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Strategically Aligning NGOs with Community Service Orders: A  
Study of the Existing and Proposed Non-custodial Sentencing  
System, Operating within the Criminal Justice System in Zambia

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## **Abstract**

Our research topic was born out of a need to identify possible solutions for addressing the grave overwhelming issue of prisoner's health in the Zambian Prison Service (ZPS). As we found via literature review, many of the factors contributing to the poor health of inmates was rooted in excessive overcrowding in the prisons. Hence, we began looking at feasible solutions to decongest Zambia's prison system and identified non-custodial sentencing as one that was both practical and extremely beneficial to society at large. Non-custodial sentencing would specifically target offenders who commit misdemeanour crimes or, in other words, are deserving of a sentence of less than three years in prison, as well as pre-trial detainees who have not yet been convicted. These groups would receive community service sentences and parole, respectively. We offer insights as to what other key players, namely NGOs, can do to ensure the effectiveness of the Community Service Scheme in Zambia.

## Acronyms

ATJ	Access to Justice
AGE J	AGE Justice International
CJS	Criminal Justice System
CPC	Criminal Procedure Code
CS	Community Service
CSO	Community Service Order
CSS	Community Service Scheme
DAPP	Development Aid from People to People
MCMCH	Ministry of Community Development and Mother and Child Health
MoHA	Ministry of Home Affairs
MoJ	Ministry of Justice
NCS	Non-Custodial Sentencing
NICRO	National Institute for Crime Prevention and Reintegration of Offenders
NGO	Non-Governmental Organization
NPB	National Parole Board
PC	Penal Code
PF	Prison Fellowship

PFF	Prisoner's Future Foundation
PRI	Penal Reform International
PRISCCA	Prisons Care and Counseling Association
SAIPAR	Southern African Institute for Police and Research
SI	Statutory Instrument
ZGF	Zambian Governance Foundation
ZLDC	Zambian Law Development Commission
ZNCCS	Zimbabwe National Committee on Community Service
ZPS	Zambian Prison Service

Note: Alternatives to incarceration and Non-custodial sentencing were used interchangeably within this report

## Introduction

Prisoners are often a vulnerable population that go unrecognised in the developing world. Stigmatised by society, prisoners are often stripped of their basic human rights and face poor health conditions. The conditions within Zambia's Prison System originate largely from the issue of overcrowding. Zambia's Criminal Justice System (CJS) still follows the outdated Penal Code from the 1960s. As a consequence of the 'over-use of pre-trial detention, strict sentencing practices, and the lack of proper criminal justice policies' (ZLDC, 2012) mandated by the Prison Act of 1966, overcrowding is the root cause of many of the problems within the CJS. Therefore, our conversation looks to other methods of punishment as alternatives to incarceration.

Neither rehabilitation nor alternatives to incarceration are a foreign concept to Zambia. Recently, many other African countries have shifted their focus to this paradigm as well. In fact, it is already provided for in Zambia's Penal Code, though it is not currently utilised due to poorly created legislation and insufficient guidelines, which we will discuss in this paper. Much previous research has focused on the failures of the community service scheme in Zambia. In this paper, we will build off of this existing knowledge and add to it with up to date information. Further, we were able to take advantage of the opportunistic time we engaged with this research to take it a step further. The Zambia Law Development Commission is in the process of drafting a new law to address the ineffective components of the entire Penal Code. We were able to gain insight to the structures of this new law and thus, provide insights on crucial steps that need to be taken to ensure the effective implementation of the newly proposed Community Service Scheme specifically. We also look beyond the prison system itself to include the role of other stakeholders.

This paper is as organised as follows. First, we will provide background information on the current health conditions of the prisons and the legislative history of alternatives to incarceration in Zambia. This section is followed by methodology that explains how we conducted our research and interviews with stakeholders. In our preliminary findings, we will illustrate the current roles of various stakeholders, outline the current proposal for a new community service scheme, and identify challenges that impede current implementation that also pose a threat to the proposed structure. We will conclude with area-specific recommendations for improvement and NGO involvement supported by comparative studies and suggestions for future areas of research.

The challenges we identify in the current Criminal Justice System and for its relevant stakeholders regarding non-custodial sentencing will transcend the new legislation unless properly addressed. The trends we assess throughout our interview processes are indeed challenges that impede successful implementation of the current and proposed Community

Service System. However, these thematic areas are also ones that we suggest are an effective route for NGOs to take to strategically add value to the structure.

# Background

## Current Health Conditions

Upon first look at the Zambian prison system, it is evident the institution itself, as well as the prisoners in it, faces many challenges. Supremely, the current health situation is life threatening for many. HIV prevalence in the general population in Zambia is 15%; in the prison population, it is currently 27% (Unjust and Unhealthy, 2009). Additionally, tuberculosis is the leading cause of death in prison, being the most common opportunistic infection for those living with HIV (Unjust and Unhealthy, 2009). Sick and healthy prisoners are routinely mixed together, resulting in higher transference of disease. Insufficient and poor quality of food that is in violation of international standards characterise a prisoner's daily life (Unjust and Unhealthy, 2009).

While there seems to be a wide array of issues that are complex and hard to address, they all have one adversary root cause: overcrowding. Zambia's prisons were built prior to independence in 1964 and were designed to accommodate 5,500 prisoners. As of July 2015, there are now over 20,000 prisoners according to ZPS. To date, the system is at almost 400 times its capacity, one of the most severe instances of overcrowding in the world. The prison population is ever growing, rising from 275% over-capacity just six years ago, in October 2009. The congestion exacerbates all of the aforementioned health issues, as well as creates a list of additional concerns and human rights violations.

From our own visit to Lusaka Central Prison, we discovered that 84 people sleep in one cell with one bathroom for them all. As described by one prisoner, 'The way they used to pack slaves in the ship, that is how we sleep'. (Kenneth, Mukobeko Maximum Security Prison, September 30, 2009). This prison built in 1923 was meant to accommodate 200 people; there are now well over 1,000 inmates being housed there. Despite the law mandating a officer to prisoner ratio of 1:4, there is a total of 150 officers that serves this population of inmates, at a ratio of 1 officer to 10 prisoners (Prisons Care and Counseling Association (PRISCCA), 2015). The result of this congestion is that the prison is unable to segregate inmates. Convicted, juvenile, circumstantial children, pre-trial detainees, and immigrant detainees are thus all held together in the same areas (Unjust and Unhealthy, 2009). Dilapidated structures provide poor ventilation and illumination and are only aggravated by the packed conditions.

According to the report, Unjust and Unhealthy (2009), 'Good prisoner health is good public health'. Public health does not exist in isolation. During their sentences, prisoners have contact with guards who return to their communities at the end of the workday. At the end

of their sentences, prisoners flow back into society. The unfortunate conditions of their health can undoubtedly, directly affect and endanger the health of the general population.

## **Justification for Non-custodial Sentencing**

The solution is clear: the prison system desperately needs to be decongested. Many organisations are currently admirably attempting to alleviate health and legal issues within the system. While these efforts are certainly needed, they are treating tertiary symptoms of the larger issue: overcrowding. There are two possible routes to take to decongest the prison system. The first, as recommended by the *Zambian Prison Audit of 2009*, is to build more modern infrastructure. However, this is not a cost-effective way or a sustainable solution in the face of resource scarcity. A growing prison population will keep up and even outpace the structures built and Zambia's government does not have the resources to finance this huge investment. The second option would be to reduce the number of people entering the prison system. This is a much more sustainable and effective measure to take. A reform that will wean the Criminal Justice System within Zambia away from surviving off of assistance towards a system that is long-term and self-sustaining is needed.

Alternatives to incarceration, or other solutions for offenders that divert them from the prison system, such as parole and community service can provide this much needed alleviation. The use of alternatives to incarceration reflects a fundamental change in the approach to crime. This change is aligned with the development of the *Zambian Prison Service*. The creation of ZPS both structurally and legislatively began pre-independence and focused on a 'penitentiary approach'. This approach was centered on isolation and punishment. Recently, the approach in ZPS, and around the world, is switching to a 'correctional approach' instead. This approach focuses on rehabilitation and reformation.

Alternatives to incarceration provide many benefits to the penal system, the government, and society as a whole. Financially speaking, diverting offenders who commit misdemeanors proved to be an economically sound solution. It costs the government more to provide one year of care for a prisoner than it would to budget for one additional offender under an operating community service scheme (Hamaundu, 2004). Looking to Zimbabwe as an example, the cost of keeping a person in prison amounts to approximately USD \$120 per month; the cost of placing someone on Community Service amounts to USD \$20 only (ZNCCS, 1997).

Due to ZPS's already constrained budget and resources, relying on fluctuating international donors and the government, this financial advantage proves instrumental in ameliorating the overall Criminal Justice System. Further, diverting minor offenders away from prison



will decrease the rate of re-offenders and habitual offenders. The act of going to prison, even for a few years, often destroys social and familial ties, effectively isolating the prisoner leaving them to resort to crime once again. It is often observed by parole officers that offenders who go to prison for less serious crimes are more likely to learn bad habits from those who have committed more serious crimes, and therefore are essentially trained to become better criminals. Diverting minor offenders from prison allows them to maintain their ties to society, which hold a person socially and morally accountable. The method of community service allows the offender to give back to the community and pay appropriate reparations for both their own and society's benefit.

Non-custodial sentencing would be a step in the right direction to improving the reintegration of offenders as well, a service that is mostly absent from Zambia's current system. 'The current state of rehabilitation in Zambia is like trying to bail out a sinking boat with a teacup. If we believe that rehabilitation is worthwhile, and the success stories showing the power of people to change, then we need to be pouring our correctional resources into rehabilitation and factors that affect rehabilitation' (ZLDC, 2012). Community service orders will allow the offender to maintain ties to society and their family. This continued support means that half the battle is already won. Reintegration is no longer a concern, and the focus can be applied to the much-needed area of rehabilitation instead.

## **Legislative History**

Guiding the Zambian Criminal Justice System is an outdated piece of legislation, the Prison Act of 1966. The workings of this legislation were created pre-independence by colonizers and were essentially copy and pasted post-legislation without careful consideration for Zambia's specific needs at the time. The legislation did not provide for Zambia's growing needs and is effectively outdated. For example, it did not anticipate the needs of women going to prison, thus it neither provided adequate guidelines for the circumstantial children it allowed to also go to prison.

In 1990, the UN introduced the Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) to address overcrowding in prisons around the world. This aimed to 'provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternative to imprisonment'. The rules intended to promote 'greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society' (Tokyo Rules, 1990). Prison reform gained momentum in the mid-1990s. In 1996, the first pan-African seminar was held and brought together 47

countries to discuss matters concerning prison conditions. The outcome was the Kampala Declaration, which recommended an improvement of prison conditions and sensitisation of African countries. The following year, the Kadoma Conference held in Zimbabwe advocated for Community Service Orders in Africa. Following this conference, Zambia committed to making a change and held its own seminar that same year.

With the help of Penal Reform International (PRI), Zambia drew up a Community Service scheme. The proposed structure included: a National Committee dedicated to monitoring Community Service Orders that would be chaired by the judge of the High Court. The committee was to be represented by a diverse array of stakeholders. The structure proposed was to be under the Judiciary, assigning the role of pre-trial reports to clerks of the court (Hamaundu, 2004). According to a Magistrate at Kitwe Subordinate Courts, the judiciary-driven programme was on track until it was 'hijacked' by the Ministry of Home Affairs in the battle for international funding. The resulting outcome was three separate amendments (Penal Code Amendment 12 of 2000, Criminal Procedure Code Amendment of 2000, Prison Act Amendment of 2000) that we today know as the Community Service Orders in Zambia.

Together these three amendments provide a superficial explanation for how CSOs should operate in Zambia. Penal Code Amendment No. 12 of 2000 provides for community service 'as a form of punishment and conditional suspension of a sentence of imprisonment requiring an offender to perform unpaid work within the community where the offender resides for the period specific in the order for community service'. Criminal Procedure Code Amendment No. 13 of 2000 provides that police service should be the ones, pre-trial, to recommend offenders for community service to the courts. The Registrar of High Courts in charge of court operations says that courts could not actually give out community service orders provided for in this law because these pre-sentencing reports have not been submitted by the police service. Additionally, police service did not have enough manpower to deal with the pre-sentencing reports or supervision process. (Hamaundu, 2004) Even those who are authorized to submit the reports have no guidelines on how they should make reports on offenders, nor guidelines on how to supervise or make reports on their updated performance. Prison Act Amendment No. 14 of 2000 empowers the Minister of Home Affairs to 'by statutory instrument, make regulations for the process of applying to the court for community service'. However, apart from this one-line provision, there is nothing else that prescribes any regulations on how community service in general will operate.

These three amendments symbolize the failure of Community Service Orders in Zambia from the outset. These amendments were passed in a 'piece-meal' fashion, instead of one stand-alone piece of legislation. This haphazard manner created a problem for smooth

implementation. Thus, with inadequate legislation, the community never saw the potential benefits of this law (Choonga, 2004). The law lacked clear guidelines, administrative structures, supervisors, and placement institutions. With no regulations or prescribed structure to guide the operation, it is no wonder the scheme did not exist in practice. For example, there was no provision for the existence of a National Committee, which is the body that is supposed to administer the execution of the community service scheme in the country. This was an imperative structure for the successful implementation of the scheme when introduced with the help of PRI. As a result, PRI withdrew funding from Zambia in 2001 and refused to assist with any further implementation until the legislation was revisited in order to be effective. PRI wrote to the Zambian Law Development Commission that same year asking for the legislation to be abandoned and further reviewed (Choonga, 2004). Without outside donors, there was inadequate resource allocation internally; no specific human or financial resources were dedicated toward implementation through the MoHA.

Acknowledging the failed attempt at implementing a CSO scheme in Zambia and that overcrowding was still a mounting problem, the government passed the Prison Act Amendment No. 16 of 2004. This Amendment provided for the use of parole. Parole is early release of prisoners conditional upon them fulfilling the requirements set out by the court. Offenders who have served sentences of at least two years and have six months remaining are eligible for parole (Prison Act Amendment No. 16, 2004). The Act established the National Parole Board to 'coordinate activities related to, and recommend the release of prisoners on parole; and perform such other functions as the minister may, by statutory instrument, prescribe' (Prison Act Amendment No. 16, 2004). The Board is a centralised system made up of: the Deputy Commissioner, chaplain-general, the director, representative of MoHA, representative of Ministry of Community Development and Mother and Child Health (Social Welfare Department), representative of the attorney-general, representatives of religious organizations, representatives of NGOs dealing with the welfare of prisoners, and a member of the reception and discharge committee. The Act also provided for Extension Services by the prison service in conjunction with parole: 'The Commissioner shall establish an extensions services programme for purposes of providing post imprisonment programmes for discharged prisoners and prisoners who are released under compulsory after care orders' (Prison Act Amendment No. 16, 2004). Officers who are professionally qualified in social welfare purposes are in charge of administering Extension Services.

## Methodology

Initial data collection was conducted at Cornell University starting in April 2015 through a review of relevant literature. A collection of journals articles and reports were gathered on the current human right violations and health conditions that characterized Zambian prisons. Beginning in May 2015, after attributing a majority of the challenges the prison service faced to overcrowding, we narrowed our focus to look for possible solutions to decongest the prisons. Thus, non-custodial sentencing options such as community service and parole emerged as our refined research topic. Through an attachment to the Southern African Institute for Policy and Research (SAIPAR) and the Zambian Governance Foundation (ZGF), our research activities expanded to include further review of relevant literature, semi-structured interviews, a review of non-governmental organization (NGO) publications and communications, and a review of the current legal framework in Lusaka, Zambia.

In order to gain a better understanding of the current legal framework and Zambia's present capacity for the implementation of non-custodial sentencing and parole, relevant stakeholders within Zambia's Criminal Justice System were interviewed. Relevant stakeholders include Prisons Care and Counselling Association (PRISCCA), Prison Fellowship (PF), Zambian Prison Service (ZPS), National Parole Board (NPB), Ministry of Home Affairs, Zambian Law Development Commission (ZLDC), AGE Justice International (AGE J), Prisoners Future Foundation (PFF), Development Aid from People to People (DAPP), and others. Each stakeholder was questioned on his or her current perspectives of the Prison Act of 1966 and the Penal Code (Amendments) Act No.12 of 2000, Criminal Procedure Code (Amendment) Act No.13 of 2000, and Prisons (Amendment) Act No.14 of 2000 that allow for community service, their opinions on any needed amendments to the legal framework, barriers against the implementation of non-custodial sentencing, and any challenges that their organizations faces in playing their role within the Criminal Justice System.

Comparative studies and discussion with international donors were also conducted. International donors such as Penal Reform International (PRI) and Access to Justice were questioned on past experiences working with criminal justice systems in various African countries, and their role as a donor. Other legal frameworks on non-custodial sentencing were consulted as well. These include South Africa, Zimbabwe, and Uganda in order to assess advantages and disadvantages of their own systems and further, how they could be applicable within Zambia. The National Institute for Crime Prevention and Reintegration of Offenders (NICRO), a South African NGO, was also questioned on their innovative methods on diversion and reform of offenders.

## Preliminary Findings

Our research topic was born out of a need to identify possible solutions for addressing the issue of prisoner's health in the ZPS. As we found via literature review, many of the factors contributing to the poor health of inmates was rooted in excessive overcrowding in the prisons. Hence, we began looking at feasible solutions to decongest Zambia's prison system and identified non-custodial sentencing as practical and extremely beneficial to society at large as well. Non-custodial sentencing would specifically target offenders who commit misdemeanour crimes, or in other words, deserving of a sentence of less than three years in prison and pre-trial detainees, or in other words, those who have not yet been convicted guilty. These groups would receive community service sentences and parole, respectively.

Our research included a visit to Lusaka Central Prison in Lusaka, Zambia, where we obtained, via data kept in paper files, three all-encompassing findings. First, there were over 1,000 prisoners in a prison built over 90 years ago, meant to house 200 people. Overcrowding in Zambia is extensive. Second, of these 1,000 plus prisoners, 362 were pre-trial detainees. These people have been denied speedy access to a trial and contribute to the aforementioned peril of overcrowding. Third, 320 of the prisoners there were serving sentences of three years or less. This is the population that would be eligible for Community Service Orders. A micro analysis of Lusaka Central Prison, which is statistically representative of the prison population as a whole, reveals that some of these 682 people in prison could instead be beneficiaries of non-custodial sentences and contributing to the productivity of society rather than occupying government funds in prison. To alleviate Lusaka Central Prison of this category of persons would theoretically bring their occupancy number down to approximately 318. That means transforming 500 percent congestion to 159 percent.

The below describes our preliminary research findings from interviews with various stakeholders. Our results are organized by the following: a brief explanation of the roles of each stakeholder within the Criminal Justice System, an introduction to the revised community service scheme from ZLDC, a description of the existing momentum towards prisoner reform, and challenges faced by those working in the Criminal Justice System (CJS) that may transfer into the new era of Community Service Orders (CSOs).

## **Roles of Parties Operating within the Criminal Justice System**

### *Zambian Prison Service*

The Zambian Prison Service falls under the Ministry of Home Affairs (MoHA) and is the main agency within the Criminal Justice System. The Commissioner of Prisons, appointed by the Republican President, heads the Zambian Prison Service. ZPS is mandated with controlling the prisons and its prisoners in all 10 provinces in which the Regional Commanding Officer (RCO) monitors and supervises the operation of all the district prisons within that province. ZPS works 'to effectively and efficiently provide and maintain humane custodial and correctional services to inmates and to increase industrial and agricultural production in order to contribute to the well being and reform of inmates and maintenance of internal security'. The services include education, literacy programming, basic and high education, distance learning, rehabilitation training (agricultural production, carpentry, tailoring, metal fabrication, sculptures), and milling plants, offender management unit, open air prisons, inmates care, behaviour change, special need offenders, development, and reintegration.

### *Civil Society Organizations*

The CSOs that we have identified are concerned with the needs of prisoners and work in conjunction with government institutions. The organizations include: Prisons Care and Counseling Association (PRISCCA), Prison Fellowship (PF), AGE Justice International (AGE J), Prisoners Future Foundation (PFF), Development Aid from People to People (DAPP), and others. These organizations are given more flexibility to focus their efforts on specific needs of prisoners.

### *National Parole Board:*

The National Parole Board is characterized by its dependency. As a sector under the Zambian Prison Service (ZPS), the National Parole Board functions to manage the parole application process and to supervise those on parole. The Reception and Discharge Committee (RDC), Extension Service Unit (ESU) compose the National Parole Board and assist in the management and supervision of parolees on the ground level. Supervision is conducted under the RDC and POs established within the provincial and regional offices. The NPB is dependent on ZPS for the administration of parole. NPB recommends eligible prisoners for parole but the final decision comes from the ZPS Commissioner.

## **The Parole Application Process**

The NPB currently uses media, posters, workshops, and seminars to communicate to offenders their legal right to apply for parole and its release procedures. The offender must then seek out a parole officer (PO). A series of interviews are conducted between the PO and the offender in order to complete the parole application. The PO completes the report and submits it to the NPB. The NPB is tasked with reviewing parole applications from all the provinces within Lusaka. Restricted by funding, the Board convenes only when a suitable amount of applications are received or upon the availability of the board.

Therefore, the board does not meet in a periodical manner and the duration for applying for parole varies considerably. NPB members include: Deputy Commissioner in Charge of Correctional Services acting as the Chairman, the Chaplain General, the Director of Health, Representative of the Ministry of Home of Affairs, Representative of the Ministry of Community Development and Mother and Child Health of the Social Welfare Department and a representative of the Attorney General, Representative of one CSO dealing with the welfare of prisoners. (Choonga, 2004)

Those that are recommended for parole are often those that can illustrate their remorse and minimal risk to the surrounding community. After a decision has been made by the NPB, the resulting applications are sent to the Commissioner of Prisoners in Kabwe for the final decision. The process is very centralized.

### *Zambia Law Development Commission (ZLDC)*

The Zambia Law Development Commission is a quasi-government, statutory body under the Ministry of Justice (MoJ) with a specialized function to conduct law reform. In a broader definition, ZLDC is in charge of changing the law to keep up with society. ZLDC has the autonomy to interact with outside stakeholders and is accessible to address any needed law reform. Law reform begins with research and consultation with stakeholders. After the proposal has been created, it is then drafted and given to the minister, who is then responsible for taking the legislation to parliament for final approval. It will then be made into law. ZLDC can participate in the actual performance of a new law alongside stakeholders to ensure that it is workable in practice.

## **Proposed Structure for the New Law**

After years of research, interviews with stakeholders, attendance at expert seminars, and consultations with surrounding African countries, the following community service scheme

is being proposed to the government to annul the previous penal code. This stand-alone piece of legislation introduces a multi-sectorial approach on prison reform. The multi-sectorial approach is intended to be a built-in checks and balance system for each governing body. The new law does not only center on alternatives to incarceration but also addresses most of the changes that need to be made to the entire prison system, including issues such as: human right conditions, legislative failures, prison management, reintegration, needs of the most vulnerable populations within the prison service such as women and circumstantial children, and torture. For our research purposes, only a brief explanation of the new community service scheme will be provided , as well as the guidelines for all key stakeholders.

As stated previously, a major problem of the existing legislation on community service is that it fails to address guidelines for implementation. This legislation will provide clear instruction in categorizing which institution should be mandated to handle offenders and who qualifies for community service, which offenses are eligible, and tools for monitoring and evaluation.

Roles of each player:

The Judiciary: will award the order of community service.

MoHA: will be given the mandate to establish the secretariat to be responsible for sourcing the funds from the government and from other cooperating partners such as international donors and reviewing the monitor and evaluation forms.

MCDMCH: will provide the probation officer from the Social Welfare Department responsible for counseling aspect of parole to utilize their training in counseling and guidance to supervise offenders on community service.

NGOs: will be able to sit on the National Committee on Community Service Board to provide additional support in achieving the objectives of the board.

Community members/Chiefs/Traditional leaders: will be utilized when necessary to provide a link between the offender and the courts as well as inform the board on the sentiments of the surrounding community.

Under the Ministry of Home Affairs will be the National Committee on Community Service Board. This committee will be in charge of administering and supervising all non-custodial sentences. The committee will have headquarters in all of the provinces. Underneath the National Committee on Community Service Board will be ZPS. The Director and the deputy director of the community service boards will report to the ZPS. Senior Community Service officers from the MCDMCH will report to the deputy director. The community service officers will be in charge of POs, while the POs will head the subordinate community officers. Please refer to the respective chart in the appendix.



Offenders that commit minor misdemeanours will be eligible for community service. Misdemeanours, or minor offenses, constitute crimes that qualify for less than two-year sentence in prison. Other considerations taken by the court are the age of the offender and whether or not he or she is a habitual offender. Before a community service sentence can be given, the offender has to give consent to the sentence. A report is then given to the court by the POs to provide background information on the offender. The court based on the background information provided by the report chooses a placement to best match the skills of the offender. There will be permanent placement sites mandated in this scheme that has yet to be determined.

A pilot study will be conducted in three districts: Lusaka, Kabwe, and one rural setting to be announced later. The purpose of the pilot is to iron out any unanticipated challenges in implementation. ZLDC will monitor the implementation and work beside the above stakeholders during the pilot study.

## **Momentum and Political Will Derived from Advocacy Efforts**

‘We are living in a modern world and we need to be moving with the times’, said Barbara, a Regional Parole Officer at Lusaka Central Prison. Institutions at every level are capitalizing on this era of change and are ignited with passion to help. AGE J has petitioned for the rights of female prisoners and their circumstantial children. PRISCCA has advocated on behalf of juveniles for the creation of a statutory instrument to promote speedy execution of sentences. International donors are already being consulted for financial support. A precedent has been set to mandate the release of a number of prisoners through presidential pardons.

There is a national recognition and advocacy for prison reform. The prisons have reached a new celebrity status within the news. In President Sata’s first public address, he mentioned, ‘most of the people in prison should not be there’. It is at the top of everyone’s agenda within the government and sensitisation at the government level is not uncommon. With the help of NGOs such as PRISCCA, influential government administrators are successively being informed to prisoners needs. According to Dr. Malembeka, the director of PRISCCA, ‘One judge that was brought to see the conditions cried tears at circumstantial children’.

Recognition at the political level is there and it is clear that the wheels are spinning for reform. All of these current advocacy efforts share the same conclusion that the only solution for a more efficient and effective Criminal Justice System is the entire revision of

the Penal Code. The 'law is what guides us. If the law says, we'll do it, just give us the proper resources', stated Martha Sinkamba, Assistant Commissioner of ZPS and Head of Extension Services at NPB. The will for change is clearly present and stakeholders are ready to 'bring it on' and ready to do what is required to better the conditions of prisoners. However, many efforts focus on the short-term relief for prisoners as everyone waits with anticipation for the new governing legislation.

## Challenges

### *Lack of Communication and Uncoordinated Efforts*

The aforementioned stakeholders involved in the Criminal Justice System are all working toward the same goal: implementing an effective Community Service Scheme in Zambia. However, a lack of communication underlies their relationships and thus results in the inefficient use of human capital. It was not until the fifth week of our research that we learned ZLDC was, in fact, in the process of drafting new legislation targeted at addressing many of the issues other stakeholders had raised. All other interested parties did not know the status of this legislation or for most, that it was being drafted at all.

Without this crucial knowledge, many advocates continued to work tirelessly to advocate for a change to the law – one that is already in the process of being amended. Other NGOs have tried to work under the existing structure provided in the legislation in order to reach their goal of implementing CSOs. ZPS has worked with various NGOs, including PRISCCA and Prisons Fellowship, to form the Zambia Prisons Consultative Forum. This is a group of stakeholders interested in prison reform that are working under the MoHA and MoJ to review applications of organizations that want to apply to supervise offenders for Community Service. They have also been working on pushing for the MoJ to create a statutory instrument (SI) for the judiciary to use to give out Community Service Orders. Currently, their proposed supervision for offenders is based on volunteers and church-related outreach programs. Prison Fellowship stated in an interview that many people have shown interest in volunteering and government officials have instructed them this is the best way for them to have a voice. The problem with this Consultative Forum is that it is working to create CSOs under the existing legal framework provided, which, according to ZLDC will be completely annulled by the end of this year with the new legislation.

There is clear division and lack of communication between relevant NGOs and government agencies regarding the implementation of CSOs and the status of the legislation. In an interview, the executive director of PRISCCA argued that the best strategy to achieve an amendment to the existing legislation was a 'shortcut'. He proposed the best and quickest

way to change the law was to lobby the President and present him with a persuasive policy paper so that he would instruct the minister to create the bill 'that night'. Then the minister would take it to parliament and it would become law. He instructed that this was a way to get around the lengthy process of drafters. Sharon Williams at ZLDC adamantly warned against this route for passing any type of legislation. As an expert in law reform and the Assistant Director of ZLDC, she cautioned that legal reform spontaneously ordered by the president usually lacks consensus, rationale, and sufficient research. She supported that the best review and rewriting process does, in fact, take the necessary time to identify specific challenges on the ground and consult with stakeholders. She explained ZLDC had previously worked with PRISCCA and done extensive research to ensure the law would be constructed correctly the second time around. PRISCCA, unaware of the status of this legislation, was understandably dissatisfied with the lengthy and seemingly never-ending process, as it was first initiated in 2006 and they were not kept informed on the developments in their findings and the progression of the law.

PRISCCA cited the National Parole Board as another example of a government institution that does not work effectively with NGOs. He saw the NPB as not transparent in its' decision making for specific offenders and that the overall system the NPB works under is too limiting to effectively address the majority of offenders. Additionally, he expressed the desire to have more input in the decisions that directly affect many of the offenders his organization works with. Additionally, there is only one slot for an NGO to sit on the NPB and the rest are government officials and government appointed. He added that the NGO that was chosen to sit on the board, a church organization, is relatively uninvolved with prisoner-related efforts. He would rather a network of NGOs select a representative to sit on the board.

There was also miscommunication and a lack of concerted efforts amongst NGOs themselves. While it did not seem like there were contentious sentiments among the various groups concerned with prison conditions, it became apparent throughout our interviews that this lack of coordinated efforts resulted in the inefficient use of resources and time. In many cases, it results in organizations trying to recreate a wheel that has already been worked on by another organization. For example, the previously mentioned Zambia Prisons Consultative Forum attempts to be the centralized body that approves NGOs to supervise CSOs. AGE Justice on the other hand is concurrently but separately working with the MoHA to utilize a Catholic Church Organization's network to supervise offenders. The Prison Consortium, led by PRISCCA efforts, is a recently formed group that attempts to organize NGOs concerned with prisoners. However, this group overlaps with members of the Consultative Forum and does not include other organizations we identified as relevant parties.

Miscommunication extends to the network of government agencies internally as well. The NPB, a government department, is included in the group of relevant stakeholders that were not aware of the current legislation being drafted. Martha Sinkamba, the Assistant Commissioner of ZPS and the Head Extension Services officer of the NPB, expressed she was not aware of the progression made by ZLDC either. Further, Christabel, the lead lawyer on Penal Reform at ZLDC, identified that the objective of parole, as under jurisdiction of the NPB, is not being met due to many challenges the NPB faces. Christabel, among many other stakeholders, see a lack of transparency from the NPB which further contributes to poor communication.

Communication within the dominion of the NPB itself affects the efficiency of its operations. The law states that the whole process for approving offenders for parole should take no longer than 14 days once the board has met, however this is often not the case.<sup>1</sup> Martha cited the reason to be that the ZPS Commissioner has the final say in approving offenders for parole, rather than the NPB. This extra bureaucratic step creates laps in waiting time and lengthens the process in getting approval for parole. Martha explains, you can't tell your boss, 'hurry up, we're waiting'. She suggested that having the NPB act as the final stamp of approval would decrease the lengthy process and would, in fact, be better because the NPB has been in touch with offenders, their references, and has discussed their individual circumstances at length.

## **Pre-Trial Detainees**

The Penal Code provides that a person held in custody, without being convicted, shall have access to legal representation or a judge within 24 hours of being detained. However, there are countless stories of detainees being held for weeks, months, and even years. These detainees can often be found innocent later on once their case reaches trial. Paul Swala, Chair of Prisons Fellowship, was serving as an army officer in 1979-99 and was accused of planning a coup. He was arrested and spent two years in prison before his case reached trial, where he was proved to be innocent. After his trial and being acquitted he was still denied his job back. According to Swala, the conditions for those held pre-trial are just as bad, if not worse, than prison itself. This means that every year, thousands of people who may be innocent are subjected to prison-like conditions and treatment. This population is large in number and thus a large contributor to the issue of overcrowding.

In Zambia's prison system, 6,000 individuals, or about one-third, are currently being held pre-trial. On our visit to Lusaka Central Prison, we discovered accordingly that 362 out of about 1,000 prisoners are pre-trial detainees. Geoffrey Mayamba, the Director of Prisoner's

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<sup>1</sup> Interview with Martha Sinkamba from the National Parole Board 14 July 2015

Future Foundation (PFF), cited a lack of clear understanding of roles within the Criminal Justice System as one of the main factors for the 'excessive and extended use of pre-trial detention'. It is symptomatic of the failings in the Criminal Justice System relating to the effective and efficient management of case flow. He cited these failings specifically as: poor record keeping, case files getting lost, logistical challenges such as transportation of detainees to court appearances, non-selective charging of suspects, lack of forensic capacity to investigate cases, abuse of police powers to arbitrary arrest and detain, poor communication, lack of cooperation and coordination between prosecutors and investigators of the CJS institutions, and prolonged investigations on the part of the police who wait for instructions from the Director of Public Prosecution.<sup>2</sup>

PFF cites poor communication between courts and prisons as a major cause for the large number of pre-trial detainees. He informed us that remandees often do not know the date of their next case hearing. In addition, he sympathizes that judges cannot work every hour of every day. Judges handle about 200 cases per month but there is an even larger influx of cases to attend to. There are also sometimes unnecessary adjournments by the courts, which are not communicated to the prisons. Finally, ZPS has inadequate knowledge of the appeals procedure process from the courts to advise those accused remandees.

The 'poor and powerless' are often the ones that bear the brunt of excessive and extended pre-trial detention due to a lack of access to legal aid.<sup>3</sup> Detainees who have no money to pay for legal representation thus have no one to push for their cases. Organizations like PRISCCA and Prison Fellowship offer assistance in this regard; they will go to courts and represent those who cannot afford it so that their cases are not pushed to the bottom of the pile. Further, most remand prisoners do not have access to or knowledge of Criminal Justice procedures that would grant them bail, police bond, or the ability to make appeals.

The theme of the inequality of offenders extends to the current availability of non-custodial options as well. According to PRISCCA, only the wealthy have access to services from CSOs under the current law. 'You can buy freedom, but you need the resources to do it'.<sup>4</sup> He supported that non-custodial options are not compelling under the current law, so these sentences are completely at the mercy of the judge. Therefore, assistance from CSOs is a window only for those who can afford strong representation or bribes. Further, the NPB explained that those who live in rural areas are less likely to have access to parole as a non-custodial option. This inequality though is due to constrained resources.

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<sup>2</sup> Interview with Geoffrey Mayamba from Prisoners Future Foundation 29 June 2015

<sup>3</sup> Ibid.

<sup>4</sup> Interview with Godfrey Malembeka from PRISCCA 26 June 2015

## Constrained Resources

For majority of the stakeholders we interviewed, limited resources and funding contributed to poor administration, information management, and a lack of training. For example, although the poor cannot afford to hire their own legal representation, there are government-provided lawyers. However, these lawyers are understaffed, not found in all districts or provinces and yet sometimes still charge a fee. It was overwhelmingly clear that this limitation extends to the ZPS as well. PRISCCA noted that ZPS has made increasing efforts to improve data collection. However, the officers need to phone-in information to their supervisor. He says the staff is not given 'talk time' by the Commissioner and so sometimes they are not able to relay the content. According to Barbara, the Provincial Parole Officer, 'when certain information is needed you don't have it at hand, you have to start running up and down from one office to another'. This affects officers' ability to gather full information about a parolee, prisoner, and processes to follow. Further, there were no clear systems or comprehensive evaluations identified to keep track of parolees.

Consequently, officers receive minimal training. A parole officer's job is to rehabilitate, keep track of, and assist those released on parole. When asked how she is encouraged to promote behavioural change or how progress in parolees is measured, Barbara could not answer from memory, but assured us that there were guidelines 'somewhere she would find later'. However, Barbara is not solely to blame; she has an immense number of responsibilities and functions, as she takes on many different roles everyday. For example, she is trained as a nurse and attends to prisoners at Lusaka Central; she is a ZPS officer under the Offender Management Unit; she is a parole officer; and finally, she sits on the NPB when it meets. She expressed that her work resembles more of a volunteer position than a salaried-career. Martha Sinkamba at the NPB also cited a shortage of parole staff and their overwhelming responsibilities as a hindrance to effectively monitor parolees. Lusaka Central Prison, home to over 1,000 prisoners, employs four parole officers, who again, have several job titles in addition to being a parole officer.

These same issues challenge the operations of the NPB as well. Members of the NPB are intended to sit for a three-year renewable term. Martha explained that the extent of their training was two weeks in Canada. However, with a renewal of the board overdue, there probably will not be funds to do this same type of training again. Martha stressed many times that the NPB does not receive adequate funding from the government to execute all the services it is expected to. With 40,000 kwacha per month, they are expected to finance operations of the whole office including electricity, computers, water, stationary, all administrative expenses, and all travel expenses and accommodations that come along with the expectations of the NPB to serve the entire country. Logistically, they have tried to solve the inadequate financing of traveling to all parts of the country to sit and review

applications by sitting mostly in Lusaka and having paper requests sent to them. They respond with the decisions via paper messenger again, occasionally requesting an oral or in-person meeting to determine eligibility. However, this solution poses its own challenges as well. Without effective digitized documents or communication, there are certainly increased delays in determining parole eligibility. The reliance on physical documents produces slow processes and is of course prone to errors or misplacements. Martha has a computer in her own office but explains its' benefits are not fully capitalized unless everyone uses the digitized system.

## **Mediocre Rehabilitation and Reintegration**

Upon our visit to Lusaka Central Prison, we spoke with two parole officers. One was the aforementioned Barbara, and the other was Hastings. Hastings told us a story of a young man, 21 years old, who had spent a few years in prison, committed for petty theft. He had stolen a phone because they had no money and limited food at his uncle's house, where he stayed. Four days after he was released on parole, he was arrested for a crime. This time, he had broken into that same uncle's house and stolen a TV and radio. Hastings had the opportunity to speak with this offender, before he escaped, who explained 'my family did not accept me when I came back out. I had nowhere to stay, no money'. Hastings said, 'If he doesn't have anywhere to stay, then prison will be a better place than home'.

This offender's story is the epitome of the need for implementing CSOs. He was convicted for a petty theft and then cut off from society and his familial ties, which increased the likelihood that he would commit another crime. Hastings explained that many crimes committed are the results of their circumstance and these people 'do not belong alongside murderers and rapists'. This offender's re-offense is the result of a failing rehabilitative system in the CJS.

PFF explained the CJS recognized this desperate lack in rehabilitation, which led them to create the Offender Management Unit, tasked to look into prisoner's welfare and impart sustainable skills. They are responsible for inmate care, bedding, clothing, hygiene, sanitation, HIV awareness, nutrition management, risk assessment, promoting sports and recreation, and skills training in academics, agriculture, industrial activities, and farming. This is a large range of responsibilities for one officer to have, not to mention the several other hats they are concurrently supposed to wear. Hastings explained that 'we are able to give them skills, but we are not able to extend that help to resources or financial help'. He expressed that although many offenders do in fact leave prison with learned skills, they are seldom able to put these to use to support themselves. The government and other employers mostly refuse to hire this category of people and they are unable to start

businesses themselves because they lack capital – hence, they often resort to crime again. Hastings melancholy concluded, 'Have we done enough? We have not. We have not done enough'. Additionally, when we asked the parole officers about the other extension services they offer to encourage behaviour change, they provided us with little proof of service beyond speaking with the offender.

In the newly proposed CSS, the role of counselling and rehabilitation will be the sole responsibility of Social Welfare workers under the Social Welfare Department in the Ministry of Community Development and Mother and Child Health. These Social Welfare workers already exist so it was hoped that they would transition smoothly to the new structure. These Social Welfare workers also need to obtain a three-year degree in social work. The other supervisor from ZPS will be strictly in charge of monitoring hours and administrative needs. Hastings affirmed the need for this schism in parole because when offenders see him in his ZPS uniform they are usually reluctant to open up. 'They immediately think I am out to get them', says Hastings. According to Christabel at ZLDC, they hope to implement the CSS with established placement institutions such as tree plantations or hospitals, but can also be flexible to suit specific cases or skills of the offender. For example, she mentioned if a lawyer is given a CSO, that person can be required to donate the prescribed amount of hours to pro-bono legal work instead of planting trees to better give back to society.

## **Un-Sensitized Community**

As said by Venessa Padayachee, the National Advocacy and Lobbying Manager at NICRO, 'the biggest challenge is society itself'. It appears that society still remains one step behind the government. If the current law is replaced by the newly proposed legislation, a major deterrent to its perceived effectiveness is likely to be society itself. Widespread unfamiliarity among citizens of an individual's legal rights in Zambia perpetuates the continued overuse of arrest and detainment as punishment. Finally, stigmatism of ex-offenders encompasses many communities and hinders perceptions of Community Service and Parole.

According to Dr. Malembeka, if one were to look at the demographics of the prison population, he/she would see that many prisoners come from rural areas. Due to lack of legal education, many offenders in these areas enter into court without proper knowledge on the various forms of punishment and lack the funds to afford proper legal representation. For some, their discrimination under the law begins before court in that many do not even know what exactly constitutes a crime under the law. For example, according to Dr. Malembeka many offenders are arrested for trespassing, although they did



not know they were committing an offense at the time of the alleged crime. These individuals are often incarcerated and contribute to the ever-growing prison population.

The perception of the community holds great power. On the community level, a retributive culture and stigmatization remains high for offenders. Ex-offenders are welcomed into their community by being called 'Chikawalala' or thief. For many, a criminal is always a criminal and should be treated as such. With this perception, the community has the ability to eliminate any corrective work done by ZPS and POs by simply failing to accept a prisoner back into society. According to Hastings, a PO from Lusaka Central, many people forget that these offenders 'come from the community and are supposed to go back. [Prison] is not their eternal home; they are only here for a short period of time'. In addition, the community's influence often extends into the judicial courts. Magistrates and judges are often in situations where they want to comply with the law, but the community also pushes them. They cannot act in isolation and are pushed to incarcerate. Due to a history of incarceration set by the punitive approach by the Prison Act of 1966. Society often looks at community service with malice, regarding it as a form of 'soft-punishment'. As such, it fails to acknowledge the benefits of other alternatives to incarceration.

## Discussion

### Forming a Consortium to Address Communication

*'We all talk too much and don't act fast enough'* – Paul Swala, Prison Fellowship

*'They talk and talk, sometimes bring shirts and socks, but at the end of the day who is really benefitting from the people that start organizations in the name of prisoners'* – NPB

The overall and widespread lack of communication, coordination, and collaboration among stakeholders of the Criminal Justice System concerned with implementing CSOs has resulted in some poor perceptions of other parties. PFF expressed that when 'NGOs are executing their duties, they are considered to be investigators or enemies of the government'. PRISCCA spoke passionately of its mistrust of governmental officials and their honesty when it comes to prisoners, as he used to work for the government and was a prisoner himself. Martha at the NPB expressed that 'the churches are really trying, the others I don't know'. Issues with communication have negatively impacted the relationships of the relevant stakeholders.

The encompassing problem of collaboration will transcend the updated legislative system as well unless it is addressed directly. Without collaboration among the various stakeholders, the new scheme for CSOs will also result problematic and under utilized. When asked if they had any lingering questions about the prison system, every organization that provided an inquiry asked about what other NGOs or government organizations were doing or, for an update on any projects they had heard of. There is clearly a need to increase communications and cooperation between NGOs and government agencies, both between the two and within each own sector.

We propose to capitalise on the existing structure and relationships that PRISCCA has built in the early stages of their own consortium and expand upon it further. The consortium should expand to include all NGOs and organizations concerned with prisoners' health, prison conditions, and the respective legislation. There should be a deliberate effort to seek and recruit these types of organizations. Additionally, the consortium should seek to be lead by an organization that has the ability and capacity to facilitate these meetings and connect the concerned parties with other relevant stakeholders in government. Government officials connected to the subject, such as ZLDC, the NPB, and in the newly proposed structure, the National Committee on Community Service Board should meet regularly with the consortium to advise them and foster a close working relationship. This

fluidity in communication among the mentioned parties will benefit all of its' working partners.

De-mystifying each of the organizations' goals and operations will improve the relationships among the stakeholders. The NPB as aforementioned has a positive relationship with the churches association, in contrast to other prison-based NGOs. The NPB works closely with the church association, as they both sit on the board; there are more instances of communication and contact with each other - better perceptions and relationships are correlated with this. In addition to improving relations with other stakeholders, this consortium will allow NGOs to work more effectively.

By joining together, this assembly of NGOs will be better able to add value to the new CSO structure. Instead of being accused of just 'making noise' the consortium will be able to strategically assign its members to address, fund or build capacity in areas of the structure where it is most needed and desired. We propose a few areas of many possible ones in this discussion. First, this will allow the institutions in charge of implementing the CSO scheme to voice their opinions and ask for assistance where it may be needed. Second, this allows the cooperating NGOs to strategically place and align themselves rather than re-doing work or attempting at the same area in contradicting ways. There is no need to reinvent the wheel several times over.

The results of this consortium will be synergistic in effect. Combining the efforts, knowledge, and specific strengths of each NGO will strengthen efficiency. It will also allow easier distribution of information and a convenient outlet for other funds or international donors to capacity build these organizations or areas. ZLDC confirmed that when working with PRISCCA and the Prisons Fellowship at a workshop, 'most recommendations came from them actually'. Cooperation is a crucial step to take and expand upon to ensure that the proposed legal structure for CS is functional and succeeds.

## **Capacity-building within the Criminal Justice System**

The CJS is currently characterized by constrained resources, which negatively impacts the institutions' ability to effectively manage their information systems and train necessary parties. When asked what the biggest challenge to performing her job was, Barbara at Lusaka Central Prison responded that she would like to receive more training in the areas of work she is required to perform and that the introduction of a computer would save her several hours per day. In the CS scheme proposed in the new legislation, officers like Barbara would be in charge solely of tracking hours and the administrative side, while the Social Welfare workers would be responsible for the rehabilitation aspect. Still, the same

principles apply. For the system to be effective, those in charge of implementing need training. To run efficiently, there needs to be investment in information management systems and digitization of data tracking. Even a single computer or tablet in a central location that would require officers to report data daily or weekly would shave many hours and logistical mistakes from the system.

For the new CS structure to work, there has to be a commitment of funds by the government in addition to outside donors. The NPB faces many logistical challenges due to their constrained resources and consequently is deemed to be ineffective in achieving its goals by other stakeholders. The creation of the NPB was initiated by outside donors: Access to Justice program and GIZ. They provided capital necessary for vehicles, equipment, and buildings. However, once they were done setting up the NPB they discontinued funding and the board found itself scrambling for funds and facing many of the challenges we have already mentioned. It is nearly impossible for a government to sustain a department with funds that it didn't have to organically grow in the beginning.

Enhancing the human resource capabilities in the Criminal Justice System will be essential to the success of the new CSO program. Further, it will promote speedy and fair trials. 'Justice delayed is justice denied'.<sup>5</sup> Improving record keeping will allow for better monitoring and evaluation of this new program. Thus there will be better data to rely on to improve the system long term, to identify areas where further development is needed, and evidence for seeking resources for these areas.

Training of necessary persons on all levels of implementation will make or break this new CS system. Omar Khan, the project manager of Penal Reform International's (PRI) Excellence in Training on Rehabilitation in Africa (ExTRA) project, explained that success of CSOs relied on training, on all fronts. This project is currently being successfully implemented in Kenya, Uganda, and Tanzania. They are looking to this model to scale up within the countries they are currently working and in other countries as well. Khan explained they target magistrates and judges on the judicial level to ensure they know exactly what the law is, the benefits of it, and provide them with creative ways to implement it. He supported that informing them of the benefits proved very effective as many of them were surprised and were then more inclined to sentence offenders to CS. Second, they train parole officers on both the administrative and rehabilitative front so they can provide magistrates with quality assurance of the order being followed through. In addition, their supervisors and those link persons are also trained so they know exactly what their job entails. According to Khan, when those persons came out of training they felt more invested, capable, and realized there was much potential to excel in their role. In the

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<sup>5</sup> interview with Geoffrey Mayamba from PFF

legislation's new system, this training component will be absolutely essential. It can also be supported with key documents and guidelines to ensure compliance.

Vennessa Padayachee, the National Advocacy and Lobbying Manager at NICRO, emphasizes that the key to successful training is continuous professional development. Regular and updated sessions or educational conferences should be mandatory in the new scheme. She also emphasized that a fundamental component to achieving the goals of CS will be training the Social Welfare workers in rehabilitation methods.

### ***Emphasis on Restoration, Reformation, and Rehabilitation***

Ties between petty offenders and society are severed without utilizing CSOs under the current CJS, and this inhibits reintegration of the offender to their local community. The new legislation, which provides for a greater use of CSOs, will improve this concern because petty offenders will sustain their connections to family, friends, and society. However, with this change necessitates, a more comprehensive system. Offenders who receive CS will require support from the supervisor charged with counseling them, to fully realize the intended goal of rehabilitation.

Implementing CSOs on its own will not deter further crime. Padayachee at NICRO warns that CS must be a comprehensive process and is not a 'one-size fits all' solution. NICRO utilizes three specific assessments to determine placement and evaluate growth, which she says have proven extremely effective. The assessments include a psychological assessment, a criminal thinking and behavior test, and a risk assessment test. All of these tests are performed initially and following CS to provide a baseline indicator, and potential evidence for improvement. She argues, 'If you can change thinking, you can change behavior'. NICRO also uses anecdotal evidence from interviews from relatives to supplement background information for the courts. Padayachee remarked from experience: 'You can't just place people to complete hours; it is insufficient to address behavior, and assessment is needed for the learning portion'. The assessments and individualized approach provide seemingly effective and evidence-based solutions for offenders.

NICRO's approach links to their philosophy of Restorative Justice. Community service must help serve the community, in additions to resonating with the individual to help modify their mentality. She advises, in this complex issue and approach, 'You have to be smarter'. There is a need for creativity and adaptability in approach. She further asserts, 'Crime is often a result of damaged relationships'. Hasting's testimony, working as a parole officer, supports this assertion as well. To address this issue, Padayachee advises to first look at the societal and familiar relationships that have the potential to be restored within the offender's life. In her opinion, CSO needs to be focused on the victim and this can be done

through strategically assigned placements that address the behavioral needs of the offender and restore justice.

Therefore, CS options should be wide and varied. NICRO draws on thematic programs to supplement effective CSOs, including: life-skills, domestic violence, anger management, financial management, problem solving, criminal thinking, victim mediation, counseling, and/or a mix of programs. CS placements should foster the most productive experience for the offender, the victim, and society. Placement should be linked to the offense and the desired route of change. At the end of the sentence, NICRO requires the offender to complete an assignment on the reformation process to engage the offenders directly with their own personal growth and to reinforce the intrinsic value of their behavior - which, they have now seen, contributes to the welfare of society. This final step of the reformation process is essential for summarizing the path the offender has taken.

NGOs possess tremendous potential to add value within the CSO scheme by playing a role in rehabilitation. NICRO, for example, provides services such as halfway houses, drug and addiction rehabilitation and mental health treatment. Psychological assistance and rehabilitation might be best suited for NGOs to focus their resources on, especially because it is a facet of the CSO process which Zambian government might not be able to fully achieve.

NICRO affirms that information management systems in this assessment framework are critical to its implementation. Continued developmental training is critical for social workers and those professionally responsible to determine what dimension the offender will most benefit from. Continuing education should include training on assessment, communication, interview skills, setting boundaries and emotional intelligence. Overall, NICRO reports that the system has been extremely effective in reforming offenders with a very small proportion of cases that are incompliant subsequently return to prison.

Overcrowded prisons and societal crime are issues, which are too vast to only address from a top-down legislative perspective. In order to achieve the goal of CSOs, a bottom-up, grassroots approach is also necessary.

## **Methods for Sensitisation**

Much of the work of the CJS is dependent upon society for the successful re-integration of offenders back into a community. Organizing the public can make a big difference in the proliferation of community service and parole. Sensitisation needs to be a main priority; if the community does not understand the benefits of non-custodial sentencing, the

community will reject the system and those offenders, which will in turn hinder the success of the entire CSS. Currently, community sentiments reflect the out-dated Prison Act of 1966. Improved communication between the government, NGOs, and the community is necessary to create a dialogue on the conditions of prisoners between all parties, which will successfully shift to a proper understanding of reform. The community needs to be reminded that reform should be the paramount value of the Criminal Justice System.

Various stakeholders were interviewed on advocacy campaigns that have been effective in, elucidating alternatives to incarceration and therefore, alleviating the stigmatism associated with the criminal justice system. A two-step process is essential to achieving this goal. The first task is to inform the community on their legal rights, and then educating the community on the reality of community service and parole as an acceptable form of punishment. For non-custodial sentencing to be an accepted option for prison-diversion, offenders need to know their legal rights as well as the community at large. Education can be a major tool in increasing a community's knowledge of legal rights. For example, administering pamphlets and conducting workshops and seminars are effective ways to disseminate information to the community. Further research can be done on how to make the law more transparent and increase the country's distribution of legal resources.

Second, there needs to be increased awareness of the possibility for an offender to achieve redemption while in prison. Prison should not be a place of torture, but a location for reflection and positive development. DAPP recommends utilizing the influence of chiefs, headmen, and faith-based leaders for communities in rural areas because of the prominent and diverse influence they hold. DAPP has found much success in consulting first with these village leaders during prior projects, which sought to increase awareness of HIV/AIDS. Another method that has proved extremely effective in South Africa is the use of story telling within the community.

NICRO has incorporated the use of story telling by ex-offenders to gain community support and awareness. Allowing a prisoner to share their journey of reformation is a compelling way to demonstrate the efficacy of community service sentences.

In an interview with PRI, they attributed much of the ExTRA project's success to an emphasis on community involvement in rehabilitating offenders. PRI identified community out-reach as a key component of the new CSS in Zambia. One of the techniques their program found effective was again, having ex-offenders speak to people about what it was like to be in prison or engage with a CSO. Furthermore, radio and TV programmes that educate society on the viability of CSOs as an alternative to incarceration are useful. Prison Fellowship warns, however, that many people in Zambia do not have access to TV and radio. To address this, they recommend using church organization networks and faith-

based leaders to sway and sensitize the general community. PRI supports that community involvement was a positive force in Kenya, where volunteer probation officers (VPOs) are utilized. The government does not have funds to invest in parole officers, but VPOs are used for status checks to connect the offender back to the court. These VPOs are generally well-respected people in the community and are older rather than younger, 'beginner' volunteers. Although this completely volunteer-based system will not be utilized in Zambia's new proposed CSS, it provides an interesting example for places that may struggle with the structure, like very rural areas. DAPP informed us that traditional leaders in rural settings have messengers who could even serve as an additional link between rural settings, the offender, and the courts.

'It is not absolutely necessary to safeguard the community, specific victim or vindicate social norms, long-term incarceration is extremely wasteful of precious state resources. Although many may take momentary pleasure when a judge pronounces a long sentence against an offender who has done something odious, their pleasure might be dulled if the judge also spelled out the consequences of that same sentence. In order to sentence an offender to 30 years for being a habitual thief (or third-time offender), the state will have to deny 30 poor young men and women tuition at the state university. Thus the cost of incarceration is tremendous' (Singh, 2007).

Over all, community service and parole can provide a beneficial symbiotic relationship: both for the offender and the community. Venessa Padayachee stresses the importance of community members being able to see tangible benefits derived from the CSS in accepting it as productive to society and as a legitimate punishment. Permanent project sites such as tree plantations, building schools, and cleaning up the city are good examples. These visible improvements will ensure that CSOs are an act of restorative justice for the entire community. This need for promotion and sensitisation is a great area for NGOs to assume and take advantage of their close involvement with the community to enhance the efforts of the government for alternatives to incarceration.

In the pilot studies conducted in Zimbabwe, a series of regional training events were conducted to raise the awareness of magistrates and the community on the purpose and operation of CSS. Zimbabwe places much of their success in sensitisation through the use of positive media coverage. The Zimbabwe National Committee on CS claims 'only through the media are we able to reach out to the public and explain what CS is all about' (ZNCCS). This can be done through a series of steps according to Zimbabwe. First, it requires contacting the local media, then taking the local media on a tour of the local placements in order to enhance the visibility of the public on CS and increase their confidence on the system, and then to attend local meetings and conference to explain the programme (ZNCCS).



In response to the public's sentiments on NCS, ZNCC's states that CSS is not a 'soft option' as long as 'it is properly implemented and supervised'. Punishment is governed by the number of hours an offender is mandated to carry out by the court. The work will be supervised and reports submitted to ensure that the offender conducts the punishment. Prior to the colonial era, community-based punishments were common in Zambia.

Punishments were based on compensation usually through the form of cattle, goats, and chicken. If the offender was unable to provide the requested compensation for their crime, manual labour in the community, or banishment in the most severe cases, was prescribed to make up the difference (Chonga, 2004). Therefore, alternatives to incarceration are not a foreign concept with community-based settings and during sensitisation schemes should be expressed that community service reflects traditional justice and 'reflects a sentencing within a framework of national interest and cultural integrity' (ZNCCS).

### **Comparative Study: Zimbabwe's Community Service Scheme:**

Zimbabwe set the precedent for community service in the 1990s in Eastern Africa; therefore it is expected to find some similarities between the proposed ZLDC framework and the existing CSS in Zimbabwe. Surrounding countries such as Zimbabwe, Uganda, Tanzania, and South Africa share similar models for implementing non-custodial sentencing. Work and studies on alternatives to incarceration began in the 1992 with the financial support of the European Union and the British government. PRI facilitated the primary projects on community service and by 1997; the scheme was officially transferred to the government (ZNCCS).

The CSS led to the formation of a National Committee on Community Service and the creation of local committees to organize the scheme in the community. The membership on these committees consisted of NGOs, and representatives from the criminal justice system (police, courts, prisons, local government, and social services). The committee on CS shares full autonomy from the government and have complete control of finances, assets, and implementation of CS. The streamlined nature of having one governing body to handle the implementation and administration of non-custodial sentencing allowed Zimbabwe to experience immediate success within the first year of implementation. For example, from January 1993 to December 1994, over 3,000 people were placed on community service sentences. Placements included hospitals, schools, orphanages, elder care homes, and environmental projects. In 1996 it was reported that 15,000 offenders benefited from CSS and the government was able to save \$9 million (ZNCCS). In the following years as a result of NCS, the prison population stabilized, there was a high attendance rate in CSS, there was reduced recidivism, an increased judicial confidence in alternatives to incarceration from

magistrates and judges, a decrease in the financial burden, and increased public satisfaction and benefit from CS (ZNCCS).

The success from the Zimbabwe model increased international interest in this approach. As briefly mentioned before, Zimbabwe held the Kadoma Conference to advocate for CSO in Africa. Zimbabwe became an exemplary standard on how to successfully avoid the challenges and implementation community service punishments. According to Zimbabwe, there are certain critical factors that countries most possess before the establishment of a community service program. These factors include political willingness, involvement and co-operation of all relevant ministries at a high level, the willingness of heads of institutions to participate in the scheme to properly supervise offenders, and the effective co-partnership and cooperation with the government and NGOs (ZNCCS).

In the Zimbabwean CSO there was a lot of emphasis placed on the role of the NGO within the community service scheme. CSS is a community-based punishment and NGOs offer a community based perspective and influence. Because the ZLDC proposal shares similar qualities to the Zimbabwean CSO, there is equal potential for NGOs to work within the CSO. Through our interviews, it was clear that some of the criminal justice institutions such as NPB and ZPS are burdened under financial constraints. According to Zimbabwe, NGOs can provide high quality service at a reduced cost therefore; the participation of NGOs can alleviate the financial constraints of government institutions under the CJS (ZNCCS). Working in conjunction with the government, NGOs can be efficient and effective in this CSS.

### **Comparative Study: NICRO operating in South Africa**

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is an example of the possible role an NGO can have to collaborate with CSO towards the enhancement of NCS options.

‘There is no particular reason why I should have been given this chance. Because everyone I think should get given this chance because everyone has some good parts in them and sending a person away does not solve anything, it just makes it harder for the person to find the good in oneself. No one is born bad, they just sometimes take the wrong road, and all they need are a few directions to come right again. Because you can't force someone to change they must do it themselves. I think that is what the course was, my direction map and I think everyone needs one’. Said by a 15 year old shoplifter (Muntingh and Shapiro, 1997)

### *Brief South African Legislative History*

In 2007, the prisons reached 139.46% over capacity (Singh, 2007). The South African Criminal Justice System, which included law enforcement officers, the court systems, the prison system, and a variety of other organizations, were burdened to find a solution. The introduction of alternatives to incarceration redefined crime and justice to a practice focused on the rehabilitative, educational, and restorative options for offenders.

The Cape Town division of NIRCO in the 1980s initiated investigation into non-custodial sentencing options (Singh, 2007). Non-custodial options were defined as victim-offender reconciliation programmes, restitution and compensation, day fines, community service, electronic monitoring, intensive supervision programmes, and boot camps (Singh, 2007). The principle of community service in South Africa was found to sentence the offender in the community rather than prison, furthering the concept that the community was accountable for the offender by encouraging community involvement in correctional programmes. Between 1980 and 1994, more than 1400 cases were assessed by NICRO, Cape Town. Post 1994 the department of Correctional Services and the Correctional Supervision and Parole Board were constructed to assist the implementation of Non-custodial sentencing. Similar to Zimbabwe, a coordination and management structure was created at every level of government to align the judiciary, police, prosecutors, and correctional services, under a CSO. It is also allowed within the South African CSO for NICRO and other appropriate NGOs to administer and execute the CSO.

### *Responsibilities of NICRO*

NICRO began providing NCS service delivery in 2006 and it utilized their NGO status to specialize their focus within the CSO scheme on diversion, a potential area for development within all schemes for NCS. As an organization, NICRO offers three core services: diversion, offender reintegration, and non-custodial sentencing 'seeks to empower the offender, the victim, the criminal justice system and the community to move towards a more restorative justice system, to one that repairs the damage of crime' (NICRO 2014). Diversion is defined as a method of 'relieving the judiciary of its load and at the same time of obviating the problem of recidivism among petty offenders' (Singh, 2007). Diversion strives to reduce recidivism and the reduction of negative influences on the criminal justice process by channeling minor cases away from the court to, extra judicial programmes in the form of community work sentence and drug and alcohol treatment programs at the discretion of the court (Singh, 2007). Diversion alleviates the burden on the judicial system, and allows space for internal development within criminal justice institutions and increasing social accountability throughout the community.

NICRO focuses on the needs of the offender by concentrating their efforts on correcting criminal behavior through developmental and therapeutic interventions to empower the individual with values that will prevent re-offending. This is monitored and evaluated through the inclusion of physiological assessment tests. NICRO's programs address substance abuse, anger management, community service learning, life skills training, substance addition, domestic violence, empowerment and many more. As of 2013, NICRO has had an 88% compliance rate and served 4,700 offender to increase positive behavioral outcomes in the form of reduced substance abuse, improved decision-making and interpersonal relationship, and lifestyle changes (Jules-Macquet, 2013).

Further investigation is needed to clarify the advantages of diversion programs, but it can be a long-term goal for alternatives to incarceration to be governed under NGO participation in Zambia.

## Conclusion

Currently, the entire CJS, including relevant NGOs, suffers from a lack of communication and uncoordinated efforts. We suggest that NGOs capitalize on an existing consortium of advocates and expand this network. In addition to partnering with relevant government officials to identify additional areas they can contribute to, improve relations and the fluidity of communications. Next, pre-trial detainees currently represent a third of the population in prisons – a third of the overcrowding issue. This population is still largely unaddressed finding roots in the processes and procedures of the CJS. Constrained resources contribute to poor administration, information management and a lack of training among those responsible for administering Community Service Orders. These institutions need capacity building and additional training to thrive under the new structure in the proposed legislation. Furthermore, the CJS currently does a mediocre job of rehabilitation and reintegration for offenders this leads to poor living conditions for past offenders and a greater likelihood to commit more offenses. In the new structure, there will be opportunities for NGOs to assist in this area and fill a crucial gap. Finally, the key to the success of the new CSS lies in sensitizing the community. The community is the source of the offenders, the space for rehabilitation to occur, and where they will return. As a result, the community at large needs to support CSOs and informed of its advantages. This is yet another fundamental gap NGOs have the ability and resources to fill.

Some of the precautions ZNNCS expressed during the initial implementation were concerned with ‘net widening’, or the over-use of a sentence. Therefore, an area for further research would be devising prescriptive measures for magistrates to follow and effective sensitisation methods for magistrates that would distinguish NCS options from each other and the appropriateness of a sentence to the crime. Another area for future research is the introduction of paralegals in the judiciary system to increase the legal representation of offenders in court. Also, advocacy methods for how to promote community dispute resolutions to supplement the methods for sensitisation above.

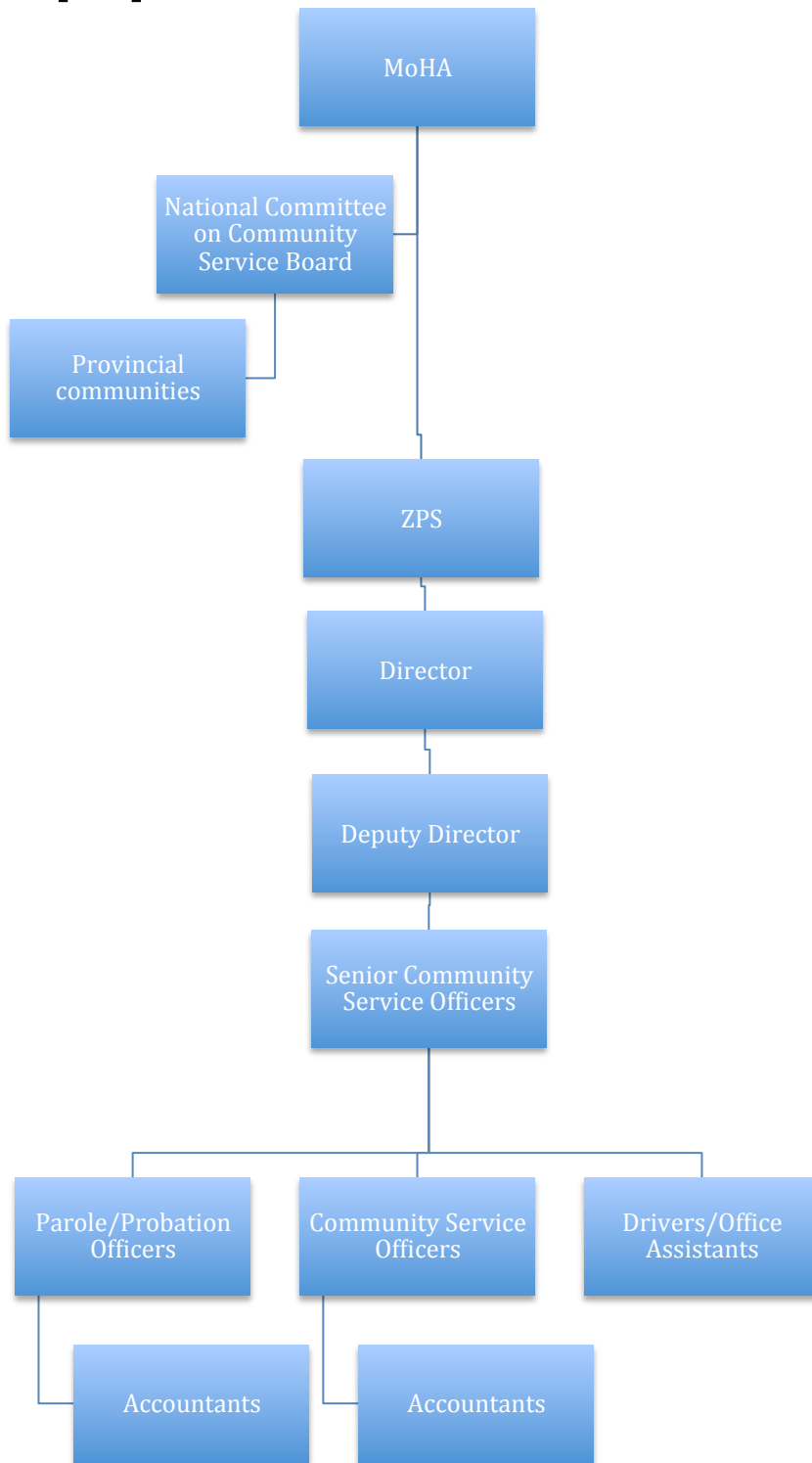
Successful implementation of the proposed Community Service Structure, currently being drafted, will require the communication, cooperation, and coordination in all of the aforementioned areas. It will only be possible if all key players do their part to add value and fill missing gaps. Non-custodial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

## References

- Auditor General. 2014. Rehabilitation and Reintegration of Prisoners. [ONLINE] Available at:  
<http://www.ago.gov.zm/reports/Special/2014/OAG%20Rehabilitation%20and%20Reintegration%20of%20Prisoners%20.pdf>. [Accessed 01 July 15].
- Fydes Masosa Hamaundu. 2004. Community Service as an Alternative to Custodial Sentencing, is it Working in Zambia . [ONLINE] Available at:  
<http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/3010/HAMAUNDUFM0001.PDF?sequence=1>. [Accessed 24 June 15].
- Government of Zambia. 2000. Criminal Procedure Code (Amendment). [ONLINE] Available at:  
<http://www.zambialii.org/files/zm/legislation/act/2000/13/cpca2000291.pdf>. [Accessed 03 July 15].
- Human Rights Watch. 2010. Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons. [ONLINE] Available at:  
<http://www.hrw.org/sites/default/files/reports/zambia0410webwcover.pdf>. [Accessed 13 May 15].
- Jules-Macquet, R.. 2013. Is behind bars better?-Non-custodial sentencing holds the key. [ONLINE] Available at:  
<http://www.saflii.org/za/journals/DEREBUS/2013/223.html>. [Accessed 02 July 15].
- Jules-Macquet, R.. 2014. Non-Custodial Sentencing: Service Analysis and Four Offender Case Studies. [ONLINE] Available at: <http://www.nicro.org.za/wp-content/uploads/2014/05/Final-Version-of-Case-Study-Research-2014.pdf>. [Accessed 09 July 15].
- Laws of Zambia. 2013. Chapter 97 Prisons Act Arrangements of Sections . [ONLINE] Available at: <http://www.zambialaws.com/Principal-Legislation/chapter-97prisons-act.html>. [Accessed 03 June 15].
- Muntingh, L. M. and R. Shapiro. 1993. NICRO DIVERSION OPTIONS. [ONLINE] Available at: <http://www.unicef.org/tdad/southafricanicrodiversion97.pdf>. [Accessed 14 July 15].

- Mwanza, T.. 2012. Parole As a Way to Reduce Overcrowding in Zambian Prisons: A Communicative and Participatory Approach . [ONLINE] Available at: <http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/1800/Tobias.pdf?sequence=1>. [Accessed 01 July 15].
- Penal Reform International. 2012. Alternatives to Imprisonment in East Africa: Trends and Challenges . [ONLINE] Available at: <http://www.penalreform.org/wp-content/uploads/2012/05/alternatives-east-africa-2013-v2-2.pdf>. [Accessed 16 June 15]
- Singh, S.. 2014. Alternatives to imprisonment in South Africa: A historical perspective, 1980's to present. [ONLINE] Available at: [http://dspace.nwu.ac.za/bitstream/handle/10394/8150/No\\_53\(2007\)\\_Singh\\_S.pdf?sequence=1](http://dspace.nwu.ac.za/bitstream/handle/10394/8150/No_53(2007)_Singh_S.pdf?sequence=1). [Accessed 15 July 15].
- Zambia Governance Foundation. 2014. Factsheet: The health system in Zambia. [ONLINE] Available at: [http://say-zambia.org:8080/jspui/bitstream/123456789/332/1/Factsheet\\_HEALTH\\_final.pdf](http://say-zambia.org:8080/jspui/bitstream/123456789/332/1/Factsheet_HEALTH_final.pdf). [Accessed 02 June 15].
- Zambia Law Development Commission. 2012. Report of the Implementation of Community Service Sentencing in Zambia . [ONLINE] Available at: [http://www.zambialii.org/files/zm/other/zmldc/report/2012/2012/Community%20Service%20Sentencing%202012\\_opt.pdf](http://www.zambialii.org/files/zm/other/zmldc/report/2012/2012/Community%20Service%20Sentencing%202012_opt.pdf). [Accessed 02 July 15].
- ZNCCS. 1997. COMMUNITY SERVICE IN PRACTICE. [ONLINE] Available at: [http://www.gsdrc.org/docs/open/SSA\]27.pdf](http://www.gsdrc.org/docs/open/SSA]27.pdf). [Accessed 14 July 15].

# APPENDIX I: New CS administrative structure under ZLDC's proposed law





## **Appendix II: Limitations**

Our research faced limitations due to stakeholder accessibility and responsiveness. For example, we were unable to gather perspectives from every level of the CJS such as the judicial arm. Furthermore, during our interviews with stakeholders, we encountered contradictory information regarding existing advocacy efforts and implementation on NCS that varied between stakeholders their personal interests. Therefore, we attempted to remain objective in our report by displaying both perspectives where information provided was incongruent.