



BIROn - Birkbeck Institutional Research Online

Jacobson, Jessica and Sabuni, P. and Talbot, J. (2017) Disability and the criminal justice system in Zambia. *Journal of Intellectual Disabilities and Offending Behaviour* 8 (2), pp. 59-69. ISSN 2050-8824.

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/18597/>

Usage Guidelines:

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html>
contact lib-eprints@bbk.ac.uk.

or alternatively



Emerald

Journal of Intellectual
Disabilities and Offending
Behavior

Disability and the criminal justice system in Zambia

Journal:	<i>Journal of Intellectual Disabilities and Offending Behavior</i>
Manuscript ID	JIDOB-12-2016-0023.R1
Manuscript Type:	Research Paper
Keywords:	Zambia, intellectual/psychosocial disabilities, criminal justice, self-advocates, disadvantage, police, prisons, courts

SCHOLARONE™
Manuscripts

ABSTRACTPurpose

Drawing on multi-method research conducted in 2013-2014, this paper considers the extent and nature of disadvantage experienced by individuals with psychosocial and intellectual disabilities (PID) who come into contact with criminal justice system in Zambia. The research was conducted as part of a wider project aiming to bring about improvements in how people with PID are dealt with by criminal justice services.

Design/methodology

The research activities included interviews with 29 individuals with PID who had experienced the criminal justice system as suspects, defendants or prisoners ('self-advocates'). A focus group and interviews were also conducted with family members of people with PID who had criminal justice experience.

Findings

People with PID in contact with criminal justice services in Zambia are disadvantaged and discriminated against routinely and systematically. Like all detainees, they experience harsh and at times brutal conditions of detention. However, because of their disabilities, such experiences can be more keenly felt: their disabilities may be exacerbated by detention or by limited or non-existent health care; and they are likely to be less resourceful than other detainees and, therefore, less able to cope with the privations of detention.

Originality/value

In drawing on the self-advocate interviews, this paper presents direct, vivid accounts of what it means to be a suspect, defendant or prisoner with disabilities in Zambia. These are extremely marginalised and multiply disadvantaged individuals whose voices are rarely heard.

KEYWORDS

Zambia, intellectual disabilities, psychosocial disabilities, criminal justice, police, prisons, courts, self-advocates, disadvantage

CATEGORIZATION OF PAPER

Research paper

Disability and the criminal justice system in Zambia

Jessica Jacobson,ⁱ Phillip Sabuniⁱⁱ and Jenny Talbotⁱⁱⁱ

This paper reports on a study of the intersection between disability and criminal justice in Zambia. The research sought 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 in Zambia. 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.

For individuals facing imprisonment, the World Health Organisation notes that 'prisons are bad for mental health' (WHO, 2007). Already at a disadvantage because of their disability, the cumulative effect of deprivation of liberty and autonomy, harsh environments, and unceasing threats to personal security, which represents life in prison for most (Sykes, 1958), can make prison especially hard for individuals with psychosocial and intellectual disabilities to bear. The negative impacts of prison life can increase a person's vulnerability, exacerbate existing health conditions and disorders, enhance the risk of mental ill health (WHO, 2007; Armour, 2012), and erode thinking and life skills (Sainsbury Centre for Mental Health, 2008).

The study

The research was conducted in 2013 to 2014 as part of a wider project aiming to bring about evidence-based improvements to how individuals with psychosocial and intellectual disabilities (henceforth PID) are dealt with across all parts of the Zambian criminal justice system.^{iv} There were several components to the research, as follows:

- Review of relevant current and forthcoming national policy and legislation;
- Collation of available statistics on the criminal justice population in Zambia;
- Review of the existing international research literature on prevalence of people with PID in criminal justice systems;
- In-depth interviews with:
 - 17 senior stakeholders from government, criminal justice and health services and civil society organisations;
 - 56 practitioners based in police, courts, prisons, hospital mental health services, and the Legal Aid Board in three provinces;
 - 29 individuals with PID who had direct experience of the criminal justice system as suspects, defendants or prisoners (henceforth referred to as 'self-advocates');
 - 6 interviews and one focus group with family members of people with PID who had experience of the criminal justice system.
 - Collation of illustrative case studies from service providers working with people with PID.

This paper focuses on the findings of the self-advocate interviews and the interviews and focus group with family members. These provide vivid accounts of the day-to-day realities of entering and existing within the Zambian criminal justice system as an individual with disabilities. First, however, the authors provide some context for these findings, with a brief overview of the justice system in Zambia and disabilities within the justice system. The article concludes with a consideration of the implications of the research findings for the future development of criminal justice policy.

The context

Zambia is a landlocked southern African country with a population of around 16 million, of whom over 2 million live in its capital, Lusaka. Formerly a British colony (Northern Rhodesia), Zambia gained independence in 1964. Its level of development is classified as 'medium' on the UN Human Development Index, by which it is ranked in 139th place out of 188 countries (United Nations Development Programme, 2015).

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, National Prosecution Authority, courts and judiciary, Legal Aid Board and prison service.

The Zambia Police Service falls within the remit of the Ministry of Home Affairs, and as of January 2015 was said to comprise 17,217 police officers and 994 civilian support staff.^v Reports on the use of excessive force by the police are not uncommon (see, for example, US State Department, 2013; Human Rights Commission, 2013).

Zambia's courts system is made up of the Constitutional Court, which has original and final jurisdiction on constitutional matters; the Supreme Court, which hears appeal cases only; the Court of Appeal (where appeals are heard first); the High Court, which has unlimited and original jurisdiction on both civil and criminal matters, and deals with the most serious criminal cases (the High Court also has division courts, such as the Family Court, Children's Court, Commercial Court, and Industrial and Labour Relations Court); the Subordinate (or Magistrates') Court, which hears most criminal cases; Small Claims Court; and Local Court, which generally administer customary law on marriage, property and inheritance. A long-standing problem faced by the criminal courts is their limited resourcing and capacity, resulting in large backlogs of cases year by year (Institute for Security Studies, 2009; OSISA, 2011; PAN, 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.^{vi}

Zambia's total prison population, as of April 2015, was 18,560, producing a prison population rate of 125 prisoners per 100,000 of the national population. This is the 15th highest rate out of 53 African countries. The official capacity of the prison system is reported as 8,100; accordingly the prison population of 18,560 represents an occupancy rate of 229%. In 2013, almost one-quarter (23%) of Zambian prisoners were being held in pre-trial detention, and 1% of the prison population was female.^{vii} In January 2015, 56 prisoners (55 men and one woman) were detained during His Excellency's Pleasure,^{viii} meaning that they had been detained indefinitely having been found not guilty of an offence 'by reason of insanity' or having been deemed incapable of making 'a proper defence'. As of the same date, 414 prisoners (406 men and eight women) were on death row.^{ix} 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.

A report on human rights in Zambia described prison conditions 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' (US State Department 2013; see also Zambia Human Rights Commission 2012 & 2013).

Psychosocial and intellectual disabilities in the criminal justice system

No systematic data are available on the numbers of people with PID within the criminal justice system of Zambia. Indeed, little is known about prevalence in the general population, reflecting – as in many other African countries and indeed in much of the world – the low priority accorded to mental health and PID in public policy, the stigma associated with these conditions, and lack of appropriately qualified healthcare personnel (Mayeya et al, 2004; Omar et al, 2010). A recent report by the two local NGOs 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 (MDAC and MHUNZA, 2014). The report observes also that mental healthcare 'is nearly non-existent at the primary healthcare level', with highly centralised services available 'only in eight hospitals across the country' – rendering them inaccessible to most people in Zambia.

Among the limited research on prevalence of PID within criminal justice populations in African countries is a study of non-convicted remand prisoners in Nairobi, Kenya, which found a very high level of undiagnosed psychiatric morbidity among both women (84%) and men (77%) (Mucheru, 2006). In Zambia, in a survey of 206 prisoners in Lusaka Central Prison, 63% of respondents reported that they had a current mental illness (Nseluke and Siziya, 2011). However, a different picture of prevalence of PID arose from the criminal justice practitioners interviewed for the current study – most of whom reported having rarely worked with people with PID. For example, 13 out of 15 police respondents said that people with PID are rarely, very rarely or never arrested and detained by the police; eight out of nine court-based respondents reported that defendants with PID appear only rarely or very rarely before the courts; and most of the 13 prison officer respondents said 'just a few' prisoners have PID. Taking into account what is known from the international research literature about prevalence, it appears highly likely that these accounts from practitioners reveal a lack of awareness of PID and the absence of systems for identifying such disabilities, rather than genuinely low levels of disability among suspects, defendants and prisoners.

Experiences of the criminal justice system among people with PID

A total of 29 self-advocates with PID were interviewed for this study. Their ages ranged between 19 and 60; and all but one were men. Although the precise nature of self-advocates' disabilities is not available, they were generally described by the interviewers as having 'psychosocial' or 'mental' disabilities.

Experiences of the police

All 29 self-advocates with PID had experience of being arrested and detained in a police cell. They were asked in interview about their initial contact with the police, and the large majority said that they had been taken to a police station because they were suspected of having committed an offence. However, five of the 29 said that they did not know why they had been brought to the police. 11 of the respondents said that they had been taken to the police station by the police themselves or other authorities, while 15 said that relatives, members of the general public or local community, or a local 'neighbourhood watch' had brought them to the police. (The remainder mentioned others who had taken them to the police or did not know who had done so.)

The 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 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 respondent 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 – as are shown in Box 1.

Box 1: Accounts of negative experiences at the police station

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

Experiences of the courts

Of the 29 self-advocates with PID, 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, most self-advocates had 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 2, below.

Box 2: Accounts of negative experiences at court

Unfair procedure or outcomes, particularly where proceedings resulted in detention during His Excellency's Pleasure
<ul style="list-style-type: none"> • <i>My case was mishandled. I was jailed without being found guilty.</i> • <i>I was not given an audience as I was referred ... for assessments before I could defend myself... The courts recommended that I am detained during His Excellency's Pleasure and I have been in [hospital prison] for four years now.</i> • <i>[The bad thing at court was] not being heard.</i>
A frightening experience
<ul style="list-style-type: none"> • <i>It was a scary environment as [there were] a lot of men in uniform.</i> • <i>The environment is threatening.</i>
Delays and adjournments
<ul style="list-style-type: none"> • <i>There were too many adjournments.</i> • <i>I have not been sentenced up to now. The whole process has been really delayed.</i>
Not understanding what was happening
<ul style="list-style-type: none"> • <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> • <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>

Respondents were also asked about whether they had received various kinds of help at court. Half of them reported receiving legal assistance, including three who said they received this at some points in the judicial process but not at others. 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.^x Contrasting accounts of the availability of legal help are presented in Box 3.

Box 3: Contrasting accounts of access to legal assistance

Legal help received
<ul style="list-style-type: none"> • <i>There was someone who was explaining things for me. I think he was a lawyer.</i> • <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> • <i>I managed to get a lawyer from legal aid. My Auntie facilitated that process.</i>
Legal help not received
<ul style="list-style-type: none"> • <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> • <i>There was no legal help rendered to me. It is very difficult to get lawyers in [area]... 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> • <i>I would have loved to have a lawyer.</i>

Experiences of prison

Of the 29 self-advocate respondents with PID, 27 had spent time in prison – including those who had been held in the secure unit at Chainama Hills Hospital, known as Chainama East Prison. Twenty-five respondents were in custody at the time of the interview (10 in prison and 15 in Chainama East Prison). Of these, 11 were being held during His Excellency's Pleasure^{xi} (HEP). The remaining 14 respondents who were in custody at the time of the interview were being held in pre-trial detention. None, therefore, was a sentenced prisoner.

Most of the respondents (22) had been to prison once only. The lengths of time that respondents had spent in prison to date (those currently in custody only) are shown in Table 1, broken down by prisoner status. As HEP detention is indefinite, the lengthy terms served to date by prisoners so detained is not unexpected. The finding that nine of the pre-trial detainees had spent at least one year in custody, of whom five have been detained re-trial for at least two years, reflects the general 'excessive and extended use of pre-trial detention in Zambia', as elsewhere in Africa, which is 'symptomatic of failings in the criminal justice systems relating to the effective and efficient management of case flow' (OSISA, 2011: 2).

Table 1: Respondents currently in custody: time spent in custody to date

	Prisoners in pre-trial detention	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, **which reflects research in other jurisdictions concerning the ways in which individuals' experience prison (Sykes, 1958) and the particular difficulties experienced by those with PID. See, for example, Morrison, 1991; and Schnittker, 2013.** The large majority of self-advocates in this study said that 'bad things' had happened to them in custody, although nine mentioned 'good things' such as, for example, having learned bricklaying and electrical skills, 'watching television', 'learning about

... the justice system' and 'being in the prison cells without any conflicts'. The main themes to emerge in respondents' accounts of the negative aspects of prison life are set out in Box 4.

Box 4: Accounts of negative experiences of prison

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

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).

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.

Such negative aspects of prison life have been described as 'the pains of imprisonment' – meaning the insidious deprivations and frustrations inherent in prison life (Sykes, 1958). These include deprivation of liberty and personal autonomy; deprivation of goods and services; deprivation of security; and deprivation of heterosexual and other family relationships. Sykes (1958) argues that, while every person will have a different experience of prison, the overwhelming impact of such deprivations can be immensely damaging to mental and emotional health.

Impact of disabilities on experiences of the criminal justice system

1
2
3 The findings of the self-advocate interviews create a vivid picture of the difficulties and suffering
4 experienced by individuals with PID who are caught up in the criminal justice system of Zambia. It is
5 difficult to assess the extent to which these experiences relate to their disabilities, or are common to
6 all individuals – with or without PID – who enter the criminal justice system; however, the interviews
7 provide some evidence of the impact of PID on experiences of and progress through the criminal
8 justice system. There would appear to be two main ways in which disabilities serve to disadvantage
9 the individual suspect, defendant or prisoner.
10

11 First, comments from many of the self-advocates suggest that poor conditions of police and prison
12 detention – not only in terms of the harsh physical environment, but also in terms of incidents of
13 violence and abuse among officers and detainees alike, and the lack of access to medical help and
14 other forms of social support – can exacerbate pre-existing needs and vulnerabilities. At the same
15 time, pre-existing needs and vulnerabilities can make the experience of poor conditions and abusive
16 relationships more difficult to bear. Three self-advocates said:
17

18 *Due to the state I was in, the police could not understand my behaviour and ended up*
19 *detaining me for one week... Due to the psychotic state I was in, I spent most of the day and*
20 *night standing. I failed to sit down even when I was told to do so. I was confused.*
21

22 *I was in a mental crisis and brutally beaten. I cannot remember what happened ... I was ill-*
23 *treated [at the police station]. Life was hard and I was starved. Everything was in one place*
24 *including the toilet. I regained consciousness in the cell and realised I had a swollen leg. I*
25 *didn't know why I was there.*
26

27 *[In prison] so-called normal people tell you that you are mad and it feels bad.*
28

29 Secondly, self-advocates' accounts of their experiences of the criminal justice system show that they
30 were often unable to exercise their legal rights, not only because of the structural constraints of an
31 overburdened and under-resourced system, but also because of their own difficulties understanding
32 the justice process and communicating with the authorities. On the basis of the interview material
33 alone it is not possible to make any kind of objective assessment of the fairness or otherwise of the
34 criminal justice procedures and outcomes to which these individuals were subject; but what is clear
35 is that these procedures and outcomes were often experienced as entirely arbitrary, inexplicable
36 and unfair, as well as grindingly slow. Self-advocates' sense of their own powerlessness, and of the
37 criminal justice system's unremitting power over them, is apparent from remarks they made at
38 various points in the interviews, including direct pleas for help, which several made of the
39 interviewers:
40

41 *I would have liked the police to understand my situation and counsel me. Instead they called*
42 *me a 'Chainama [hospital prison] case'.*
43

44 *I have no lawyer; in fact I need you to find me a lawyer to represent me in this case.*
45

46 *Are you going to take me out of this place?*
47

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

51 *[I have] no information as to when I will be released. Most people from the HEP section died*
52 *because of poorer conditions than those in the other sections.*
53

54 *Family members' perspectives*
55
56
57
58
59
60

1
2
3 To supplement the information from the interviews with self-advocates, six interviews and a focus
4 group were held with family members – including mothers, fathers, sons, a wife and a brother – of
5 people with PID who had been in the criminal justice system.
6
7

8 Several themes emerged from these family member discussions which echoed what was said by self-
9 advocates. Family members' spoke of delays in the progress of proceedings; one father, for example,
10 said that the court process was 'too slow' and that his son was held in pre-trial detention for a year
11 and a half. Another father said that his son's case was adjourned eight times in eight months; and in
12 the ninth month his son was acquitted. Most family members said that medical treatment and
13 support to address their relatives' disabilities was not forthcoming within the criminal justice system.
14 Further, some family members described active mistreatment of their relatives by criminal justice
15 professionals:
16

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

18
19 *He was badly beaten and the police even denied relatives to take food to him because they*
20 *labelled him as a thief... The police should not have beaten him the way they did because*
21 *that caused his mental illness.*
22

23 The poor way in which many of their relatives were dealt with by the criminal justice system was
24 linked by several of the family members to prevailing social attitudes. The police and others in the
25 criminal justice system, it was said, were reflecting in their behaviour the contempt, stigma and fear
26 attached to people with PID disabilities across much of society:
27

28 *When you look at the attitude of the police it can be bad for everyone. But when a person*
29 *has a label, stigma because of their problems, it is worse.... It's ignorance; they [the police]*
30 *don't understand people with mental disability. And it's the same for prison warders. They*
31 *are also human beings; they have their own feelings and their own fear. Society has its norms,*
32 *this is normal; they don't know what to do. I don't blame them.*
33

34 *The police are scared of mentally sick people. Once, the policeman said, 'If he touches me I*
35 *will shoot him with a gun.'* They are not kind.
36

37 From the family members' perspectives, prevailing negative attitudes toward disability are manifest
38 also in the lack of health and social care provision for people with PID in the community:
39

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

42 *And it's not just about medication, there are other things. The medical staff should spend*
43 *more time talking to the person, not just say, 'here's your drugs. Next!'*
44
45

46 The implications of this lack of provision appear to be two-fold: first, in the absence of community
47 services to support wellbeing, individuals with psychosocial and intellectual disabilities are more
48 prone to crisis, which in turn can lead to arrest and detention by the police; and second, for their
49 part, the police then have little alternative to either pursuing criminal prosecution or seeking
50 admission to a psychiatric hospital:
51

52 *When a person is very violent there is a law that says you can get a court order and that*
53 *person is taken to hospital. When [the police] came for my son they lifted him like a goat,*
54 *they tied his hand and legs to a gun the way a goat is carried. My husband and I said to*
55 *ourselves, 'What have we done? Why do they treat him in such a way?' They think they can*
56 *do anything, which is why some families keep people shut in the house.*
57
58
59
60

1
2
3 *Is there a way that the criminal justice system or anyone else would provide psychological*
4 *and psychosocial help to my brother because he becomes violent at times? ... He is a danger*
5 *and he is capable of killing someone.*
6

7 **Policy implications**

9
10 The vast majority of people interviewed for this study –not only the self-advocates but also senior
11 stakeholders and practitioners – said that people with PID face stigma and discrimination across
12 Zambian society. It is inevitable that discriminatory attitudes, including widespread assumptions that
13 such individuals lack capacity and have little to contribute to public life, pervade criminal justice and
14 other public services. At least until recent years, such attitudes were reflected also in national
15 legislation which did not afford people with disabilities the same rights as were granted to those
16 without disabilities, and frequently contained discriminatory language and provisions.
17

18 This study has shown that people with psychosocial and intellectual disabilities in contact with
19 criminal justice services are disadvantaged and discriminated against routinely and systematically.
20 Like all detainees, they experience the harsh and at times brutal conditions of detention. However,
21 because of their disabilities, such experiences can be more keenly felt: their disabilities may be
22 exacerbated by detention and worsened by limited or non-existent health care; and they are likely to
23 be less resourceful than other detainees and, therefore, less able to cope with the privations of
24 detention.
25

26
27 *The exigencies of life in prison or 'pains of imprisonment' can both contribute to prisoners' poor*
28 *mental health, and mental ill health can develop because of imprisonment (Sykes, 1958; WHO, 2007).*
29 *There are several factors that make 'prisons are bad for mental health', and these include*
30 *overcrowding, lack of privacy, violence, isolation from social networks, enforced solitude,*
31 *insecurities about the future, and poor health services in prison, especially mental health services*
32 *(WHO, 2007); most of which were highlighted by self-advocates in this study (see Box 4). Individuals*
33 *who are caught up in the criminal justice system, and particularly those who are imprisoned, are*
34 *further disadvantaged by the additional stigma associated with their status as 'suspect', 'offender' or*
35 *'prisoner'/'ex-prisoner'. This can create added barriers to, for example, maintaining relationships*
36 *with family and friends and renewing social connections upon release from prison (Schnittker, 2013)*
37 *and, ultimately, reintegrating into the community.*
38

39
40 Legislation exists that both draws people with psychosocial and intellectual disabilities into the
41 criminal justice system, and conspires, through ineffective implementation and poor operational
42 practice, to keep them in detention for long periods – with little hope of review, appeal or release.
43 For many, the process that brought them into detention remains a mystery, as they struggle to
44 understand police and court procedures and terminology, with little support; while the risk of
45 becoming 'lost' in the system is ever present.
46

47
48 Notwithstanding the above remarks, and the particular challenge they pose, the scene is set for
49 change. Ratification of UNCRPD and the domestication of its provisions through The Persons with
50 Disabilities Act 2012 have demonstrated a commitment by political leaders to ensuring the rights of
51 people with disabilities and their inclusion in society. This commitment is further reflected in the
52 Constitution of Zambia (Amendment) Act (No 2) 2016, whereby Article 118 (2) (a) provides that
53 'justice shall be done to all, without discrimination'. However, Part III of the Constitution (as
54 amended by Act (No 2) 2016), the Bill of Rights, has not yet been revised to reflect the rights of
55 people with disabilities.
56
57
58
59
60

New and forthcoming legislation, such as the Mental Health Bill, set out provisions for 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.

In recent months, some positive progress has been made. This includes reviews for persons detained during HEP, which has led to 40 individuals being appropriately released, including through presidential pardon. Further, the Ministries of Home Affairs and Health are working closely together to improve health facilities for prisoners, and new medical equipment has been installed in Livingstone and Chipata State prisons.

REFERENCES

- Armour, C. (2012) 'Mental Health in Prison: A Trauma Perspective on Importation and Deprivation' *International Journal of Criminology and Sociological Theory*. 5 (2):886-894
- Human Rights Commission (2012) *2012 Annual Report*, Human Rights Commission, Lusaka, Zambia
- Human Rights Commission (2013) *Report of the prison and police cells inspection: Eastern, Western, Northern and Muchinga Provinces August 2013*, Human Rights Commission, Lusaka, Zambia
- Institute for Security Studies (2009) *The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*, African Human Security Initiative, Monograph 159
- Mayeya, J., Chazulwa, R., Mayeya, P.N., Mbewe, E., Magolo, L.M., Kasisi, F. and Bowa, A.C. (2004) 'Zambia mental health country profile', *International Review of Psychiatry*, 16 (1-2): 63-72
- MDAC and MHUNZA (2014) *Human rights and mental health in Zambia*, Mental Disability Advocacy Centre (MDAC) and Mental Health Users Network of Zambia (MHUNZA)
- Morrison, E. F. (1991) 'Victimization in Prison: Implications for the Mentally Ill Inmate and for Health Professionals' *Archives of Psychiatric Nursing* 5 (1):17-24
- Mucheru M. W. (2006) *Prevalence of psychiatric morbidity among remanded prisoners: a cross sectional descriptive study*, Masters of Medicine in Psychiatry Dissertation, University of Nairobi
- Nseluke, M. T. and Siziya, S. (2011) 'Prevalence and Socio-Demographic Correlates for Mental Illness Among Inmates at Lusaka Central Prison', *Medical Journal of Zambia*, 38 (2)
- Open Society Foundations and Open Society Initiative for Southern Africa (2015) *Challenging disadvantage in Zambia: People with psychosocial and intellectual disabilities in the criminal justice system*
- Omar, M. A., Green, A. T., Bird, P. K., Mirzoev, T., Flisher, A. J., Kigozi, F., Lund, C., Mwanza, J., Ofori-Atta, A. L (2010) 'Mental health policy process: A comparative study of Ghana, South Africa, Uganda and Zambia', *International Journal of Mental Health Systems*, 4 (24)

OSISA (2011) *Pre-trial Detention in Zambia: Understanding caseload management and conditions of incarceration*, Community Law Centre, Zambian Human Rights Commission and the Open Society Initiative for Southern Africa, Johannesburg

Paralegal Alliance Network (PAN) (2011) *Review of Case Flow Management in Zambia: Case for judicial leadership in the pre-trial process report*, PAN, Lusaka, Zambia

Sainsbury Centre for Mental Health (2008) *'In the DARK: The Mental Health Implications of Imprisonments for Public Protection'*, Sainsbury Centre for Mental Health: London

Schnittker, J. (2013) 'The Psychological Dimensions and the Social Consequences of Incarceration' *Annals of the American Academy of Political and Social Science*, 651:122-138

Sykes, G. (1958) *Society of Captives*. Princeton, NJ: Princeton University Press

United Nations Development Programme (2015) *Human Development Report 2015: Work for Human Development*. New York: UNDP. <http://report.hdr.undp.org/>

US State Department (2013) *Country Reports on Human Rights Practices for 2013: Zambia*, US State Department Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/documents/organization/220386.pdf>

World Health Organization (2007) *Mental health in prisons*, Geneva: WHO http://www.who.int/mental_health/policy/development/MH&PrisonsFactsheet.pdf?ua=1
Mental Health, Human rights and Legislation Information Sheet, Sheet4

ⁱ Institute for Criminal Policy Research, Birkbeck, University of London.

ⁱⁱ Paralegal Alliance Network, Zambia.

ⁱⁱⁱ Prison Reform Trust, London.

^{iv} The research and wider policy work were undertaken by a consortium comprising a number of Zambian NGOs: the Paralegal Alliance Network (which led the project), the Legal Resources Foundation, the Mental Health Users Network Zambia, Prisons Care and Counselling Association, and the Zambia Federation of Disability Organisations. The London-based Prison Reform Trust and the Institute for Criminal Policy Research at Birkbeck, University of London, also participated in the project. The project was funded by the Open Society Initiative for Southern Africa (OSISA), and supported by the Zambian Ministry of Home Affairs. The full report on the study is published as Open Society Foundations and Open Society Initiative for Southern Africa (2015). A short film about ongoing work in Zambia can be found here: <https://www.opensocietyfoundations.org/voices/zambia-pioneering-new-approach-criminal-justice-people-disabilities>.

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

^{vi} Davies Chikalanga, Ministry of Justice; personal correspondence, 12 January 2015.

^{vii} Prison population data drawn from the ICPR World Prison Brief at <http://www.prisonstudies.org/world-prison-brief>, accessed 23.11.16.

^{viii} Davies Chikalanga, Ministry of Justice, personal correspondence 12 January 2015

^{ix} Kaputo W. Chisapa, Ministry of Home Affairs, personal correspondence 15 January 2015.

^x While English is the official language of Zambia, it is the mother tongue of only a very small minority of Zambians. A wide range of local languages are used across the country.

^{xi} During His Excellency's Pleasure (HEP): 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).

Box 1: Accounts of negative experiences at the police station

1	
2	
3	
4	
5	
6	Harsh physical conditions – highly inadequate provision for sleeping, overcrowding and poor sanitary conditions
7	
8	<ul style="list-style-type: none"> • <i>Over-crowding was another problem resulting in inmates spending the night in a sitting position.</i>
9	<ul style="list-style-type: none"> • <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>
10	<ul style="list-style-type: none"> • <i>I once spent three sleepless nights because there was no space for me. We would sleep on reed mats.</i>
11	<ul style="list-style-type: none"> • <i>Mosquitoes, dirty environment, bad conditions and too cold.</i>
12	
13	
14	Physical abuse by police officers
15	
16	<ul style="list-style-type: none"> • <i>I was tortured by the police officers.</i>
17	<ul style="list-style-type: none"> • <i>I was brutally beaten by the police officers before they could even get a statement from me.</i>
18	<ul style="list-style-type: none"> • <i>I was beaten, slapped and taken in to police cells.</i>
19	
20	Food shortages or being denied food
21	
22	<ul style="list-style-type: none"> • <i>I was denied food, water and had no access to the rest room.</i>
23	<ul style="list-style-type: none"> • <i>I was only given one meal a day - a piece of bread with sugar solution.</i>
24	<ul style="list-style-type: none"> • <i>There was not enough food as we scrambled for the little food that was served.</i>
25	
26	Fighting and physical abuse among detainees
27	
28	<ul style="list-style-type: none"> • <i>I was bitten because I bit someone.</i>
29	<ul style="list-style-type: none"> • <i>Old inmates mock and beat new ones.</i>
30	<ul style="list-style-type: none"> • <i>I was brutally beaten by other cellmates.</i>
31	
32	No opportunity to give their own accounts
33	
34	<ul style="list-style-type: none"> • <i>I was not given an opportunity to defend myself – the police are brutal.</i>
35	
36	Not understanding what was happening
37	
38	<ul style="list-style-type: none"> • <i>When I reached the police station people were talking but I didn't understand what they were trying to say.</i>
39	<ul style="list-style-type: none"> • <i>I was in a confused state and cannot tell exactly what was happening.</i>
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	

Box 2: Accounts of negative experiences at court

Unfair procedure or outcomes, particularly where proceedings resulted in detention during His Excellency's Pleasure
<ul style="list-style-type: none"> • <i>My case was mishandled. I was jailed without being found guilty.</i> • <i>I was not given an audience as I was referred ... for assessments before I could defend myself... The courts recommended that I am detained during His Excellency's Pleasure and I have been in [hospital prison] for four years now.</i> • <i>[The bad thing at court was] not being heard.</i>
A frightening experience
<ul style="list-style-type: none"> • <i>It was a scary environment as [there were] a lot of men in uniform.</i> • <i>The environment is threatening.</i>
Delays and adjournments
<ul style="list-style-type: none"> • <i>There were too many adjournments.</i> • <i>I have not been sentenced up to now. The whole process has been really delayed.</i>
Not understanding what was happening
<ul style="list-style-type: none"> • <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> • <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>

Box 3: Contrasting accounts of access to legal assistance

Legal help received

- *There was someone who was explaining things for me. I think he was a lawyer.*
- *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 managed to get a lawyer from legal aid. My Auntie facilitated that process.*

Legal help not received

- *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.*
- *There was no legal help rendered to me. It is very difficult to get lawyers in [area]... 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 would have loved to have a lawyer.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60

Box 4: Accounts of negative experiences of prison

1	
2	
3	
4	
5	Poor physical conditions, particularly in terms of provision for sleeping, overcrowding, and lice
6	infestation
7	<ul style="list-style-type: none"> • <i>The prison was overcrowded and infested with lice.</i>
8	<ul style="list-style-type: none"> • <i>There are no blankets and so much congestion in remand prison.</i>
9	<ul style="list-style-type: none"> • <i>A lot of congestion in the prison and this makes the sleeping very uncomfortable. No beddings</i>
10	<ul style="list-style-type: none"> • <i>thus it is so cold.</i>
11	<ul style="list-style-type: none"> • <i>Especially sleeping is difficult; I just sleep on one side.</i>
12	
13	Limited or poor quality food
14	<ul style="list-style-type: none"> • <i>The food in this prison is not good enough for the prisoners. The beans are not well prepared as it</i>
15	<ul style="list-style-type: none"> • <i>is half cooked and smelly.</i>
16	<ul style="list-style-type: none"> • <i>Food is a problem.</i>
17	<ul style="list-style-type: none"> • <i>Bad experience due to the hunger.</i>
18	
19	Physical abuse by other prisoners
20	<ul style="list-style-type: none"> • <i>When you are being assaulted there is no one to help.</i>
21	<ul style="list-style-type: none"> • <i>I endured beatings and bullying especially from the prison captains [prisoners who have been</i>
22	<ul style="list-style-type: none"> • <i>given a level of authority over others].</i>
23	<ul style="list-style-type: none"> • <i>I was once strangled by my fellow inmate when he had a relapse.</i>
24	
25	Mistreatment (physical or not) by prison staff
26	<ul style="list-style-type: none"> • <i>Beatings from the prison officers.</i>
27	<ul style="list-style-type: none"> • <i>There is ill-treatment from prison warders.</i>
28	
29	Poor or absent medical treatment
30	<ul style="list-style-type: none"> • <i>The sanitary conditions are not ok. My skin infection is becoming worse.</i>
31	<ul style="list-style-type: none"> • <i>I got sick in the prison because my medication was finished.</i>
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	

Table 1: Respondents currently in custody: time spent in custody to date

	Prisoners in pre-trial detention	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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60