pushing for the report to be done so that his health can be ascertained and he can be brought before the court of law to stand trial. Source: Legal Resources Foundation*

**Study 5: The People vs EKM: Defendant on remand pending treatment until fit to stand trial.**

- *EKM was employed as an engineer in the mines following completion of his university degree. He was married with three children. At the age of 38, he suddenly developed the belief that he was 'God to be' and 'Jesus Christ' and started to exhibit bizarre behaviour at home and at work.*
- *On a visit to his parents in their village he narrated his beliefs. His mother and brother argued with him and a fight ensued, in which EKM killed his mother and assaulted his brother. He was sent to Chainama East Hospital Prison under Section 17 of the Criminal Procedure Code. A medical report was completed which indicated that he was under the influence of a mental illness at the time of the offence and that he was not fit to stand trial as he still had active symptoms of a major mental illness.*
- *Having gone back to court he was sent back to Chainama East 'for further treatment until fit to stand trial'. He was treated and rehabilitated adequately over several years. Although he had some symptoms he improved to such an extent that he could not act upon his delusions. However, Chainama's communication with the court proved futile. He died at Chainama East at the age of 65, after more than 25 years in detention without ever having been tried.*
- *Source: Msoni (2013)*

**Study 6: JK: Petition filed (outcome unknown) on behalf of defendant detained indefinitely pending medical examination**

- *JK is a 44-year-old petitioner with schizophrenia. In 1998 he was charged with murder and detained at Kamwala Remand Prison before being transferred to Chainama East Hospital Prison for assessment of his fitness to stand trial. However, he has not been taken back for trial but rather has been detained indefinitely at Chainama East, apparently due to administrative problems within the Directorate of Public Prosecutions and other parts of the criminal justice system; he has currently been in detention for 16 years. His lawyers have petitioned that he has been detained for too long and should be released unconditionally. They have pointed out that his health has deteriorated and a speedy trial is necessary as he has already served a large part of any sentence that would be passed.*
- Source: PAN

**Study 7: AS and five others vs the Attorney General: Successful petition filed relating to detention without trial**

- *The six petitioners face charges of murder, and all had been subject to psychiatric examinations between the years of 1979 and 2005. Each petitioner had been found 'not fit to stand trial, make a plea and follow the proceedings' on the grounds of suffering from schizophrenia. All had been detained at Chainama East Hospital Prison since the time of medical examination.*
- *The petition was filed on the grounds that their indefinite detention without trial was unlawful under the Constitution of Zambia, as it violated their right to a fair hearing within a reasonable time and their right to liberty. The case was heard by the High Court in June 2014; the court found that the continued detention of all the petitioners was unlawful because 'a wait or a delay of between 9 and 35 years for petitioners to take plea cannot, in the circumstances of this case be said to be reasonable'. The court ruled that the petitioners be unconditionally released forthwith.*
- Source: High Court judgment 2014/HP/0620

**Study 8 : The People vs KW: Help given to progress a case**

- *KW was arrested and detained in February 2013. He appeared in court and was charged with two counts of murder. The case was committed to the High Court, and the defendant was referred to Chainama for medical assessment after the court observed that he was unable to take plea.*
- *The doctors at Chainama noted that KW showed signs of mental illness, but they could not prepare a report because of a language barrier. The Legal Resources Foundation (LRF) provided an interpreter, enabling the report to be prepared; this shows that KW is unfit to stand trial. Subsequently the LRF lawyers requested that the Clerk of Session secure an earlier date for the hearing, which has been arranged. It is likely that following the hearing KW will be sent back to Chainama for continuing treatment*
- *Source: Legal Resources Foundation*

**Study 9: The People vs OM: Effective rehabilitative work in prison**

- *OM was a 25-year-old prisoner, detained during His Excellency's Pleasure, who had committed an offence in a post-epileptic condition. Before the offence he was in his third year of a BSc degree. He was exceptionally good in mathematics, and in prison made use of his talent by giving lectures to fellow prisoners. He took them up to Grade 9 and 12 levels.*
- *In this case, OM's skill was identified for use in the process of rehabilitation. He seemed to enjoy the task of teaching, as he was often seen beaming with satisfaction after lectures. He was released five years later, after his condition had stabilised and after relatives who could continue supporting him had been identified.*
- *Source: Msoni (2013)*

## CHAPTER 06

# Discussion and Recommendations

**T**his concluding chapter draws together the themes discussed over the preceding chapters by, first, highlighting the main findings of the research process; secondly, presenting a series of recommendations aimed at improving both policy and practice with respect to how people with psychosocial and intellectual disabilities come into contact with, and are managed by, criminal justice services; and thirdly, considering how implementation of these recommendations can be supported through proposed follow-up work to this project.

### 6.1 Main findings of the research

This study set out to obtain an in-depth understanding of the intersection between disability and criminal justice and, in particular, the extent to which people with psychosocial and intellectual disabilities might be more adversely affected by their contact with criminal justice services than people without such disabilities.

In addition to a review of the legislative and policy framework, as it relates to the management of people with psychosocial and intellectual disabilities in contact with criminal justice services, the study involved gathering a wide range of views from over 100 interviewees. Interviewees included senior stakeholders from government and civil society organisations; practitioners from criminal justice and health; family members of people with psychosocial or intellectual disabilities; and self-advocates – individuals with psychosocial or intellectual disabilities with direct experience of the criminal justice system. Respondents spoke candidly of their experiences; they raised concerns, and made suggestions about how the situation might be improved. While the personal accounts of self-advocates and family members are at times harrowing, a small number of positive reports were

also made. Although many of the negative experiences of self-advocates are distinctly related to their disability and, in particular, the lack of an appropriate response to their disability, it is noteworthy how 'mainstream' many of their negative experiences are. For example, harsh physical conditions impact all prisoners; this is not adverse treatment linked to an individual's disability, even though their experience of the same harsh conditions might be felt more keenly because of their disability.

The main findings of this study are discussed under the following headings:

- Stigma and discrimination

***Prevalence of people with psychosocial and intellectual disabilities in the justice system***

- Harsh conditions
- Disability discrimination
- The legislative and policy framework
- Collaborative working
- Resources and priorities
- Disability awareness training and workforce development
- Public sensitisation
- Concluding remarks

***Stigma and discrimination***

The vast majority of respondents involved in this study said that people with psychosocial and intellectual disabilities face stigma and discrimination in society, generally. Inevitably, these wider social attitudes are reflected in how people with psychosocial and intellectual disabilities both come into contact with, and are managed by, criminal justice services; and negative attitudes towards disability are found in discriminatory legislation, such as the Mental Disorders Act 1951, and, consequently, in public policies and practice.

To change societal attitudes towards people with disabilities, a transformational shift in public perception and behaviour is needed. Ratification of UNCRPD and the Persons with Disabilities Act 2012 has set the scene for change. More enlightened provisions are reflected in the draft Constitution (November 2014)

and, notwithstanding some limitations, in the forthcoming Mental Health Bill (replacing the Mental Disorders Act). Implementation of new legislation should begin to change behaviour, which, in turn will help to encourage, inform and reinforce change.

Prevalence of people with psychosocial and intellectual disabilities in the justice system It was noted, in Chapter two of this report, that little information is available about the prevalence of people with psychosocial and intellectual disabilities within the general population, and the assessment of prevalence in the criminal justice population poses even greater challenges.

Criminal justice practitioners interviewed for this study tended to be more familiar with terms such as 'mental illness' and 'mental health problems' than they were with psychosocial disability; while amongst all interviewees there seemed to be less awareness, understanding or acknowledgement of intellectual disability than of psychosocial disability.

Psychosocial and intellectual disabilities can range from mild, which are generally less obvious, through to severe, which are generally more obvious conditions. When people come into contact with criminal justice services, individuals with more severe and/or obvious conditions are perhaps the most likely to be referred by the courts for a medical assessment and subsequently be detained during His Excellency's Pleasure. However, there are likely to be many more individuals with psychosocial and intellectual disabilities caught up in the criminal justice system. For example, people with mild or less obvious conditions who are likely to proceed through the criminal justice system much as any other person; and people who have learned how to cope with their condition, and who may try not to draw attention to it for fear of ridicule, discrimination, or worse. Others may develop a psychosocial disability during their time in detention.

International literature, including from the World Health Organisation (2007b), points to high numbers of people with psychosocial disabilities caught up in criminal justice systems around the world. This is due to a number of reasons of which poverty (which is frequently associated with minimal or non-existent economic and legal rights for people with disabilities), and limited access to appropriate community-based medical care and social support (which can exacerbate an individual's condition leaving them at particular risk of contact with

the police, particularly in moments of crisis), are especially significant; and both of these circumstances can be said to apply in Zambia. Although less is known, internationally, about people with intellectual disabilities, where data are available indications are that there is a greater prevalence of such individuals among the offender population than in the general population. The reasons for this are similar to those described above for people with psychosocial disabilities, and include poverty and limited access to community-based social support, which can leave individuals vulnerable to exploitation, crises and contact with the police.

A relatively low prevalence rate of people with psychosocial and intellectual disabilities within the criminal justice system was reported by criminal justice practitioners, and this may reflect the numbers of people in pre-trial detention for medical assessment and detained during His Excellency's Pleasure. The reported low prevalence, however, contrasts strongly with the interview responses of criminal justice practitioners. For example, when asked for their views about suspects, defendants and prisoners with psychosocial and intellectual disabilities, respondents spoke in detail about their circumstances and problems, and gave considered responses about how improvements might be made; responses that indicate that their contact with such individuals in the criminal justice system is perhaps more commonplace than their estimates of prevalence suggest.

The reported low prevalence rates may also reveal a lack of awareness of psychosocial disabilities and of intellectual disabilities, in particular; and the absence of procedures for formally identifying people with such disabilities'. While practitioners were able to recount some of the difficulties (and distress) faced by individuals in their care, and to suggest improvements and solutions, they may not have felt able to estimate prevalence. In short, practitioners were more likely to notice an individual's demeanour and/or behaviour and conclude that something was 'amiss', than they were to recognise and report that an individual might have a psychosocial or an intellectual disability.

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1 While no culturally specific screening tools were identified for use in Zambia, in 2014 a screening tool was developed in Malawi to help identify people who might have intellectual disabilities – the Zomba ID screen (ZIDS). With minimal adjustment, the Zomba ID screen may be appropriate for use in Zambia. For further information contact Dr David Douglas: [dougld@doctors.org.uk](mailto:dougld@doctors.org.uk)

It seems likely, therefore, that the reported low prevalence rates reveal limited awareness of psychosocial and intellectual disabilities, and the absence of procedures for identifying such disabilities rather than genuinely low levels amongst the criminal justice population. Better recognition of people with such disabilities through training, and proper implementation of procedures that require criminal justice personnel to note the 'condition' of an individual on arrival into police detention, and health screening on entry into prison should be pursued. To understand actual prevalence rates in Zambia, further research is needed. However, it is not necessary to know exact numbers in order to make positive changes that would benefit people with psychosocial and intellectual disabilities in contact with criminal justice services.

### ***Harsh conditions***

The harsh physical conditions experienced by people held in police detention and in prison have been described in a number of reports (OSISA 2011; Dissel, 2011; US State Department, 2012); and are described in Chapters two and five of this report. In their most recent inspection of prisons (which also included police stations and posts), the Zambia Human Rights Commission (2014a) found that while some improvements to prison infrastructure had been made, prisons were not generally fit for habitation. The same inspection found evidence of torture by police officers in the form of beatings, and physical assault, injuries and psychological abuse by officers and other detainees. Evidence from this study further demonstrates the punishing environment of detention, both in police stations and in prison. Overcrowding, insanitary conditions, food shortages and physical abuse, both between detainees and meted out by criminal justice personnel, seem commonplace.

While such experiences are not the preserve of individuals with psychosocial and intellectual disabilities – harsh physical conditions and physical abuse affect all detainees – evidence from this study suggests that people with psychosocial and intellectual disabilities are more vulnerable to the negative impact of such experiences. For example, due to the nature of their condition, people with psychosocial and intellectual disabilities may be less resourceful than their peers and therefore less able to cope in the prevailing conditions of detention. This, together with limited access to necessary support and medical care, can exacerbate pre-existing conditions making a poor or harsh environment more



difficult to bear; it can also trigger problems for individuals pre-disposed to certain conditions, including psychosocial disabilities.

It is not possible from this study to determine whether detainees with psychosocial and intellectual disabilities were more likely to experience 'bad things' and, more specifically, 'bullying' and beatings than detainees without such conditions. It is noteworthy, however, that while most self-advocates reported beatings and brutality at the hands of other detainees and criminal justice personnel, they were less likely to say that such things had happened to them at Chainama East Hospital Prison. That is not to say that detention in hospital is necessarily a more positive experience, as overcrowding in 'decrepit' dormitory accommodation and sedation are commonplace (MDAC and MHUNZA, 2014).

Some respondents suggested that separate accommodation for prisoners with psychosocial and intellectual disabilities should be introduced; however, while this might be expedient in the short term, it fails to address the underlying causes of the problems faced by such prisoners and, in the longer term, is unlikely to be compliant with UNCRPD and the People with Disabilities Act. This is because UNCRPD and the People with Disabilities Act are about ensuring the inclusion in society of people with disabilities, which would not be in keeping with segregation on the grounds of disability (however well intentioned such a response might be). A number of reports (such as those cited earlier in this section), call for improvements in the conditions of detention, and any such improvements are also likely to be of benefit people with psychosocial and intellectual disabilities. Two particular concerns raised by respondents for this study were that of overcrowding, which could be addressed, in part, by the proper use of bond and bail (see, for example, Zambia Human Rights Commission 2014b); and beatings and other brutality at the hands of both criminal justice personnel and other detainees, which could be addressed through a zero tolerance approach.

### ***Disability discrimination***

People with psychosocial and intellectual disabilities who engage in, or who are alleged to have engaged in, offending behaviour are likely to come to the attention of the police in much the same as anyone else; however, powers invested in the police extend the scope for arrest and detention to non-criminal behaviour that is commonly associated with people with such disabilities, consequently heightening their risk of becoming caught up in the criminal justice system. For example, a lack

of community services for people with psychosocial and intellectual disabilities can lead to crises, which may manifest in behaviour that family and community members believe is distressing or life threatening to the individual concerned, or is perceived as 'challenging', 'out of control' or merely 'odd'; and in the absence of community services, alerting the police may be the only option available to them. The police, however, are not trained in how to deal with such situations and often have little alternative themselves other than to arrest and detain the individual concerned. Thus, the legislative framework and lack of community services conspire to create an unreasonable and potentially discriminatory police response to people with psychosocial and intellectual disabilities, when they are in most need of support.

The structural constraints of an overburdened and under resourced criminal justice system can result in delays and long periods in pre-trial detention for everyone involved in criminal justice proceedings. However, for people with psychosocial and intellectual disabilities the risk of delay is much greater. A combination of shortcomings in legislation and operational practice, possibly compounded by entrenched prejudice, has created a situation whereby periods spent in pre-trial detention are routinely extended far beyond the legal minimum. For example, an individual with, or suspected of having, psychosocial or intellectual disabilities may first be made to wait in pre-trial detention for a medical assessment, which generally takes between three and six months, but can be for much longer (Dissel, 2011); following their assessment, they are likely to wait again to be returned to court – and at each stage, both pre and post medical assessment, there is evidence of individuals becoming 'lost' in the system. Depending on the assessment, the individual might then be detained indefinitely (during His Excellency's Pleasure) and without trial, with inadequate review procedures, no opportunity for appeal – and again, the risk of becoming 'lost' in the system. Further, the level of seriousness of the alleged crime, for example, whether it is theft or murder, is not reflected in the indefinite periods spent in detention.

By law, individuals detained during His Excellency's Pleasure should be subject to a six-monthly review and, if their condition has improved sufficiently, they may be recommended for release. However, limited health care and a generally ad hoc review process conspire against this eventuality – meaning that detainees frequently spend very long periods in detention, with little hope of release.

Criminal justice proceedings can be difficult for anyone to navigate, understand and participate in, especially in the absence of legal assistance. Due to the nature of their condition, many people with psychosocial or intellectual disabilities will have particular difficulties. For example, they might have reduced communication and comprehension skills and experience heightened levels of anxiety, which can make them especially vulnerable to coercion and unfair decision making. Most self-advocates interviewed for this study highlighted their own difficulties in understanding the justice process and in communicating with the relevant authorities; this, notwithstanding the provision in the Persons with Disabilities Act, which states:

***Subject to the Constitution, law enforcement agencies shall take into consideration the disability of a person on arrest, detention, trial or confinement... and make reasonable accommodation for that person... including at investigative and other preliminary stages***

(Section 9)

The Persons with Disabilities Act also contains the provision for effective participation in proceedings (Section 8); and the right to a fair trial is enshrined in the new draft Constitution (Section 49; November 2014). The right to a fair trial, which is predicated on effective participation, can be supported by legal assistance and 'reasonable accommodation'. Reasonable accommodation in court proceedings might, for example, involve taking longer to explain proceedings to the defendant, taking regular breaks to aid concentration, and taking steps to ensure the defendant understands what is happening and what is expected of them, and the implications of decisions made.

Most senior stakeholders raised concerns about the lack of legal representation generally, and for people with psychosocial and intellectual disabilities, in particular. The Persons with Disabilities Act includes the provision for 'procedural and other appropriate facilities to enable the person with disability to access justice' (Section 8), which can be said to include legal representation; and the new draft Constitution (November 2014) includes the right to have a legal practitioner assigned to the accused person, at the public expense, if a substantial injustice would otherwise result (Section 49). These developments are to be welcomed. In the absence of necessary and effective reasonable accommodation, the reduced communication and comprehension skills frequently experienced by people

with psychosocial and intellectual disabilities, and consequent heightened levels of anxiety, may result in 'substantial injustice'; therefore, access to a legal practitioner should routinely be made available to these individuals.

The Persons with Disabilities Act (and forthcoming Constitution) are clear on the kinds of support that should be in place for people with disabilities to help ensure their access to justice, and this includes people with psychosocial and intellectual disabilities. The presumption of legal capacity, provision of reasonable accommodation and legal assistance has the potential to reduce instances where Sections 160 and 167 of the Criminal Procedure Code Act (capacity to stand trial and 'insanity defence', respectively) are applied, and the use of indefinite detention during His Excellency's Pleasure (seen by many respondents in this study as unfair and in need of review), as well as providing necessary support to people with psychosocial or intellectual disabilities who would not necessarily be subject to these proceedings.

While some elements of the implementation of the Persons with Disabilities Act have obvious and significant cost implications, other elements are less costly, but require a change in approach. For example, a small number of self-advocates spoke about help they had received: one said, 'there was someone [in court] who was explaining things for me', while another said 'the cops guided me... and the court clerks were accommodating'. These kinds of support, however small and informal, are examples of positive practice that should be built upon.

### ***The legislative and policy framework***

In recent years, the ratification of UNCRPD and domestication of its provisions, through the People with Disabilities Act 2012, have demonstrated a significant shift in the way people with disabilities are viewed, and a commitment to ensuring the rights of people with disabilities and their social and economic inclusion in society. The new draft Constitution (November 2014) and Mental Health Bill further reflect this commitment.

Despite such welcome improvements, ensuring the full implementation of the rights of people with disabilities is a major undertaking; and, in the context of this study, is further compounded by the particular stigma faced by individuals with psychosocial or intellectual disabilities caught up in the criminal justice system. As already mentioned in this report, senior stakeholders raised particular concerns

about delays in the implementation of legislative change – without which any improvement in practice is unlikely to occur; and many respondents highlighted the need to review and update national laws to ensure compliance with UNCRPD and the Persons with Disabilities Act.

Laws that were enacted before ratification of UNCRPD and the People with Disabilities Act do not generally accord the same rights in society for people with disabilities as for people without disabilities, and frequently contain discriminatory language and provisions. For example, the 1996 Constitution and Mental Disorders Act, arguably, permit the arrest and detention of individuals with psychosocial and intellectual disabilities on the grounds of their disability alone, or non-criminal behaviour associated with such disabilities, with minimal recourse for appeal and review. It is welcome news that the new draft Constitution (November 2014) and Mental Health Bill would see the removal of these provisions, and would promote a more enlightened approach towards people with disabilities, more generally. However, not all provisions within the Mental Health Bill are compliant with UNCRPD and the Persons with Disabilities Act, such as forced hospitalisation and the lack of recognition of legal capacity, and a review of the Bill for compliance should be undertaken prior to enactment.

Sections 34 and 61 of the Mental Health Bill are relevant to this study, and to particular concerns raised by senior stakeholders. Section 34 sets out the procedure whereby individuals may be admitted as forensic patients to determine whether they are 'capable of making a plea'. An examination to determine the individuals 'mental state' is required within 48 hours of admission, however, there is no timeframe stated within which the individual should be returned to court. Long periods spent in pre-trial detention by people with psychosocial and intellectual disabilities was raised as a concern by senior stakeholders, and maximum pre-trial detention periods were said to be routinely violated for these individuals. A timeframe for return to court, commensurate with maximum pre-trial detention periods, should be added to the Bill.

Section 61 of the Mental Health Bill concerns the 'role of the police in mental health', and describes the circumstances whereby the police may 'pick up' a patient or individual with 'a mental disability or impairment or intellectual disability' (with or without a warrant) and take them either to a 'place of safety' or, if such a place is not available, into custody. Broad discretion on when and whether to apprehend

an individual, and where they may be taken, is likely to prolong the 'arbitrary or inconsistent practice' in police dealings with people with psychosocial and intellectual disabilities – highlighted by senior stakeholders as being problematic, and keep open the risk of detention on the grounds of disability. In reviewing the Bill for compliance with UNCRPD and the People with Disabilities Act, safeguards should be added to negate the risk of disability related detention.

Most senior stakeholders in this study said that the legislative and policy framework was important in helping to ensure that people with psychosocial and intellectual disabilities do not get caught up in the criminal justice system on the basis of their disability alone, and in improving arrangements for how such individuals are dealt with when they do come into contact with criminal justice services. However, there were mixed views about the extent to which existing legislation discriminated against such individuals or, conversely, upheld and protected their rights: some respondents observed that it wasn't necessarily the legislative framework that was 'at fault', rather it was a lack of effective implementation that can give rise to disadvantageous or discriminatory outcomes. For example, while some respondents cited the Criminal Procedure Code Act as being 'adequate' in its approach towards people with psychosocial and intellectual disabilities, others said it contained provisions that were discriminatory, such as Section 27(b), which permits the arrest of an individual unable to 'give a satisfactory account of himself'. Although not discriminatory of itself, this provision might more readily be applied to individuals likely to behave contrary to ordinary social norms – including some people with psychosocial and intellectual disabilities, especially at moments of crisis.

The question of implementation was further reflected in interviews with health and justice practitioners. Almost all practitioner respondents highlighted a lack of guidance on how to deal with people with psychosocial and intellectual disabilities in contact with criminal justice services, and there was an overwhelming call for guidelines, information and training to help them to undertake their work. Whether such guidance exists is a moot point; in calling for guidelines, practitioners were demonstrating the need for operational support.

Implementing legislative changes, and reviewing and revising national laws for compliance with UNCRPD and the Persons with Disabilities Act, should be undertaken in tandem with the development of policies and operational

guidelines to support practitioners in their day to day work, and to help ensure implementation at the local level. Routine monitoring, by an independent body, could be undertaken to encourage and support implementation, and to hold government departments to account.

***Collaborative working***

The intersection between disability and criminal justice brings together different government Ministries; and while each has their own role to play, they are necessarily interdependent.

Most respondents highlighted the challenge of improving the situation for people with psychosocial and intellectual disabilities in contact with criminal justice services, and many recognised the need for a wider health and social care response to help prevent people coming into contact with the police in the first place, and to provide support at moments of crises. In short, progress cannot be made by criminal justice agencies alone; close cooperation is needed between different Ministries including, Home Affairs, Justice, Health, and Community Development Mother and Child Health. To help ensure progress, senior stakeholders said there needs to be collaborative working, which could be aided, for example, by 'an inter-ministerial committee' that could take a common approach to reviewing legislation and deciding how best to proceed.

Senior stakeholders called for closer cooperation between the relevant Ministries, and the need to establish 'clear policy in this area'; one health practitioner noted that improvements would only be made 'when the community and government join efforts'. By working together, shared concerns can be raised, and solutions explored and developed.

One instance of where collaboration between different Ministries is needed relates to the first point of contact that an individual with psychosocial or intellectual disabilities has with the police. For example, most senior stakeholders raised concerns about police powers of arrest and detention of people with psychosocial and intellectual disabilities, which they considered to be exercised in a way that is 'arbitrary or inconsistent' and 'over-zealous'. However, given the limited availability of community services for people with psychosocial and intellectual disabilities, and the extent to which family members and members of the community can call upon the police to deal with behaviour that is perceived by

them as ‘challenging’, along with the wide discretion that police officers seem able to exercise, it is perhaps unsurprising that ‘arbitrary or inconsistent’ responses are made; while perceptions of ‘risk’ presented by ‘challenging behaviour’ might precipitate an ‘over-zealous’ response by the police.

### ***Resources and priorities***

Zambia is a lower-middle income country ranked 141 out of 187 countries on the UN Human Development Index for 2013<sup>2</sup>. While it is to be expected, therefore, that public services are under resourced and overburdened, welcome improvements in health and education have been made. Public service provision, however, remains generally limited and overcentralised, and there is poor infrastructure within the services that are provided. Further, within the context of these limitations there is a low prioritisation of mental health and other services for people with psychosocial and intellectual disabilities, and of criminal justice services; and, as discussed above, this has particular implications for people with psychosocial and intellectual disabilities in contact with criminal justice services.

Senior stakeholders highlighted the need to prioritise services for people with psychosocial and intellectual disabilities both within and outside the criminal justice system. One said that ‘huge budgets’ are not needed, adding that progress can be made ‘bit by bit’; while another said that what was needed was the ‘political will’ to make improvements. Family members, in particular, expressed their frustrations at the lack of local services for their relatives and, for themselves, information that might help them to better understand and support their loved ones.

Community services for people with psychosocial and intellectual disabilities can help to promote and support their wellbeing and, where necessary, deal with deterioration in an individual’s condition, so helping to reduce and prevent crisis situations. In Zambia, where there is a lack of community mental health and social care services, people with psychosocial and intellectual disabilities, and their families, are frequently left unsupported or with limited support and especially vulnerable to crisis situations. And, when crises do occur, there is extremely limited scope for any response other than that of involving the police, which can lead to arrest and detention, and compulsory admission for inpatient treatment.

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2 <http://hdr.undp.org/en/data>



The Mental Health Bill, which will replace the Mental Disorders Act, sets out a community based approach to mental health, and this is welcomed. In a joint report, ZAFOD and MHUNZA (2012) set out the main elements for a community based mental health system. The proposed system, which is underpinned by the principle of people with psychosocial disabilities being directly involved in how services are developed and delivered, builds on existing community networks (such as peer support and support from family members and friends), and on community based resources (such as primary health care centres), rather than establishing a new structure of service delivery. It further proposes a comprehensive range of services and support, including non-medical social support services; community based crisis prevention, response and rehabilitation; person centred planning and advocacy; and home based treatment and support services to help mental health users to remain in their communities.

In utilising pre-existing infrastructure and services, and building on the person's circle of support from family members and friends, the model proposed by ZAFOD and MHUNZA offers a potentially cost effective route to developing community based services for people with psychosocial disabilities, which in turn may reduce their contact with criminal justice services. This model for community and social support services to enhance inclusion should be extended to individuals with intellectual disabilities.

#### ***Disability awareness training and workforce development***

The need for training, information and workforce development for health and criminal justice personnel and members of the judiciary was raised by almost all senior stakeholders and practitioners, or the absence of such training was noted as a barrier to improvement. Respondents gave clear indications as to what they felt was necessary, including:

- Disability awareness training: the need for disability awareness training was frequently linked by respondents to the prejudice, stigma and discrimination faced by people with disabilities in society, generally; some respondents further noted that the criminal justice system reflected prevailing social attitudes.
- Disability awareness training would include, for example, information about disability (what a disability is and is not); the principles underpinning

UNCRPD and the Persons with Disabilities Act, and the legislative requirements placed on public services and their employees; examples of 'reasonable adjustments' and practical sessions to encourage participants to consider their own work environment and the types of reasonable adjustments that might be necessary.

- Specific disability training; for example, information about psychosocial and intellectual disabilities, including how to recognise when an individual might have such conditions, what support they might need, how to ensure effective communication, and how to make reasonable adjustments to routine procedures.
- Context specific training; for example, linked to operational guidelines (see The legislative and policy framework, above), which might provide front line police officers with guidance on how to respond when they think an individual might have psychosocial or intellectual disabilities, and guidance for legal aid lawyers representing people with psychosocial and intellectual disabilities.

It is good practice, generally, to ensure that people with disabilities are involved in both developing and delivering training that concerns them – in this context, people with psychosocial and intellectual disabilities who will, ideally, have direct experience of the criminal justice system. Developing a common curriculum and resource materials would help to reduce costs and ensure that trainees have a similar learning experience.

To support collaborative working across and between different Ministries (see Collaborative working, above), training sessions should involve a mix of justice, health and social/community personnel; this would help to minimise resource input, and maximise the impact of training.

To help embed training, responsibility for monitoring impact and demonstrating progress should be placed with a named member of the senior management team within each respective department or organisation.

### ***Public sensitisation***

Almost all senior stakeholders and practitioners spoke of the need for 'public sensitisation' to help reduce and prevent the stigma, prejudice and discrimination

experienced by people with disabilities on a daily basis. Such wider social attitudes will inevitably affect how people with psychosocial and intellectual disabilities both come into contact with criminal justice services, and are dealt with once they are in the criminal justice system. While disability awareness training and workforce development is necessary for those who work within health, justice and community development, public education for all citizens is equally important. This could be delivered, for example, through schools, colleges and other public services, and by utilising national media.

***Concluding remarks***

The stigma, prejudice and discrimination experienced by people with psychosocial and intellectual disabilities in their daily lives, and the widespread assumption that such individuals lack capacity and have little to contribute to society, will inevitably pervade public services and how people with disabilities are dealt with by public services personnel.

This study has shown that people with psychosocial and intellectual disabilities in contact with criminal justice services are disadvantaged and discriminated against routinely and systematically. Like all detainees, they experience the harsh and at times brutal conditions of detention. However, because of their disability such experiences are more keenly felt – their disability may be exacerbated by detention and worsened by limited or non-existent health care; they are likely to be less resourceful than other detainees and, therefore, less able to cope with the privations of detention. Legislation exists that both draws people with psychosocial and intellectual disabilities into the criminal justice system (1996 Constitution; Mental Disorders Act and the Criminal Procedure Code Act), and conspires, through ineffective implementation and poor operational practice, to keep them in detention for long periods – with little hope of review, appeal or release. For many, the process that brought them into detention remains a mystery, as they struggle to understand police and court procedures and terminology, with little support; while the risk of becoming ‘lost’ in the system is ever present.

Notwithstanding the above remarks, and the particular challenge they pose, the scene is set for change. Ratification of UNCRPD and the domestication of its provisions through the Persons with Disabilities Act have demonstrated a commitment by political leaders to ensuring the rights of people with disabilities

and their inclusion in society; and this is further reflected in the new draft Constitution (November 2014) and, in part, in the Mental Health Bill. New and forthcoming legislation sets out provisions that will provide community services and support for people with psychosocial and intellectual disabilities, so helping to reduce and prevent their contact with criminal justice services; removes discriminatory language and provisions from existing legislation; and seeks to ensure access to justice, through reasonable accommodation and legal assistance, and to improve mental health care for detainees.

To drive forward these promised changes, strong political leadership and commitment by government departments, supported by non-governmental organisations, is required.

This study has demonstrated the harms and injustices experienced by people with psychosocial and intellectual disabilities caught up in the justice system, and the deep frustrations of family members at the lack of community services for their loved ones; it has helped to crystallise the concerns of senior stakeholders and practitioners, and – perhaps most important, all respondents have contributed ideas for change.

## **6.2 Recommendations**

On the basis of the study findings, a series of recommendations have been developed in relation to four themes:

- Legislation, policy and practice
- Resources and priorities
- Disability awareness training and workforce development
- Public sensitisation.

In addition to the nine recommendations, made on the basis of findings from this study, three reports have been drawn upon to generate three further recommendations. These further recommendations relate to concerns raised by respondents to this study – namely the overcrowded and harsh conditions of detention (Zambia Human Rights Commission 2014a); poor implementation of bond and bail (Zambia Human Rights Commission 2014b); and inadequate mental health care (MDAC and MHUNZA 2014).

The scope of the recommendations is wide. While this is perhaps daunting, progress on implementation can be made step by step, and on a number of fronts. Not all recommendations require significant resource input; sometimes it is more a question of doing things differently.

Work relating to the following recommendations should be led by a cross-ministerial group, which should be chaired by the Ministry of Home Affairs and include the Ministries of Justice, Health, and Community Development Mother and Child Health. The cross-ministerial group should be supported by the Zambia Agency for Persons with Disabilities; the project consortium, and the steering committee and advisory group for this study (see Acknowledgements); and self-advocates, and family members. Where additional input for particular recommendations is needed, for example, from other government ministries, individuals or organisations, this is suggested at the end of the relevant recommendation.

***How recommendations might be implemented is outlined in section 6.3, below.***

#### ***Legislation, policy and practice***

Ratification of UNCRPD and the Persons with Disabilities Act are welcomed, and have set the scene for change. In the absence of implementation, however, such legislative improvements are meaningless.

1. National laws that relate to people with psychosocial and intellectual disabilities in contact with criminal justice services, including their initial contact with the police, should be reviewed for compliance with UNCRPD and the Persons with Disabilities Act; legislation that discriminates against or otherwise disadvantages people with psychosocial and intellectual disabilities should be amended or removed. For example, Section 7, Mental Disorders Act, which empowers the police to arrest a person found 'wandering at large'; Section 9, Mental Disorders Act, which, arguably, permits detention on the grounds of disability; and Section 27, Criminal Procedure Code Act, which empowers the police to arrest any person 'who has no ostensible means of subsistence or who cannot give a satisfactory account of himself'.
2. The Persons with Disabilities Act should be implemented forthwith, and provisions that relate to legal capacity and support for people with disabilities

in contact with criminal justice services should be prioritised; for example, Sections 8 (Legal protection and participation in legal proceedings) and 9 (Law enforcement and persons with disabilities, Cap 1). Note: the Persons with Disabilities Act is a 'Superior Act' – meaning, that subject to the Constitution its provisions 'shall prevail to the extent of any inconsistency' with 'any other written law impacting on the rights of persons with disabilities' (Section 3).

3. To reduce contact between the police and people with psychosocial and intellectual disabilities for non-criminal behaviour – such as at moments of crisis or extreme distress, legislation should be considered that requires an immediate first response from health and/or social care personnel, with support from appropriately trained police personnel, as necessary. Further, police cells should not be used to detain individuals with psychosocial or intellectual disabilities for non-criminal behaviour; rather, community mental health services (see recommendation four, below) should include day-care facilities for people with psychosocial or intellectual disabilities to attend, or be taken to, at moments of crisis or extreme distress, including when their own safety or that of others is perceived as being at risk. Individuals and their carers should be involved in care and support planning to enable the individual to return home at the earliest possible stage.
4. The Mental Health Bill, as it relates to criminal justice sanctions and discretion, should be reviewed for compliance with UNCRPD and the Persons with Disabilities Act, and enactment should be expedited (so replacing the Mental Disorders Act 1951). Once enacted;
  - a. Community mental health services should be prioritised and developed along the lines of the ZAFOD and MHUNZA (2012) model, and people with intellectual disabilities should be included in service provision; further, mental health community services should assist with the rehabilitation of individuals as they prepare for and are released from prison and other detention
  - b. Prison mental health services should be prioritised; individuals should not be held during His Excellency's Pleasure without a guarantee of adequate mental health services

- c. Links between prison and community mental health services should be made to help ensure prisoners with psychosocial and intellectual disabilities receive the necessary support upon their release.
5. Mobile and Emergency Health Services, organised by the Ministry of Health, should include mental health expertise; this would help in decentralising mental health services. Mobile services could also provide information and guidance for individuals with psychosocial and intellectual disabilities and their carers, and support public sensitisation (see recommendation nine) through the dissemination of information.
6. Operational guidelines for front line health and justice personnel should be developed in tandem with the review of national laws and implementation of the Persons with Disabilities Act, and the review of the Mental Health Bill and implementation of the Act (see recommendations one, two, three and four); in particular;
  - a. Policy and practice guidelines should adhere to UNCRPD and the Persons with Disabilities Act
  - b. Clear protocols should be developed detailing how, and under what circumstances, criminal justice personnel should refer suspects, defendants and prisoners to mental health practitioners
  - c. A 'zero tolerance' approach should be taken towards beatings and other brutality of individuals by criminal justice personnel; this approach should be underpinned by training (see recommendation eight) and supervision, and reinforced through disciplinary action, where necessary. A 'zero tolerance' approach should also be adopted to reduce and prevent prisoner on prisoner beatings and other brutality.

While these activities constitute a significant undertaking, progress can be made on a number of different fronts – coordinated by the cross-ministerial group (see above) – by taking a 'pathway' approach. This entails a focus on the distinct stages of the criminal justice process, from initial contact with the police through to sentencing, detention and release, and dealing with different

sections concurrently. For example, police and healthcare personnel may attend to legislation, policy and practice concerning an individual's initial contact with the police at the same time as court personnel, members of the judiciary and the Legal Aid Board attend to arrangements for the provision of reasonable accommodation during court proceedings.

In addition to the cross-ministerial group (see above), front line health and justice practitioners should be involved in developing policy and practice guidelines.

***Resources and priorities***

While recognising the constraints of limited resources, priority needs to be given to community services, which can help to reduce and prevent people with psychosocial and intellectual disabilities coming into contact with criminal justice services, and to prison mental health and support services.

7. Priority should be given to:
  - a. The development of community services for people with psychosocial and intellectual disabilities (along the lines of the ZAFOD and MHUNZA (2012) model; see recommendation four)
  - b. Increasing the number of medical staff able to provide and support adequate health care services for detainees and prisoners with psychosocial and intellectual disabilities
  - c. Clarifying the time-frame within which medical assessment during pre-trial detention should be undertaken, which should include an individual's return to court following assessment; this should be consistent with permitted pre-trial detention periods, and timeframes should be adhered to
  - d. Ensuring that all individuals detained during His Excellency's Pleasure undergo six-monthly reviews and, should a recommendation for release be made, that this is done in a timely way, with the necessary community support for the individual concerned, and for his/her family



- e. Implementing the Persons with Disabilities Act (see recommendation two).

***Disability awareness training and workforce development***

Training, supervision and support of frontline staff are essential and integral elements in the process of change, and in helping to maintain progress; and this is especially so when prevailing attitudes towards people with psychosocial and intellectual disabilities are inconsistent with public policy.

8. The following training and workforce development should be put in place:
  - a. Disability awareness training should be developed, and all health and justice personnel (practitioners, senior managers and policy makers), and public services personnel, more generally, should be required to participate
  - b. Specific training on psychosocial disabilities, intellectual disabilities and communication skills should be developed, and all health and justice personnel who deal with members of the public (including patients, clients, police suspects, defendants, witnesses, detainees and prisoners), should be required to participate
  - c. Context specific training for front-line health and justice personnel should be developed to support the use of operational guidelines (see recommendation six).

To underpin this recommendation, a training and workforce development policy guide should be developed, which would be led by the Paralegal Alliance Network, working under the auspices of the cross-ministerial group (see above). The policy guide would state that individual government departments are responsible for ensuring that training and workforce development (as described above) are integral to training curricula for health, justice and other relevant public services personnel.

***Public sensitisation***

It is noteworthy that almost all respondents in this study spoke of the stigma and discrimination experienced by people with psychosocial and intellectual

disabilities in society, generally. To encourage and support implementation of the Persons with Disabilities Act, upon which positive change to the lives of people with disabilities depends, the following recommendation is made:

9. Public education programmes should be undertaken, including:
  - a. as an integral part of the school curriculum and in colleges
  - b. for all citizens, utilising the media and public services.

The Ministry of Education should work with the cross-ministerial group (see above) to develop curricula for schools and colleges.

***Recommendations from other relevant reports***

The following recommendations relate more generally to the harsh or difficult conditions faced by all individuals in pre-trial detention and in prison. While they do not relate especially to people with psychosocial and intellectual disabilities in the justice system, improvements resulting from these recommendations would be of benefit to them. Recommendations ten, 11 and 12 further highlight some of the main concerns expressed by respondents to this study.

10. The application of bond and bail legislation

In 2014 the Zambia Human Rights Commission published A Survey Report on the Application of Bond and Bail Legislation in Zambia (2014b). The report makes a number of recommendations, which will be progressed during 2015 with support from the Open Society Foundations. The survey found a 'close link' between legal representation and the likelihood that an individual will request bail or bond, and recommends enhancing the capacity of the Legal Aid Board 'to make legal representation available for all citizens that are unable to afford it'. Training and information for criminal justice personnel and magistrates on the appropriate use of bond and bail, and increasing public awareness of an individual's right to bond and bail are also recommended in the report – each of which, in turn, has the potential to reduce overcrowding in police custody and prisons. Recommendations being taken forward on the application of bond and bail legislation should consider the particular needs and circumstances of individuals with psychosocial and

intellectual disabilities. Likewise, work to progress recommendations from this study should ensure that links are made with work being undertaken on bond and bail, where relevant.

#### 11. Prisons, police stations and police posts

In 2014, the Zambia Human Rights Commission published their Central Province Prisons Report (2014a), which was based on a routine inspection that included prisons, police stations and police posts. The report made a number of recommendations, many of which reflect overcrowded conditions and a generally poor infrastructure and limited resources.

Recommendations relating to prisons include the need to address the high number of remandees on invalid or expired remand warrants, and appeals not being considered or taking too long – both of which add to problems of overcrowding, and this was especially problematic for prisoners in the ‘Condemned Section’, under sentence of death. Other recommendations made include repair and maintenance of sewer systems; better management of food for inmates, which was said to be in short supply; and suggestions for reducing prisoner on prisoner assaults.

Recommendations relating to police stations and posts include a review of the law relating to bond, including bond being granted on a ‘non-discriminatory basis’ (see recommendation ten); and the provision of water and sanitation facilities in cells where detainees are held for more than six hours, and boreholes being drilled to alleviate the problem of blocked sewers. The report also noted that decent conditions of service and regard for the general welfare of police officers are likely to impact positively on how they, in turn, approach their work and deal with detainees – and made recommendations for improvements in these areas. The report further recommended that funds be made available for the ‘ongoing sensitisation and education of police officers’, and this should include disability awareness training and workforce development concerning people with psychosocial and intellectual disabilities; (see recommendation eight).

#### 12. Human rights and mental health

In 2014 MDAC and MHUNZA published the report, Human Rights and mental health in Zambia (2014). Although the report does not make any explicit recommendations, some of its main findings have a direct bearing on elements of this study. Work that flows from, or is informed by, the MDAC and MHUNZA report should cross refer to recommendations made in this report, where relevant – and vice versa.

### **6.3 Following up the project**

Over the last two years this project has worked with, and been supported by, a large number of people and organisations; a significant amount of work has been achieved and expectations have been raised of change to come. Members of the steering committee and advisory group, self-advocates and family members are committed to the next phase – that is, taking forward recommendations made.

While the task is significant, with the continued leadership of the Ministry of Home Affairs and support from the Paralegal Alliance Network, together with the strong working partnership developed between government ministries and non-government organisations, which has been demonstrated through the work thus far, real progress can be made.

It is important now to harness the desire for change by developing and taking forward a robust implementation plan. To make a start on this next phase, it will be helpful to secure funds at an early stage to help ensure that the momentum is not lost.

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## APPENDIX A

# Respondents

### Senior stakeholder interviews

A total of 17 interviews were conducted with senior stakeholders from government, criminal justice services, health services and civil society organisations. Respondents were representatives of:

- Ministry of Home Affairs, Department of Research, Planning and Information
- Ministry of Home Affairs, Prisons Department
- Ministry of Justice, Access to Justice programme
- Ministry of Health
- Ministry of Community Development, Mother and Child Health – Social Welfare
- Prisons Service and Parole Board
- Zambia Police, Force Headquarters
- National Prosecution Authority
- Zambia Human Rights Commission
- Mental health services - Chainama Hills Hospital
- Ministry of Community Development, Social Welfare



- Zambia Agency for Persons with Disabilities (ZAPD), government agency
- Prisons Care and Counselling Association (PRISCCA), NGO
- Mental Health Users Network of Zambia (MHUNZA), NGO
- Zambia Federation of Disability Organisations (ZAFOD), NGO
- Legal Resources Foundation, NGO
- Home Care and Partner, private sector organisation

**Practitioner interviews**

A total of 56 practitioners were interviewed across the three provinces of Lusaka, Copperbelt and Southern, and across a range of agencies: the police, courts, prisons (including one prison hospital), the Legal Aid Board and mental health services. The breakdown of respondents by province and agency are shown in Table A1, below.

**Table A1: Practitioner respondents**

Type of agency	Province			Total
	Lusaka	Copperbelt	Southern	
Police	5	6	4	15
Court	3	4	2	9
Prison	4	4	4	13
LAB	4	2	2	8
Health services	3	4	4	11
Total	20	20	16	56

High numbers of individuals with psychosocial or intellectual disabilities are caught up in criminal justice systems around the world. There are a number of reasons for this, which include limited community based health and social care support for people with such disabilities, discrimination and poverty. Once in the criminal justice system these individuals are highly marginalized: they are doubly disadvantaged by virtue of their disability and their criminal justice status.

With support from the ***Open Society Initiative for Southern Africa (OSISA)*** and the ***Human Rights Initiative at the Open Society Foundations*** a consortium comprising the ***Paralegal Alliance Network***, and the ***Prison Reform Trust***, in partnership with the ***Zambian Ministry of Home Affairs***, undertook a ground-breaking study of the experiences of individuals with psychosocial or intellectual disabilities within the criminal justice system in Zambia. Research included a review of national policy and legislation; the collation of national statistics; and a review of international research literature. Importantly, the research involved in-depth interviews with over 100 individuals, including senior stakeholders from government and civil society organisations; practitioners from criminal justice and health services; family members of people with psychosocial or intellectual disabilities; and self-advocates – individuals with psychosocial or intellectual disabilities who have direct experience of the criminal justice system.

The main findings from this research have informed a series of recommendations, which we hope will help shape efforts by government and civil society to reform legislation, policy and practice to uphold the rights of some of the most disadvantaged people in Zambian society.

The information contained in this report, and the tools that were designed during the research process, should also contribute to regional efforts to improve the lives of people with disabilities in contact with criminal justice services.

Members of the consortium, which was led by the Paralegal Alliance Network are the Legal Resources Foundation, Mental Health Users Network Zambia, Prisons Care and Counselling Association, Zambia Federation of Disability Organisations, and the Prison Reform Trust.



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