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CIVIL SOCIETY PRISON REFORM INITIATIVE

African Innovations in Pre-trial Justice

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The aim of CSPRI is to improve the human rights of people deprived of their liberty through research-based advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. CSPRI supports these objectives by undertaking independent critical research; raising awareness of decision makers and the public; disseminating information and capacity building.

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Executive Summary

This review seeks to showcase innovative interventions to reduce pre-trial detention in African countries, so that they may be adapted for use in other low and lower-middle income countries.

The majority of pre-trial interventions in African have tended to focus on providing access to **paralegal legal advice and assistance** to persons already held in pre-trial detention in prisons. The Paralegal Advisory Service Institute (PASI) of Malawi is the archetypal example of an intervention in which paralegal lay workers with specific training provide legal advice and practical assistance to detainees in prisons. PASI's model operates on the premise that paralegals are less expensive than lawyers, yet as good as lawyers, because of their highly specific training on pre-trial issues.

The PASI-type intervention reaches those most in need of assistance – persons held in pre-trial detention in prisons – and frequently has immediate and profound impact on individuals and their families' lives through securing their release from frequently illegal, arbitrary or unduly lengthy detention.

Adaption of the PASI model is however possible. In this review two interventions from **Malawi** are considered which arise from adaptions of the original PASI model. Both of these aim to prevent prison admissions to pre-trial detention, rather than to target those already in prison. One such adapted intervention from PASI itself seeks to provide **early access to legal assistance in police stations and courts,** preferably before a court has ordered that a detainee be remanded awaiting trial. The impact of the project includes the sensitisation of police officials to the rights of detainees and to other pathways to release of detainees before trial.

The second Malawi intervention uses paralegals to facilitate **diversion** processes. Diversion processes in developed countries were originally designed for use with children, to redirect the resolution of disputes away from the criminal justice process. While diversion of children from the trial process is a relatively common intervention, **diversion of adults** is less so. The model being piloted in Malawi by CCJP is innovative in leveraging the influence and authority of **traditional leaders** in implementing an adult diversion scheme, while bringing together the formal and informal justice systems. The aim is to formalise these processes in law. Other longer-lasting impacts include the sensitisation of influential traditional leaders to the rights of detainees and to alternative methods of managing conflict.

While the PASI paralegal model has been replicated to good effect across Africa and other developing regions, paralegals have not yet secured a right of appearance in court in any country in which they operate, and thus they cannot represent detainees in court. The legal assistance paralegals can provide is therefore limited. In response to these constraints, from **Zambia** has emerged a **triage model of paralegal assistance**. The triage model being piloted by the Prison Care and Counselling Association (PRISCCA) sees the empowerment of long-term prisoners, under the supervision of trained prison officials, in providing basic advice and assistance to fellow detainees. This is the first level of assistance. The second level of

assistance involves roving paralegals providing outside practical assistance, such as tracing sureties, and screening cases to identity those in need of legal representation to identify who can or cannot be assisted without legal representation. Lawyers are the third level of assistance. Those who are in need of legal assistance are referred to lawyers, who are employed on retainer by PRISCCA to provide a set amount of legal representation per month. The triage model ensures that all detainees receive an appropriate level of assistance, according to their situation.

As indicated above, paralegals have yet to be granted standing to appear in courts of law. They also tend to suffer from a lack of status and formal voice within criminal justice systems. In addition, variable standards of work by some service providers have affected the reputation of paralegals, and consequently the prospects for the formalisation of their role in national criminal justice systems have also been affected. In response to these issues, the **Paralegal Alliance Network** was established in Zambia. This network seeks to ensure a coherent voice for all paralegal organisations toward better co-operation in the justice system in Zambia, in setting and maintaining standards for paralegals, and in providing an amplified voice advocating for reform. Such advocacy includes advocacy toward formalisation of their role, including the right to appear in court on behalf of detainees. As a result, Zambia may become the first country to formalise the role of paralegals.

Paralegal services are frequently targeted at detainees. Yet families of detainees are often well-placed to assist their detained family members, if they are empowered with sufficient information, regarding bail, sureties and the like. By providing **empowerment through legal education to families**, the Resource Oriented Development Initiative (RODI) in Kenya helps families secure the release of detainees. An associated **rehabilitation and re-integration arm** of the project aims to assist detainees in re-entering society and avoiding future detention and provides them with enterprise development and life skills.

Systematic monitoring of prisons and places of detention is a key method of preventing human rights abuses, such as arbitrary prolonged detention and torture. Where state-mandated institutions are failing to fulfil this role, civil society organisations may embark on monitoring by agreement with the state. In Mozambique, the Human Rights League (Liga) conducts **regular prison monitoring** which leads to the identification of cases for legal representation, results in reports which help to shape the human rights environment, and informs strategic litigation which in turn improves the policy environment relating to pre-trial detention. These activities by Liga have led to permanent change in the pre-trial legislative framework.

Ultimately assisting the state in improving the operation of the criminal justice system is necessary when criminal justice problems are systemic. In Liberia, Prison Fellowship Liberia (PFL) paralegals, and Justice and Peace Commission (JPC) lawyers work together with government in an intervention which has multiple entry points, but which seeks **to identify and resolve systemic problems while providing emergency relief** through expedited court processes. The close co-operation ensures long term impact through the implementation of systemic change.

All of these organisations, through their interventions, bring something new to the pre-trial arena. It is hoped that by documenting their models, lessons can be drawn which may inform the development of future successful interventions in other contexts.

Introduction

Any country with a criminal justice system which requires a trial process to determine guilt, and which permits a person to be detained under defined circumstances before trial, is likely to imprison people on a pre-trial basis. In some countries, there is excessive or inappropriate use of pre-trial detention such that rights of detainees are affected. A little over a decade ago little was known regarding pre-trial detention in Africa. It was however clear that accused persons might languish in African prisons in deplorable conditions for years without ever being tried before a court of law, often after arbitrary arrest.

Over the last decade, more evidence has become available regarding pre-trial detention in a number of African countries. This evidence suggests that people may be detained on less serious or even trivial offences, and sometimes for political reasons; that people are detained for lengthy periods not only in prisons but also in police cells; that conditions in prisons and police cells frequently do not meet minimum standards; that detention even for a short period of time may have serious health, social and economic consequences for detainees, their families and dependents; that people detained in relation to more serious offences may be detained for years on end without being tried, even if there is little evidence against them or if they have a valid defence to the charge; that there is a shortage of lawyers and state-provided legal aid; that criminal justice systems frequently have weak case management systems and procedures, such that people can become "lost" in the system; and that most people who are caught up in the criminal justice process are very poor and do not have the means or education to defend themselves in a court of law.

Within this context have emerged a range of civil society organisations whose aim is to assist people who have been caught up in the criminal justice system, particularly those who are detained on a pre-trial basis. Many of these are paralegal organisations. The original paralegal model involved paralegal advice and assistance rendered to detainees in prisons. Over the years these organisations have adapted the paralegal model in a range of innovative ways, resulting in different interventions tailored to context which approach the problem from new directions. Many of these interventions could be adapted for use in other countries.

This review seeks to document the learning from these innovative interventions and highlight promising practices among initiatives designed to reduce pre-trial detention. The interventions featured here have all been supported by the Human Rights Initiative at the Open Society Foundations. The countries in which they operate are Liberia, Kenya, Malawi, Mozambique and Zambia. These countries represent two socio-economic contexts, low income countries (Malawi, Liberia, Mozambique), and lower middle income countries (Kenya and Zambia).[1] The intention of this review is to provide information toward encouraging the adaptation of the innovations for use in other contexts. Indeed it is apparent from the

[1] See http://data.worldbank.org/about/country-and-lending-groups#Sub_Saharan_Africa

review that a great degree of trans-national and inter-organisational learning has already occurred.

Methodology

This review is intended to identify and highlight promising innovative practices in pre-trial detention. The focus of this review is on describing the innovative models adopted by the implementing organisations to facilitate the provision of services aimed at reducing pre-trial detention. Neither evaluation nor impact assessment is intended here, although some evidence of efficacy is offered. Reviews are part of good practice and furnish the material to support the development of similar interventions in other contexts. Reviews give organisations and interested parties the opportunity to learn from a variety of experiences. This review uses written sources of information (such as progress reports and external evaluations) and internally and externally collected information to document innovative practices. Because the organisations are supported by the Human Rights Initiative at the Open Society Foundations, access to detailed information relating to those interventions was available for use in compiling the review. Documented sources have been supplemented by interviews with key members of the organisations covered where necessary.

Malawi

Malawi gained independence from Britain in 1964. Malawi became a multi-party state in 1994, after decades of one-party rule under President Hastings Kamuzu Banda. During the one-party era, Malawi had a harsh criminal justice system, characterised by extreme crime control measures, draconian criminal statutes, brutal policing and investigative methods, and harsh prison conditions.[2]

The Malawi Constitution of 1994 introduced various provisions which were intended to reconstruct the Malawi criminal justice system, including the rights of detained persons to consult a legal practitioner of their choice contained and the right of detained persons to be provided with a legal practitioner at state expense where the interests of justice so require.[3] Malawi is however possibly the poorest country in the world.[4] Consequently, in practice, there is a shortage of affordable lawyers and a shortage of state-provided legal aid. Since 2000, paralegals in Malawi have successfully been providing legal advice and assistance to prisoners, particularly those held on remand in pre-trial detention, toward their release from detention.

1. Early access to legal assistance in Malawi

Problem Statement

Many pre-trial detainees in Malawi could have been released before entering remand imprisonment if they had had legal advice or assistance earlier.

[2] See *inter alia* Human Rights Watch "Where Silence Rules: The Suppression of Dissent in Malawi" (New York: Human Rights Watch, 1990)
[3] Section 42(1)(c) Malawi Constitution of 1994
[4] World Bank data puts Malawi at a GDP per capita of 255 in current US dollars. See http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?order=wbapi_data_value_2013+wbapi_data_value&sort=asc

Interventions to promote pre-trial justice frequently focus on providing access to legal assistance to pre-trial detainees in prisons. A good example is the traditional paralegal assistance provided by the Paralegal Advisory Service Institute (PASI) of Malawi, which is premised on the idea that paralegals are less expensive than lawyers yet as good as lawyers because of their highly specific training on pre-trial issues: while lawyers must be trained on all the laws of Malawi, paralegals can receive training highly specific to criminal procedure practices.

PASI paralegals have traditionally provided legal advice and assistance to people detained in prisons (see diagram below and box below). Although PASI's service has been highly successful in ensuring appropriate release of deserving pre-trial detainees from prison, it is true that many detainees ultimately released from prison, could have been released at a much earlier stage had they received advice earlier. For example, they may have been entitled to police bail, or could perhaps have paid a fine – or there may have been no substance to their arrest at all, and with some sound legal advice and appeal to the officer-in-charge, their release could have been negotiated before going to court or entering remand imprisonment.

Furthermore, there is the additional problem in Malawi that some pre-trial detainees are not taken to prison after a court has remanded them to await trial, but continue to be held in police cells. This often occurs as a result of transport problems. Malawi has experienced an erratic fuel supply. Without fuel, police vehicles cannot transport people to court or to prison. These transport problems have resulted in police prosecutors obtaining a remand order, sometimes in the absence of the accused-detainee, who then continues to be detained in police cells and is only transported to prison at a later stage.

Innovative Solution

Provide legal advice and assistance at an earlier stage at police stations and at courts.

PASI's early access to justice project seeks to secure the release or prompt processing of adult detainees on arrest at police stations at Kanengo in the Central Region, near the capital of Lilongwe, and at Mangochi, a fishing and tourist area in the Southern region.

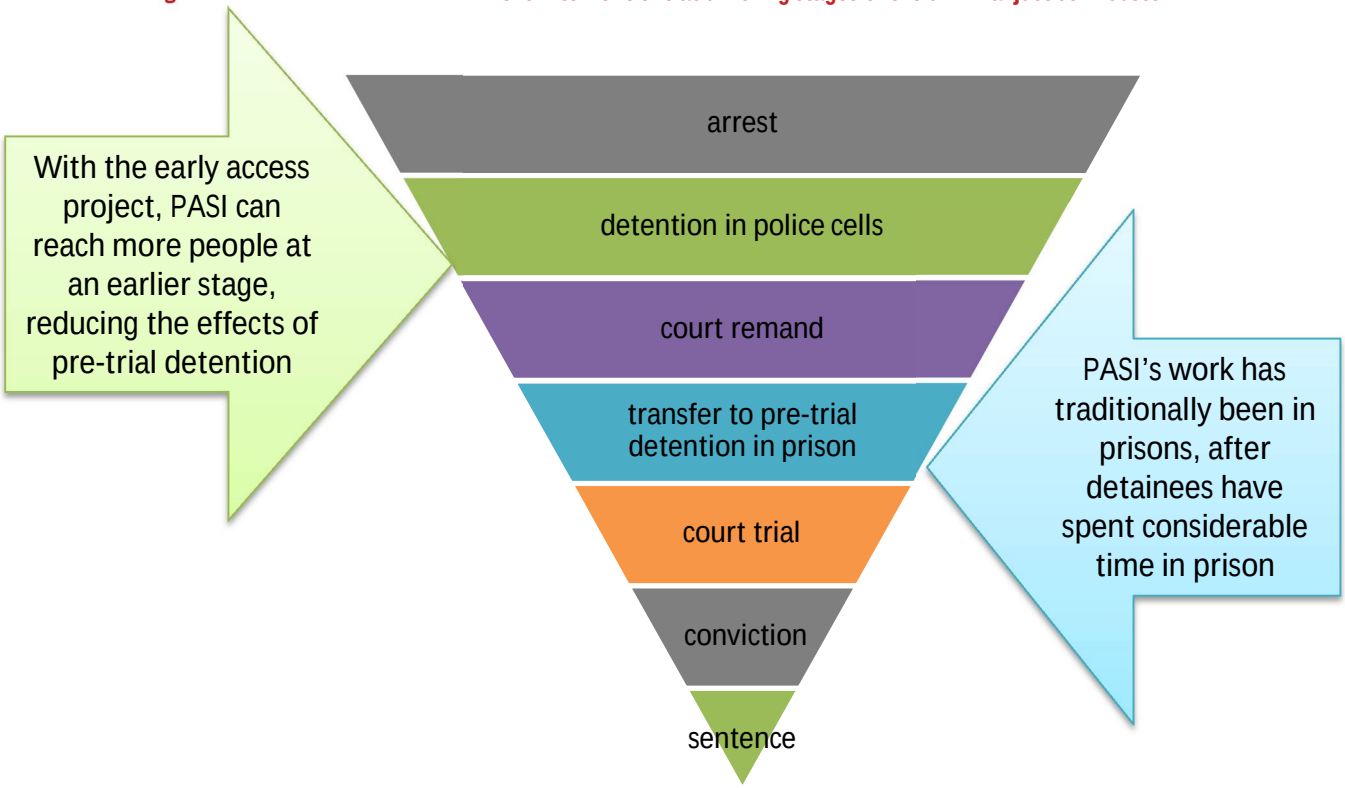
PASI paralegals do this by screening a detainee, where possible by sitting in on interviews held by police officials with each detainee. All possibilities for early release or resolution are explored. The screening process informs the referral or other resolution of the detainees' detention, which may occur through police bail, court bail, withdrawal of charges following victim-offender mediation or diversion to traditional courts, community service sentence after guilty plea, or referral to the Legal Aid Bureau for legal defence at trial.

One of the longer lasting impacts of the intervention is the sensitisation of police officials working in these police stations. Through PASI interventions, police officials obtain insight regarding their powers to order early release of arrested persons in terms of Malawi's criminal procedure, and become more aware of the rights of detainees.

The project required the assent and co-operation of the Malawi Police in order to operate. PASI was able to secure this through its many years of relationship-building with the Malawi Police. PASI's Advisory Council includes those in leadership positions in all the main criminal

justice institutions in Malawi.[5] PASI has also worked closely over many years with Court User Committees established for each court, ensuring that local as well as national relationships are maintained. PASI's Code of Conduct with which paralegals must comply has further ensured that good relations are maintained with all criminal justice system stakeholders.

Figure 1: Pre-trial detention and PASI's Interventions at differing stages of the criminal justice Process



The main innovation of this project is that paralegal services are provided at police stations, and where possible involve sitting in on police interviews. Not only can the intervention reduce the length of time people spend in detention before receiving legal advice and assistance, but the proportion of people entering the criminal justice system receiving legal education pertinent to their situation increases. In addition, through being exposed to the advice of PASI paralegals, police officials become more sensitised to their powers to order release in certain circumstances and to the rights of detainees.
The steps in the service provided at police stations are outlined in more detail below.

(i) Screening through police interviews

The first step of PASI's process in this project is screening. PASI assesses who is in the police cells. Paralegals then use **standard screening forms** to help them in deciding how to assist individual detainees. The standard screening form, for each detainee, ensures each paralegal covers all the relevant information in relation to each detainee. PASI's preference is to carry out the screening through **sitting in on police interviews with detainees** to monitor the police interview with the detainee. It is during police interviews that detainees are most vulnerable to abuse, so the monitoring of police interviews, when it is permitted, serves the additional purpose of reducing levels of police misconduct. Such misconduct can include

[5] See *Background and Organisational Structure of PASI* below

forcing confessions during police interviews.[6] The sitting in during police interviews echoes to some extent the role of a defence lawyer in more developed contexts. However, not all police members will allow PASI to monitor their interviews and PASI cannot in the current legal framework insist on doing so. In these instances screening occurs through interviews with detainees in the police cells and not during police interviews.

(ii) Referring or resolving

The screening form guides paralegals in deciding on the appropriate action to take with each detainee. Dependent on the findings, matters are taken up with police, magistrates and prison officials. Cases can be referred or resolved through:

- **Police Bail**. Police bail is available in relation to less serious offences. If the suspect has not yet been taken to court or not yet been remanded, paralegals will usually motivate for the granting of police bail for less serious offences (i.e. not for murder, sexual offences, burglary). Police bail is used frequently and usually has no monetary value attached.

- **Court Bail**. In relation to more serious offences, police bail is not available. A bail application must be held before court. Although PASI cannot represent accused persons in court, they can prepare the accused and advise them as to how to ask for bail in court.

- **Victim-offender mediation**. Various mediation programmes, such as the Village Mediation Programme, exist in Malawi. Mediation may be embarked upon with the consent of the complainant-victim. Once the grievance has been mediated, the complainant-victim may choose to withdraw the charge.

- **Traditional Courts**. Traditional courts still operate informally in parallel with other courts in Malawi.[7] Some disputes are suitable for referral to traditional courts, with the consent of the victim and the accused. If the grievance is resolved, the victim may withdraw the complaint from the formal justice system.

- **Community service**. This is imposed as an alternative to imprisonment on a guilty verdict. It can be imposed whenever the sentence on the guilty verdict is one year of imprisonment or less.[8] This is thus an option on less serious offences where the detainee is prepared to plead guilty. Paralegals may advise this course where appropriate.

- **Legal Aid Bureau referral.** The Legal Aid Bureau was formerly the Department of Legal Aid of the Ministry of Justice and Constitutional Affairs. State-provided Legal Aid is likely to be available only in relation to very serious offences such as homicide.

[6] Griggs, Dr R. 'Evaluation of PASI's Access to Justice Project 1 October 2009 to 30 September 2010: The Paralegal Advisory Service Institute's Pilot Programme for adult pretrial detainees originating at Kanengo and Mangochi Police Stations in Malawi' for the Open Society Justice Initiative, January 2011

[7] See the section on diversion below, for a description of the situation in relation to traditional courts.

[8] Section 364A, Criminal Procedure and Evidence Code.

There are very few Legal Aid lawyers in Malawi and Legal Aid is not yet operating effectively.

(iii) Individual advice and practical assistance

Once screened, PASI is able to offer individual advice and assistance to the detainee. While the course of action as outlined in the section "referral and resolution" above may be clear, practical assistance may also be required, which the paralegals offer. At the pre-trial stage, PASI individual advice and assistance at the police station level typically includes:

- **Contacting family members**. Without PASI, many family members would not know what happened to their relative. People who are detained in police cells are also reliant on friends and families to provide food, as the state does not provide food.

- **Finding sureties**. In Malawi it is frequently a condition of bail that a person of good standing "stand surety" for the accused to be released on bail. It is often also the requirement that such sureties are "bonded" in an amount set by the court. Such sureties do not have to provide the bonded amount in cash up-front, but will have to do so if the accused absconds after being granted bail. Consequently a surety must be demonstrably of the means to pay the bonded amount. Finding an appropriate and willing surety is often key to the granting of bail.

- **Explaining bail conditions and procedures to detainees**. Few ordinary people understand the purpose, meaning, conditions and procedures relating to bail. Indeed few know enough to be able to ask for bail. Paralegals explain how to ask for bail in a way which maximises the likelihood of bail being granted.

- **Tracing witnesses**. Witnesses may be able to provide information which exonerates the accused. If the lack of witnesses is delaying commencement of trial, tracing a witness may lead to the trial commencing sooner. Paralegals trace witnesses and where necessary ensure they attend the trial.

- **Preparing detainees for court**. Court is a foreign environment and often detainees do not know what to expect. Paralegals explain the procedures and prepare detainees for court.

- **Monitoring court cases.** PASI attends the court appearance of those they have assisted to ensure attendance by both witnesses and detainees themselves.

(iv) Group Paralegal Workshops

The paralegal workshops (termed "clinics" by PASI) are a key PASI activity at this stage outside of the individual case work described. These were previously only carried out in prisons but are now also carried out in police cells. A group of detainees are brought together for a workshop with paralegals. It is during these "clinics" that most detainees are informed about the law. A series of training modules previously developed for paralegal clinics on topics such as accessing bail, court procedures, and methods of representing oneself appropriately in court, are presented. The modules have evolved to include short theatrical demonstrations which have become part of the training, to illustrate what is likely

to happen in court. Individual court cases are acted out as part of the legal education process. This group work is in addition to the individual advice and assistance offered.

Paralegal Advisory Service Institute (PASI)

Organisational background and structure

The original Paralegal Advisory Service (PAS) was established in May 2000 by Penal Reform International (PRI) in partnership with four Malawian NGOs. PAS started out as a pilot scheme using four regional offices with 8 paralegals employed to work in the 4 main prisons which at the time hosted 62% of the prison population. In August 2007 PAS became independent of PRI and was renamed the Paralegal Advisory Services Institute (PASI). PASI was set up as a Trust with its objectives being to make justice accessible to all people in Malawi through improving efficiency and effectiveness in the justice system and making it responsive to the needs of all users, particularly the poor and vulnerable in pre-trial detention. PASI continues to work in partnership with four NGOs which manage the regional offices and employ the paralegals who carry out the work, and has expanded the range of its work to include police stations and courts in addition to prisons.

PASI has a Board, as well as an Advisory Council which includes those in leadership positions in all the main criminal justice institutions in Malawi. PASI's business plan sees the incremental scaling up in employment of paralegal services from the current number of 19 paralegals in 2012 (down from 30 due to financial constraints), to 57 in 2016 which will allow PASI to provide a truly national service.

Legal literacy: Through legal aid clinics, PASI empowers prisoners and persons in conflict with the law to understand criminal law and procedure and to apply it to their own situation. PASI paralegals conduct paralegal clinics in places of detention. These are aimed at those prisoners awaiting trial. The course covers six modules from arrest and detention through summary trial to committal proceedings and trial in the high court. Emphasis is placed on preparing prisoners to help themselves by role-playing bail applications, cross examination and pleas in mitigation.

Legal advice and assistance: PASI paralegals also work with prison officers to screen prisoners to identify those who have been lost in the system, or are in prison unlawfully or inappropriately. These are brought to the attention of the authorities. The paralegals compile case lists and refer cases to the courts or police. They follow up each individual case until the person is released or convicted or sentenced. They assist prisoners in filling in standardized bail forms agreed with the judiciary, which paralegals then lodge with the appropriate court. They contact sureties to ensure they attend court at the right time.

Co-ordination of the criminal justice system: Improving communication, co-operation and co-ordination between the prisons, courts, police and communities. PASI provides a mobile link between these actors in the criminal justice system to increase its efficiency and improve its operation. PASI paralegals also participate in Court User Committees (CUCs) and are instrumental in arranging camp courts, which sit in places of detention rather than at court. PASI paralegals follow a strict code of conduct, which has ensured their continued access to prisons.

Mediation: PASI has embarked on mediation services to provide conflict resolution services to avoid immediate recourse to the criminal justice system except where appropriate.

Policy development and problem solving: PASI ensures an accurate flow of data to stakeholders and can highlight problems and lobby for solutions.

Lessons Learnt

Earlier engagement in the criminal justice process by paralegals maximises the impact of their intervention. The stigma attached to individuals going to prison tends to exceed the stigma attached to those who secure police bail. Similarly, the longer a detainee spends in detention, the greater the socio-economic impact is on that person. Consequently by intervening earlier, the overall harm caused to a detainee is reduced when assistance can be provided to them at an earlier stage. In addition, conducting workshops at police stations increases the pool of people who benefit from the legal education provided by PASI. Those who would not have been remanded in prison also benefit from the information, thus increasing communities' knowledge of the law. Police officials themselves have become exposed to the knowledge and information imparted by paralegals, increasing their knowledge of rights and the law. The presence of paralegals at police stations has also discouraged illegal arrests and encouraged the police to operate in a more rights-respecting manner. This in turn has reduced the number of arrests which are made. Years of relationship-building made the project possible by ensuring the co-operation of the police service.

An independent evaluation found that PASI's early access to justice pilot project at Mangochi and Kanengo:

- **Improved cases**: inter alia the number of family members, witnesses and sureties traced increased statistically and magistrates said this had an impact on trials while the time from arrest to conclusion of a case dropped by a month at each site; the number entering guilty pleas increased owing to a PASI legal education—detainees learnt to plead guilty and beg the court for leniency which in turn increased the number of reduced sentences in the courts;

- **Improved knowledge amongst the community about detainee rights:** in particular scores in tests of police knowledge of detainee rights and laws improved**;** while detainee knowledge of law, court procedures and rights increased by two-thirds, based on both testimony and diagnostic test scores involving control groups;

- **Improved co-ordination and operation of the criminal justice system:** in particular speedier cases, less petrol expended taking detainees to court; more cooperative 'suspects' and community members; a drop in crime levels. Detectives had fewer fears about PASI at the time of the evaluation than at the time of the baseline study: ideas that PASI might spoil cases, slow investigations or advise suspects to misbehave in court were replaced by reports that PASI sped up investigations and improved detainee behaviour in court;

- **Had poverty-alleviation impacts:** *inter alia* through reducing unnecessary time in incarceration, which takes business and farms out of productivity; through free educational services and support to thousands of detainees who could not afford a lawyer; through improved community-police relations, which in turn improved

investigations and lowered crime levels which impacted positively on poor communities. [9]

The evaluator recommended a national roll-out of the programme.

2. Diversion of adults from the formal justice system in Malawi

Problem Statement

The formal justice system is inappropriate for the resolution of many disputes in villages.

The formal state justice system in Malawi operates with extremely limited infrastructure and personnel. The criminal justice system does not have adequate resources to deal with disputes in villages, some which can give rise to criminal complaints. Furthermore, the type of justice offered by the formal criminal courts is frequently inappropriate for resolution of disputes between people living in rural villages where the breaking of individual social relationships can cause conflict within the community and affect the economic cooperation on which the community depends. The formal justice system seldom provides complainants with the redress which they seek, such as apology or compensation for damage or harm caused. Prison sentences, while mandated in law, do not necessarily provide a complainant with meaningful redress.

Even though the formal justice system is an inappropriate and under-resourced conduit for the resolution of less serious disputes in the Malawi context it remains the case that Community Policing Forums (CPFs), frequently lead by traditional leaders, bring persons to the police to be detained and tried on criminal charges. The slow pace of the formal justice system leaves complainants without speedy redress, while for those who are accused, the socio-economic and other hardships suffered in detention awaiting trial are often disproportionate to the harms caused by the alleged acts that lead to their apprehension and detention.

Innovative solution

Divert adults away from the formal courts with or without conditions.

Diversion is the channelling of persons, against whom a *prima facie* case has been made, away from the formal justice system, with or without conditions, with their acknowledgement of responsibility and consent to diversion. Although diversion can take place at various stages in the criminal justice process, the diversion scheme being piloted by the Catholic Commission for Justice and Peace (CCJP) in Malawi focuses on interventions before plea, and is carried out mostly when people are detained at police stations. The scheme covers adults, and leverages the influence of traditional leaders in ensuring community acceptance of diversion processes. The decision to divert is made by police prosecutors, who are guided in the decisions by formal Diversion Guidelines, after CCJP has identified and recommended possible candidates for diversion. The diversion scheme seeks to ensure that a case which has entered the formal justice system may, after consideration of all relevant information, be considered for diversion. The diversion intervention as conceptualised in Malawi encompasses a number of innovative or best practices:

[9] Griggs, Dr R. 'Evaluation of PASI's Access to Justice Project 1 October 2009 to 30 September 2010: The Paralegal Advisory Service Institute's Pilot Programme for adult pretrial detainees originating at Kanengo and Mangochi Police Stations in Malawi' for the Open Society Justice Initiative, January 2011

- Expansion of the concept of diversion to include adults
- The leveraging of the influence of traditional leaders
- Use of a consultative and research-based development process in devising the diversion scheme.

These elements will be discussed in more detail below.

(v) Expanding the concept of diversion to include adults

In Western countries the theory of diversion has been most well-developed in the child justice sector, where diversion is understood as "an attempt to divert, or channel out, youthful offenders from the juvenile justice system".[10] This concept of diversion is based on the idea that processing certain children through the formal justice system may do more harm than good.[11] The theory contends that the formal justice system perpetuates delinquency in its processing of cases of young people, whose undesirable behaviour might be remedied more appropriately in informal settings within the community. The youth diversion argument is that courts may inadvertently stigmatize some youth for having committed relatively petty acts that might best be handled outside the formal system. It is also argued that diversion ameliorates the problem of overburdened juvenile courts and overcrowded places of detention, so that courts and institutions can focus on more serious offenders.

In Malawi, the move to diversion of adults is similarly is based on the theory that first-time offenders who are facing less serious charges can often be helped and deterred from future criminal conduct if they are cautioned and counselled, or provided with an opportunity to offer redress, rather than punished by imprisonment. A further argument is that the formal justice system is an inappropriate conduit and under-resourced conduit for the resolution of less serious disputes, as described in the problem statement above.

This approach in favour of diversion of adults is constitutionally mandated in section 13(1) of the Republic of Malawi Constitution, which provides for peaceful settlement of disputes: "to strive to adopt mechanisms by which differences are settled through negotiation, good offices, mediation, conciliation and arbitration." Furthermore, section 161 of the Malawi Criminal Procedure and Evidence Code allows for resolution of cases of common assault and other cases not amounting to a felony, through alternative means outside of the formal justice system.

(vi) Leveraging the influence of traditional leaders

The overburdened criminal justice system in Malawi is frequently presented with cases from villages which might more appropriately be resolved by alternative or traditional means. The diversion scheme being piloted by CCJP seeks to correct this. In order to do this, CCJP built on its existing human rights work with traditional leaders to ensure buy-in and participation of traditional leaders in the diversion process. CCJP has for some years been educating traditional leaders on human rights.

[10] Bynum and Thompson, (1996:430).
[11] Lundman, R.J. 1993. Prevention and Control of Delinquency. 2d ed. New York, NY: Oxford University Press

In rural villages in Malawi, most alleged offenders are brought to a police station after Community Police Forums (CPFs) have identified a suspect, usually after an aggrieved person has complained to the CPF. The CPF then brings the suspect to the Community Service Department of the Police for arrest and detention.[12] Community Police Forums (CPFs) are usually chaired by traditional leaders, and other members of the CPF tend to be appointed by traditional leaders.[13] The CPF brings the suspect to the police with the expectation that the suspect will be dealt with by the formal criminal justice system. Frequently what happens is the case is not processed timeously, resulting in the suspect being detained for extended periods, while the complainant does not have closure regarding the case.

In addition to their usual role as chairperson of CPFs, traditional leaders are frequently involved in the voluntary resolution of disputes in villages through informal justice in village tribunals, which exist alongside the formal justice system, despite their lack of formal recognition as courts.[14] The diversion plan as conceptualised in Malawi through CCJP thus seeks to leverage the role and influence of traditional leaders. For example, the diversion order reached may make use of traditional leaders in monitoring the compliance of diverted persons whose diversion includes conditions, such as to apologise or to provide compensation to the victim. Traditional leaders and their associated village tribunals may be asked by police prosecutors to monitor whether the diverted person complies with any diversion conditions imposed.

While the role of traditional leaders in justice systems is somewhat controversial, without the buy-in of traditional leaders in the conceptualisation and development of diversion in Malawi, it is unlikely that such an intervention would have been accepted or implemented. The prior work of CCJP in the human rights education of traditional leaders ensures that rights are not a foreign concept to traditional leaders.

CCJP has and continues to be instrumental in creating an interface between the formal and traditional justice sectors in a country where the vast majority of the population seeks redress in criminal matters from traditional structures yet the law favours the formal court system.

(vii) Using a consultative and research-based development process

Process of development

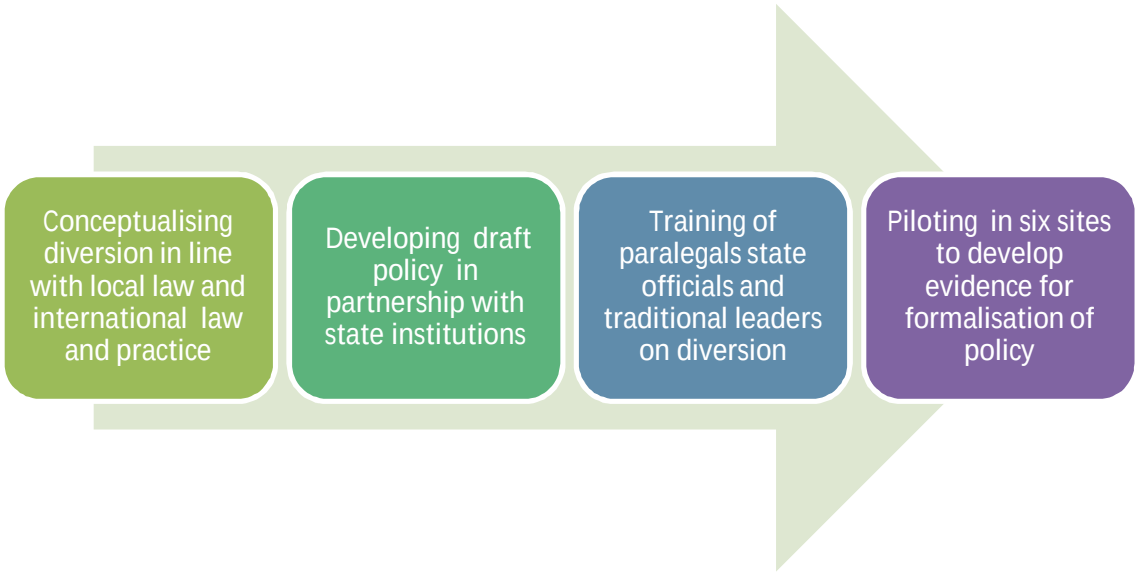
CCJP has followed a careful process in working towards a national diversion process, incorporating the following:

- conceptualisation and promotion of diversion,

[12] Interview with Peter Chinoko, CCJP, Lilongwe, October 2013.
[13] Interview with Peter Chinoko, CCJP, Lilongwe, October 2013.
[14] Traditional leaders in villages in the pre-colonial period applied a system of dispute resolution. During the colonial period, traditional leaders in Malawi applied customary law wherever legally applicable in criminal matters. Independent Malawi continued with this model during the period of the one-party state under President Hastings Banda. During this period traditional leaders' courts became politically compromised. Thus on the introduction of the multi-party system of Government in Malawi in 1994 drastic constitutional changes to the legal system were made. Reforms saw the abolition of the regional Traditional Courts and the National Traditional Appeal Courts and the integration of all the lower level Traditional Courts into the judiciary, pursuant to section 204 of the Constitution of Malawi of 1995. This meant the end of the traditional court structure parallel to the High Court System, resulting in a surge in the number of cases to be dealt with in the formal justice system. A Local Courts Bill seeking to formalise the re-introduction such courts was controversially passed in 2011 under President Bingu wa Mutharika. However the bill does has not been promulgated; subsequently President Joyce Banda indicated her government's intention to repeal the law in 2012. Under President Peter Mutharika the law has been neither promulgated nor repealed.

- formal policy development,
- training and piloting of stakeholders.

Figure 2: Steps taken by CCJP toward a national diversion scheme for Malawi



Conceptualising a diversion scheme for Malawi

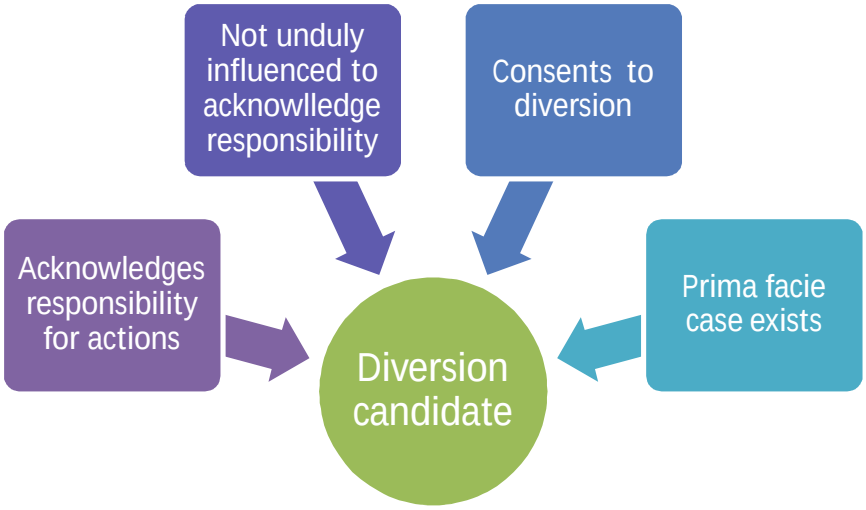
During 2009, CCJP developed ideas on how best to create a diversion scheme for petty offenders from the formal criminal justice system, after a study tour to South Africa. Section 161 of the Malawi Criminal Procedure and Evidence Code allows for resolution of cases of common assault and other cases not amounting to a felony, through alternative means. Thus the Criminal Procedure and Evidence Code permits proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, to be diverted. In line with international practice, CCJP has proposed and has promoted policy development in line with their proposal, that a case which has entered the formal justice system may[15], after consideration of all relevant information, be considered for diversion, with or without conditions, if:

- the alleged offender acknowledges responsibility for the offence
- the alleged offender has not been unduly influenced to acknowledge responsibility
- there is a *prima facie* case against the alleged offender, and

[15] Although diversion as originally conceptualised occurs at the stage of arrest, CCJP now also identifies people for diversion at other stages:

- during the investigation stage before arrest, on recommendation from a police investigator before a file is referred for prosecution
- on recommendation from the prosecutor before drawing up a charge sheet
- for people already on remand in prisons
- on recommendation from a Magistrate's Court.

The aim is to divert cases from various sources in order to collect, collate and analyse emerging trends in order to strengthen the argument for the scheme. The scheme is still operating informally, however, with no official policy or practice direction from the Chief Justice.



- the alleged offender consents to diversion. [16]

These requirements are represented in figure 3.

Developing prosecutorial guidelines and a formal diversion policy

Police prosecutors are therefore the key to the proposed diversion scheme, because in Malawi, prosecution of less serious criminal cases is mostly done by police prosecutors, who are not legally trained. (Legally qualified prosecutors from the Directorate of Public Prosecution (DPP) under the Ministry of Justice prosecute capital offences.) Police prosecutors consequently were in need of guidelines to assist them in making decisions around prosecutions in general, and on diversion. CCJP, through the Office of the DPP facilitated the production of Prosecution Guidelines, which include a draft set of Prosecutorial Guidelines for Diversion. In addition to the draft Prosecutorial Guidelines on Diversion, Chief Justice Nyirenda is being encouraged to produce a Practice Direction on Diversion to all Magistrates, as was previously done in relation to Malawi's "Bail Application Guidelines". In February 2015 then Acting Chief Justice Nyirenda commended CCJP for the project but said a lot more needs to be done to fine tune what might become a practice direction from his office.[17]

The draft Guidelines outline that various conditions may be applied to a diversion. For example, the diversion may be contingent on tendering an apology. The conditions imposed on any diversion should meet the following principles, according to international practice:

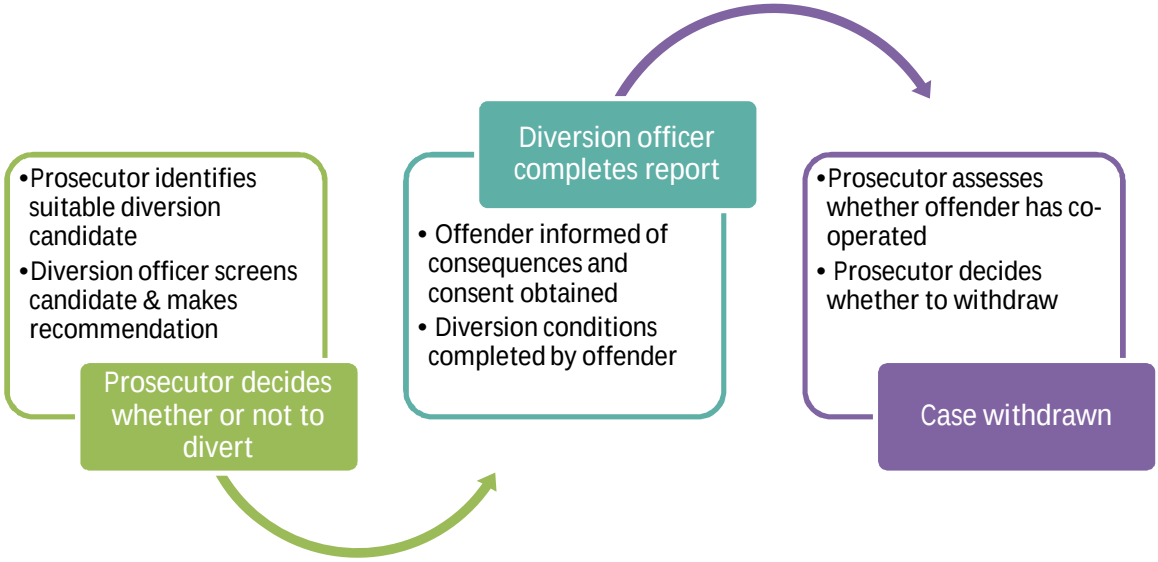
- **Proportionality.** There are two kinds of proportionality which must be satisfied. The conditions applied to the diversion must be proportionate to the offence. In particular the conditions of diversion should not be more onerous than a sentence which might be imposed by a court following a conviction. The condition must also balance the public interest in seeing justice being done, with the rights and opportunities created for the offender through diversion.[18]

[16] A Skelton, Presentation at CCJP diversion conference in Lilongwe, 7-8 May 2012.
[17] http://timesmediamw.com/chief-justice-mulls-over-diversion-of-criminal-cases/
[18] Diversion also provides opportunities for victim participation and satisfaction, particularly through restorative justice processes.

- **Achievability.** It must be both possible and likely that all conditions imposed will be completed within the adjournment period to the satisfaction of the prosecutor, before a charge is finally withdrawn.

- **Appropriateness.** The conditions of diversion should be targeted towards reparation to the victim and toward the offender's rehabilitation to ensure the purposes of diversion are met. Diversion conditions should not infringe the dignity or rights of any person.[19]

Figure 4: steps in a successful diversion



The draft Guidelines provide that once a suitable candidate for diversion has been identified by the prosecutor, a diversion officer (usually a paralegal or social worker) must screen the candidate through a face-to-face diversion interview and advise the prosecutor on the suitability of the candidate for a diversion programme. The prosecutor is not bound by the recommendation. If the prosecutor makes the decision to divert, the candidate must be made aware of the legal meaning of diversion, what is expected of him or her, and of the consequences should he or she not meet any conditions. After the diversion has been completed, the diversion officer must submit a report or a letter to the prosecutor.

The draft Guidelines provide that if the offender has co-operated with the diversion and diversion conditions, the formal criminal case is withdrawn. If not, the prosecutor may decide to proceed with the criminal trial.[20] If a matter has been diverted and the diversion order has been successfully complied with, a prosecution on the same facts may not be instituted. A diversion order does not constitute a previous conviction. A private prosecution

[19] A Skelton, Presentation at CCJP diversion conference 7-8 May 2012.
[20] If an offender appears to be a suitable candidate for diversion during the sentencing stage of the criminal trial, the court can impose a suspended sentence and make participation in a specific programme one of the conditions of the suspended sentence. If the offender then fails to comply with the condition of participation in the programme, the prosecutor can apply to the court to put the suspended sentence into operation. This is more correctly referred to as alternative sentencing and the offender will get a criminal record. It is only when diversion takes place before conviction that the accused escapes the burden of a previous conviction or criminal record.

may not be instituted against an offender in respect of whom the matter has been successfully diverted.

Training of stakeholders on diversion

Criminal justice system stakeholders in Malawi were until recently unfamiliar with diversion. CCJP carried out training to promote understanding and acceptance of the concept. In particular, training of traditional leaders was also undertaken to promote community awareness and to prevent community resistance to diversion, and also to promote the monitoring of compliance with diversion orders. With the University of Pretoria (UP), CCJP developed a comprehensive training manual on diversion.[21] Training of magistrates, judges, prosecutors, police investigators, paralegals and CCJP staff was conducted over the period 2012-2013, when piloting first occurred.

Piloting, research and formalisation

The scheme was first piloted at six police stations. The aim of the piloting was to use the data on successfully diverted cases to convince decision-makers that diversion is a useful addition to the criminal justice system. During the pilot there were, for example, 112 diversions from Nathenje, Lumbadzi, Lilongwe, Namitete, Kanengo, Kawale and Kasiya Police Stations in the first 5 months of 2012. The vast majority of cases diverted during the pilot related to allegations of theft, followed by "unlawful wounding", and charges relating to breaches of the peace. Diversion conditions included mediated withdrawal of the case, community service orders, compensation, and recovery of stolen property. Using this pilot data, CCJP motivated for the continuation of the project and ongoing formalisation of the project.

While CJCP continues to offer the programme, it has not yet been formalised either through formally adopted Guidelines or through a Practice Direction by the Chief Justice. CJCP therefore continues to collate data regarding adult diversions and to conduct a campaign toward the formalisation of diversion. In February 2015, for example, some 39 cases were identified by CJCP social workers for possible diversion from Lilongwe, Kasiya, Kawale, Mpingu, Msundwe, Namitete and Nathenje, of which more than two thirds were diverted while the remainder went through the formal criminal justice process. Some 41% compensated their victims, 13% went for counselling, while 10% went for mediation of family group conferences.[22]

Catholic Commission for Justice and Peace

CCJP was established to contribute to "the creation of a just, rights respecting, and peaceful Malawian society" CCJP works closely with traditional authorities to incorporate human rights principles into traditional dispute resolution (informal justice).

CCJP is part of the paralegal advisory service network in Malawi, co-ordinated by PASI. Within this network, the CCJP runs the Malawi Primary Justice Program which works with the Ministry of Local Government and Rural Development and traditional authorities in seven districts to strengthen the capacity of the informal justice sector. Through this program, CCJP brings together the informal and formal justice systems for networking and

[21] The manual covers International Recognition of Diversion, International Norms and Standards for Non-Custodial Measures, the legal Basis for Diversion; the Meaning of Diversion; Application of Diversion; Roles and Responsibilities of Role-Players in the Diversion Process; Diversion Programmes; and Record Keeping and Monitoring.

[22] Email from Enock Kamundi Phiri, CJCP, 2 September 2015.

coordination on several levels, most notably through Court User Committees (CUC) at the district level. CCJP has a network of 20 paralegals working in each village in the districts where it operates.
In terms of its governance structure, CCJP comprises the Archdiocesan Executive Committee at the highest level and responsible for policy making body for the Commission, the Justice and Peace Secretariat at the middle level headed by an Archdiocesan Secretary to provide for the administration of the Commission and the Justice and Peace Parish Committees at the lower level that manage the affairs of the parishes in the Archdiocese of Lilongwe. The Executive Committee comprises 12 members and meets 4 times per year.
CCJP's strength lies in its national reach and in the confidence that it has built up within communities and traditional structure through its Primary Justice Program. It also works closely with a network of criminal justice partners including: the Police Service, Prison Service, Ministry of Justice and Constitutional Affairs, Office of the Director of Public Prosecution, the Judiciary, the Malawi Law Society, the Paralegal Advisory Services and the Department of Legal Aid.

Lessons Learnt

Diversion can be applied to adults, and the experience thus far is that matters which succeed in being diverted, usually result in only two days detention in police cells, according to the pilot data. The buy-in of key-stakeholders such as prosecutors and traditional leaders is a key to implementing adult diversion. Diversion should be carefully conceptualised and tailored to the local context. Although a great deal of progress has been made by CCJP toward the realisation of a national diversion scheme, it is the responsibility of institutions of the Malawian state to formalise diversion in its policies and procedures. Currently the scheme is heavily reliant in practice on CCJP itself suggesting candidates for diversion to the prosecution, managing compliance with conditions, and reporting to the prosecution. The extent to which the conceptualised requirements for candidacy, requirements for conditions, and procedural steps are actually used in practice, has not been evaluated. What was initially successful was the careful process of creating buy-in to the framework design of the system and the guidelines applicable to prosecutors. Despite these steps the programme has not yet (late 2015) been translated formally by the Malawi state into legislation. In the absence of legislation, CCJP continues to lobby Chief Justice Nyirenda to issue a Practice Direction for Adult Diversion in Malawi for petty criminal cases.[23] The project therefore continues to operate without legislation and without a formal practice direction.

Zambia

Zambia became independent in 1964, and became a democratic multi-party state in 1991, when a new Constitution was introduced. The Zambian Constitution of 1991, as amended in 1996, affirms rights in the criminal justice system, including the right of a person charged with an offence to legal representation.[24] Since the re-introduction of multi-party deomacracy, some progress has been registered in the governance system of the country,

[23] See "Chief Justice mulls over diversion of criminal cases" BNL Times 2 April 2015 available at <http://timesmediamw.com/chief-justice-mulls-over-diversion-of-criminal-cases/>
[24] Article 18(2) (d), Constitution of Zambia Act, Cap 1

including its criminal justice system. However, many challenges remain across Zambia's criminal justice institutions, and these inhibit the efficient and effective delivery of justice to its citizens.[25]

3. A 'Triage' Model of Legal Assistance in Zambia

Problem statement

There is an absence of legal assistance in Zambian prisons.

The Zambian Constitution guarantees the right of a person charged with a criminal matter to be presumed innocent until proven guilty[26] and the right of that person to be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.[27] The Constitution provides that "every person who is charged with a criminal offence shall unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice."[28]

The right for a person to be presumed innocent is a fundamental human right and a core principle in criminal justice. Despite these constitutional guarantees, the presumption of innocence is being infringed upon by the systematic overuse of pretrial detention in Zambia, according to the Zambian Human Rights Commission.[29] "At an increasing and alarming rate, many accused persons are now spending the duration of their trials in detention despite the existence of alternatives to pretrial detention such as police bond or bail."[30]

The situation is exacerbated by limitations in relation to legal representation. The Legal Aid Act provides for the establishment and mandate of the Legal Aid Board (LAB) and the establishment of a legal aid fund. The Act provides for representation by state lawyers of accused persons who cannot afford legal representation. The Zambian Human Rights Commission however believes the LAB has inadequate numbers of staff to be able to cater for the numbers of accused persons in need of legal representation: "As a result, most remandees, especially in towns where there is no LAB presence, go through the entire criminal process without the aid of counsel. In Solwezi for example, HRC was informed by the Prison Service that accused persons will only be represented by a lawyer once their case has been committed to the High Court as the Court insists on representation for them. Those whose cases are tried in the Subordinate Court do not normally have legal representation unless they have retained them at their own expense."[31]

Yet retaining a lawyer at own expense is easier said than done, not least because Zambia has a shortage of lawyers. In 2012, it was reported that there were 731 lawyers in private

[25] ISS monograph 159, Criminal Justice System in Zambia; Enhancing the delivery of security in Africa, April 2009
[26] Article 18(2)(a), Constitution of Zambia Act, Cap 1
[27] Article 18(1), Constitution of Zambia Act, Cap 1
[28] Article 18(2) (d), Constitution of Zambia Act, Cap 1
[29] A Survey Report by the Human Rights Commission on the Application of Bond / Bail Legislation in Zambia, Zambian human Rights Commission, 2014, p6.
[30] Ibid
[31] A Survey Report by the Human Rights Commission on the Application of Bond / Bail Legislation in Zambia, Zambian human Rights Commission, 2014, p7.

practice for a population of approximately 13 million.[32] The affordability of a lawyer is an additional barrier for most detainees.

However, Zambian law currently does not prohibit non-lawyers from giving legal advice outside the courtroom, and as a result of the shortage of lawyers, a range of paralegal organisations have begun to offer services to detainees. However the number of paid paralegals available is frequently also insufficient to meet demand.

Innovative solution

How can a limited number of available lawyers and paralegals be maximised to assist as many detainees in the most efficient manner? The Prison Care and Counselling Association (PRISCCA) has adapted the paralegal model to form a "triage model". "Triage" refers to the medical system of allocating differing levels of care according to the severity of need. For PRISCAA these levels of care are three-fold: first, peer educators, second, paralegals, and finally, lawyers. The peer educators are long-term prisoners (prisoner peer educators) who are trained by paralegals to provide legal advice and other forms of assistance in prisons as "first responders", under the supervision of prison officials, who have also been trained by the paralegals. In instances where they are not able to assist a detainee, peer educators refer detainee to roving paralegals, who visit regularly visit. They screen these cases, resolve the problem where possible or refer cases which require it to lawyer, who provides legal representation.

The innovation comprises:

- Leveraging paralegal resources through supervised peer educators.
- Leveraging legal assistance through paralegals.
- Providing legal representation when really needed while still providing support to other detainees.

The innovation of the triage model is to maximise resources through step-wise referrals. Appropriately trained and adequately supervised prisoner peer educators provide the majority of legal advice and assistance to detainees, under the supervision of trained prison officials. Where they are unable to resolve matters or the matter is sufficiently serious, there is referral to paralegal officers. The paralegals in turn maximise the legal resources provided by lawyers by resolving matters administratively where this is appropriate and by collecting the necessary information to enable a lawyer to proceed, thus reducing the time a lawyer may need to expend on a matter.

"Triage" is a term borrowed from the medical context where it refers to the process of determining the priority of patients' treatments based on the severity of their condition. PRISCCA's triage model sees a step-wise scaling up of assistance according to the nature of assistance required by the detainee. The triage model assumes that the majority of detainee's queries can be resolved by prisoner peer educators within the prison. More serious queries or problems are referred up to regional paralegal officers, who visit the prison periodically. They in turn select from among referrals those they are unable to resolve

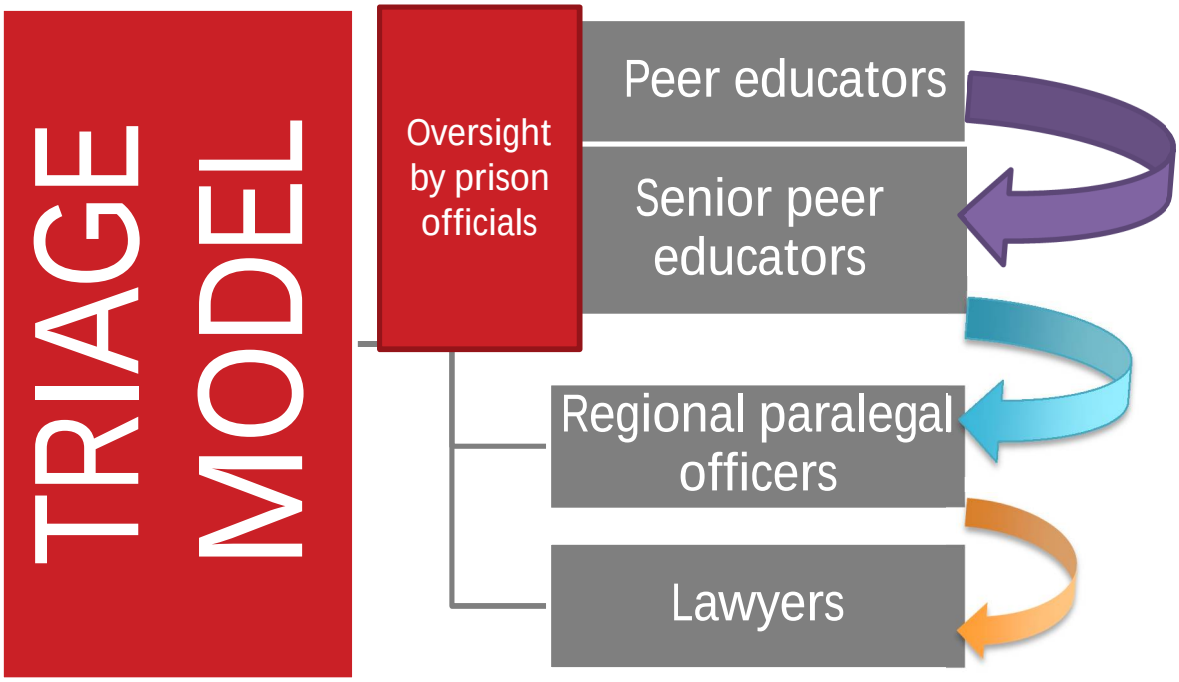
[32] Kahn-Fogel, N. "The troubling shortage of African lawyers: Examination of a continental crisis using Zambia as a case study" University of Pennsylvania Journal of International Law, Vol 33:3, p719 et.seq., available at < https://www.law.upenn.edu/live/files/969-kahnfogel33upajintll7192012pdf>

without legal representation, for referral onward to lawyers who are employed on retainer by PRISCCA.

Prison Care and Counselling Association (PRISCCA)

The Prison Care and Counselling Association (PRISCCA) is a registered non-governmental organization which was founded by ex-prisoners in 1997. PRISCCA is a membership-based organization drawing its members from prisons and communities. PRISCCA's main objective is to complement government efforts in improving prison conditions and ensuring that prisoners access their rights, including the right to legal assistance. This is done by promoting a system of imprisonment which respects human rights, and by facilitating the re-integration of ex-prisoners into society. The Zambian Government, through the Ministry of Home Affairs and the Prisons Command, has authorised PRISCCA's operation in all prisons around the country. The triage model was originally conceptualised as operating in Zambia's three main prisons at three sites (Lusaka, Kamfinsa, and Livingstone) and will ultimately also cover the nearest prison to the main prison at these sites. PRISCCA operational staff comprises an executive director and three regional paralegal officers based in each of the three provinces in which the prisons are located. The executive director and the paralegal officers are responsible for the training of prisoners and prison officers in prisons to carry out the triage model.

Figure 5: PRISCCA's triage model of legal assistance



(viii) Peer educators and senior peer educators

Peer educators[33] play a crucial role in the induction process of newly admitted or transferred prisoners. Peer educators are prisoners who have received paralegal training. They educate their fellow inmates in prisons on human rights issues and provide information on prison and legal issues. Peer educators provide basic legal education, HIV/AIDS and tuberculosis education, and human rights education. They also advise prisoners on how to make applications for transfer and for bail, when this is in their interests. Peer educators are selected from amongst longer-term sentenced prisoners who have sufficient education to enable them to interpret and appreciate learning materials. The influential character of the prisoner within prison also plays a role in the selection process, with care being taken, through liaison with prison officials, to ensure those with inappropriate influence are not selected. Furthermore, the prisoner peer educators work under the close supervision of senior peer educators,[34] who have proved themselves over a longer period, as well as trained prison officers. Peer educators hold meetings among themselves regularly to discuss issues and channel complaints to the relevant authorities.

PRISCCA has established Peer Educator Desks[35] at each of the nine regional major prisons in Zambia. The 'desks' are physical desks, manned on a daily basis by peer educators. Their work is closely supervised by the prison medical officer, chaplains, and offender management prison officers. The senior peer educators (also known as desk heads) coordinate initial referral to the paralegal officers. PRISCCA trains the prison officials to ensure appropriate supervision, in addition to also providing them with the same training provided to peer-educators.

(ix) Regional paralegal officers

Regional paralegal officers (paralegals) are directly employed and trained by PRISCCA. Paralegals resolve cases referred to them by the peer educator desk heads which require only administrative effort for resolution, such as tracing missing files. They may also negotiate with law enforcement agencies and court officials where such action is sufficient to resolve the matter, and provide assistance on bail applications, such as securing of sureties, and in tracing families and witnesses. Where they are unable to resolve the case in this way, they provide the link between prisoners seeking assistance and lawyers providing representation in court. In the year 2012-2013, paralegals resolved approximately 40% of the matters referred to them and referred on to lawyers the remainder of the cases.

(x) Lawyers

Three law firms have by agreement with PRISCCA have assigned some of their lawyers to represent PRISCCA clients in court in collaboration with regional paralegal officers. The firms are paid a monthly stipend linked to a targeted number of resolved cases. The kind of work done includes facilitating bail applications and negotiating for the withdrawal of cases. With respect to juvenile offenders' cases, most cases involve enforcing High Court reformatory orders which require juveniles to be transferred to reformatory schools. Considerable time and effort was expended by PRISCCA toward identifying appropriate law firms with a track record and interest in human rights and a willingness to provide services at a reasonable rate.

[33] Priscca's terms for peer educators is "Cell and site paralegals (CSPs)"
[34] Priscca's terms for senior peer educators is "desk heads"
[35] Priscca's term for these is "Pre-Admission and Post-Discharge Psychosocial Counselling desks"

Lessons Learnt

Using prisoners as peer-educators and as gate-keepers to legal assistance poses inherent risks of abuse. However, these risks can be ameliorated by ensuring oversight by trained prison officials and through regular monitoring by paralegals. While legal representation by lawyers can be costly, these costs can be lowered by paralegals carrying out preliminary work, and costs per capita reduced by lawyers assisting a number of detainees on the same occasion. The target set for the law firms ensures that a minimum number of people are represented each month, and costs are contained because the same monthly stipend is paid to law firms on their reaching the required targets. The target–stipend remuneration model also ensures that the incentive is to resolve cases in the most cost-effective manner. There is however a risk that more difficult cases may, as a result, be omitted. This can be overcome by performance requirements that no referred case remain not dealt with for specified lengths of time.

It is worth mentioning here that PRISCCA has in the past explored the possibility of recruiting fulltime lawyers to work for them. However, the country's Legal Practitioners Act stipulates that lawyers can only appear for a fully registered law firm so unless PRISCCA registers a separate Chambers, as has been done by the Legal Resources Foundation, their lawyer would not be able to take up cases. Additionally, when looking at the opportunity costs of having a lawyer on staff vis-a-vis retaining law firms in three geographically diverse provinces, PRISCCA is in this manner able to provide assistance to significantly more defendants with a much broader geographic reach at a lower cost.

4. Maximising paralegal impact through networking in Zambia

Problem statement

Paralegal organisations lack common standards and have little voice in the criminal justice system.

As discussed above, most defendants appearing at Subordinate Courts in Zambia are indigent and do not benefit from any form of legal advice or representation, as the Legal Aid Board (LAB) has limited resources and prioritises cases at the High Court, as do lawyers providing pro bono representation. Most citizens seeking legal advice on any matter cannot afford to pay lawyers for advice. The law however does not prohibit non-lawyers from giving legal advice outside the courtroom.

As a result, a number of paralegal organisations have attempted to step into the gap created by the absence of lawyers. Initially, few paralegal organisations offering legal advice and assistance provided services to prisoners, as they focused more on civil matters. There was also little interaction between paralegal organisations and state actors in the criminal justice system. Those paralegal organisations such as PRISCCA which began attempting to offering services to detainees and prisoners, found that because there was no state recognition of paralegals, paralegal organisations were vulnerable to denial of access to police stations and prisons.

In addition, by the late 2000's, the legal profession began to raise concerns in relation to the contribution of paralegal organisations to the criminal justice system. As more and more paralegal organisations began offering services of varying quality, the lack of common

standards around the provision of paralegal services and a lack of oversight by qualified lawyers resulted in a general scepticism regarding the usefulness of paralegal services, which in turn undermined attempts to formalise their role in criminal justice.

Innovative solution

Create a network of paralegal organisations to amplify the paralegal voice in the criminal justice system, enhance collaboration and coordination, creates a common set of standards, and to ensure oversight.

The Paralegal Alliance Network (PAN) was established in response to concerns regarding standards and oversight for paralegal organisations. PAN is a group of organisations comprising 11 paralegal service providers as members. PAN has two ex-officio members – the Legal Aid Board (LAB) and the Law Association of Zambia (LAZ). PAN was formed in 2000 when four civil society organisations involved in the provision of legal advice (Young Women Christian Association (YWCA), Legal Resources Foundation (LRF), Caritas Zambia and Zambia Civic Education Association (ZECA)) signed a Memorandum of Understanding (MoU) among themselves. By 2013, eight (8) other organizations had joined the initiative bringing the membership to 12, and PAN has acquired an independent legal personality.

PAN seeks to:

- Improve collaboration amongst criminal justice agencies through participation in the criminal justice system's 'Communication Coordination and Cooperation Initiative' (CCCI) meetings
- Improve the policy environment for legal assistance by promoting the development of a national legal aid policy which recognises the role of paralegal organisations
- Improving the quality of paralegal services by partnering with the Legal Aid Board in providing oversight to paralegal service providers and assisting the Legal Aid Board in expanding their provision of services, and partnering with National Institute for Public Administration (NIPA) to train paralegals to diploma level.

The founding members of PAN recognised the need to draw on the strengths of each individual organisation in order to improve the focus and breadth of their outreach to the poor and to vulnerable members of society requiring legal aid services. The aim of PAN is to enhance the capacity of their member organisations in offering legal aid services, by strengthening the role of paralegals in the justice system. The specific focus areas of PAN are coordination, capacity building, and the establishment of a conducive framework for legal aid and paralegal work. In order to reach poor and vulnerable people needing legal aid, PAN utilizes a network of trained paralegals and their organisations. The vision for PAN is 'Improved Access to Justice for all' and the mission is 'To provide a framework for the provision of legal aid through collaboration, coordination, cooperation and training among members in order to contribute to equitable access to justice for all'

Paralegal Alliance Network (PAN) Organisational structure

PAN aims to improve coordination among civil society organizations which provide legal aid and paralegal services. PAN was originally hosted by Caritas Zambia, a Catholic Organization under the auspices of the Zambia Episcopal Conference (ZEC) whose mandate is to foster and uphold human dignity through promotion of integrated human development. Caritas was originally responsible for financial and performance monitoring of the PAN Secretariat

and for providing physical and communication infrastructure. PAN has now separated from Caritas Zambia. The Law Association of Zambia (LAZ), while not originally a member of PAN, now forms part of PAN as does the Legal Aid Board. The Zambian Human Rights Commission (ZHRC) also works closely with PAN members and helps PAN members gain access to places of detention. The Governing Board of PAN meets quarterly and is responsible for overall oversight of PAN. The PAN Secretariat, which is responsible for implementing the annual work plans, has two full time staff members, a Coordinator and an Assistant Coordinator.

(xi) Improving Collaboration

PAN is an active participant in the Zambian criminal justice system "Communication Coordination and Cooperation Initiative" (CCCI) meetings, of which it is a permanent member. The CCCI is an inter-agency coordination initiative of the Access to Justice Programme under the Ministry of Justice. Joint CCCI/PAN activities include awareness-raising open days; informational radio programs; joint monitoring visits to prisons and police cells; joint mobile legal aid clinics including the Legal Aid Board (LAB); and human rights sensitization meetings in prisons.

As a result of this collaboration, PAN members no longer face restrictions in accessing prisons. Through the CCCIs, PAN has also been assisting its members to gain permission to set up permanent paralegal desks at police stations. While no formal partnership has been entered into as yet, the Zambia Police Service has granted permission for paralegals to visit police stations to check on detainees.

PAN produced a report in 2012 entitled 'Pre-trial Case Flow Management in Zambia'. The study was undertaken at the micro-level using actual cases from its member's paralegal desks. The research methodology followed dockets from initiation to first hearing and analysed the reasons for delays. PAN has used the study to inform its engagement with the CCCIs to ensure improved coordination amongst criminal justice agencies; the training of paralegals and to underpin advocacy efforts in respect of law and policy reform. In addition PAN continues to support its members' legal assistance clinics and has designed a booklet on the rights of criminal suspects. A PAN Members' Directory and quarterly newsletter has been produced which assists those who need services to access them and also seeks to ensure that there is no undue overlap of services.

(xii) Improving the Policy Environment for Legal Assistance

The Ministry of Justice constituted a committee in 2011 to formulate a National Legal Aid policy. Although the Legal Aid Board (LAB) was mandated to take the lead, PAN has maintained pressure with three persons sitting on the relevant Working Group with the aim to ensure the policy explicitly mandates CSOs to partner the LAB in providing legal services, and that it includes provisions relating to the training of paralegals and their right of appearance in simple matters such as bail hearings. The premise is that a sound legal aid policy will improve access to quality legal aid for criminal defendants in order to alleviate delays and prevent rights infringements that still occur in the criminal justice system.

The draft National Legal Aid Policy is currently under review at the Ministry of Justice. The policy, if adopted, will substantially change the Zambian legal aid framework. The Legal Aid Act is likely to be redrafted once the National Legal Aid Policy is adopted. The draft policy defines legal aid broadly, to include legal information, education, advice, alternative dispute

resolution, as well as legal assistance and representation in court. It envisages a mixed legal aid delivery system, which includes the Legal Aid Board, the legal profession, CSOs, paralegal coordinating bodies and university law clinics. Legal aid providers are defined to include legal practitioners, legal aid assistants, law students and paralegals at various levels of qualification and experience. The policy seeks to strengthen coordination and cooperation mechanisms and provides for accreditation schemes for organisations providing legal aid, and registration schemes for individual legal aid providers. It also provides for eligibility criteria for legal aid beneficiaries, including guidance on target groups and areas of law in which legal aid can be provided. In addition, a regulatory and governance system is provided for to ensure quality in the delivery of legal aid, through accountability mechanisms, minimum qualifications, quality standards and professional ethics, a continuous training system, and a disciplinary process. The draft also provides for a funding model to ensure sustainability. There will be a registration scheme for paralegals based on clear criteria in terms of qualification and other requirements; formalised work status; a training curriculum; and delineation of the types of legal aid services that paralegals can provide. Coordination and collaboration mechanisms between paralegal organisations and other legal aid providers and an accountability mechanism are also contained in the draft policy.

(xiii) Improving the Quality of Paralegal Services

In improving the quality of paralegal services, PAN has implemented two processes ahead of the adoption of the National Legal Aid policy. The first involves supervision and oversight, and the second involves accredited training.

An agreement was reached with the LAB for their lawyers to supervise the work of paralegals and to assist them in determining which cases require legal assistance. This initiative is currently underway in three provinces.

In relation to training, PAN has entered into a partnership with the National Institute for Public Administration (NIPA) to train paralegals at diploma level. The NIPA training arose from the need to improve the training of paralegals in order to ensure that they are fully accepted as key players in the justice system. The curriculum was developed with Zambia Open University, the University of Zambia (UNZA) and the Zambia Institute for Advanced Legal Education. An MOU was signed between PAN and NIPA and eleven paralegals were trained with PAN sponsorship. PAN is developing a Community-Based Paralegals curriculum and has engaged an expert to develop this course, which includes a new module focusing specifically on people with psycho-social and intellectual disabilities and how they interface with the criminal justice system. The difference between the NIPA Diploma Course and this curriculum is that the contents of the latter will be community-oriented and targeted at people with basic levels of education. NIPA and UNZA will be involved in developing the curriculum and the course will be run by UNZA given their experience in training paralegals at certificate level.

Lessons learnt

Paralegals can maximise their voice and gain traction in the criminal justice system by forming a network. By participating in the system as key players, and by taking steps such as standardisation, training and oversight to ensure the quality of paralegal services, respect for paralegal organisations can be raised. Co-operation with statutory human rights organisations can ensure that paralegals have access to places of detention and also ensure

oversight and training. Although many possible ways of forming a paralegal network are possible, PAN has demonstrated that using a single well-resourced organisation to provide infrastructure and administrative support to a network is a successful model.

Kenya

Kenya became independent in 1963, with one-party constitutional provisions being repealed in 1992; the Constitution was comprehensively revised in 2010. The Constitution provides that every arrested person has the right to be released on bond or bail. The Kenya Prison Service traces its origin to colonial programmes that were designed to pacify the "restive and recalcitrant African natives". [36] The system inflicted harsh punishments and not concerned with any concrete rehabilitation nor subsequent reintegration of offenders.[37] Subsequently there have been attempts to shift the focus but the state remains constrained by limited resources. [38]

5. Pre-trial detainee rehabilitation and re-integration in Kenya

Problem statement

Pre-trial detainees and their families suffer social and economic impact and need empowerment to secure release and reintegrate successfully.

A recent study found that pre-trial detention in Kenya has a significant socio-economic impact, disproportionately affecting those who are most vulnerable, in particular migrants seeking to ensure the economic survival of their families.[39] The same study found that where detainees are migrants, their families may not be aware of their detention. Without the support of their families, detainees in Kenya are unlikely to secure their release timeously. Even if they are aware of the detention, families may not fully understand the role they may play in the release of their family member. Families are frequently necessary to meet compliance with bail requirements.

Furthermore, the risks faced by those who are released after a period of detention are well documented. "Most offenders (sic) face significant social adaptation issues, which can include family and community stigmatization and ostracism, and the ensuing negative impact on their ability to find jobs or housing, return to formal education or build or re-build individual and social capital. Unless they receive help to face these issues, they frequently become caught up in a cycle of failed social integration, reoffending, reconviction and social rejection."[40] .

Lack of support of families significantly decreases the likelihood of detainees successfully reintegrating into their communities upon their eventual release. Communities in Kenya

[36] Olivia L.A. Onyango-Israel, Officer-in-Charge, Kamiti Medium Security Prison, Kenya "Overview of the Kenyan Criminal Justice System (Corrections)" The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) publication, available on <http://www.unafei.or.jp/english/pdf/RS_No90/No90_20PA_Onyango-Israel.pdf>
[37] Ibid.
[38] Ibid.
[39] Redpath J. and Muntingh L. "The Socio-Economic Impact of Pre-trial Detention in Kenya, Mozambique and Zambia" UNDP & OSJI (forthcoming)
[40] Chin, V. et. al for UNODC "Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders" December 2012 available at <http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Introductory_Handbook_on_the_Prevention_of_Recidivism_and_the_Social_Reintegration_of_Offenders.pdf>

make little distinction between convicted prisoners and pre-trial detainees on their release from prison. Both convicted prisoners and pre-trial detainees are equally at risk of being stigmatised and thus are at risk of being drawn into crime. The exact rate of re-arrest in Kenya is not known but it thought to be in the region of 30-40%. Unfortunately there is no formal network of support for Kenyan ex-prisoners (including pre-trial prisoners). Both ex-prisoners, and ex-detainees, are at risk, partly because they are frequently faced with rejection and discrimination by their communities, and their social and employment networks may have been disrupted by the period of detention.

Innovative solution

Provide release, rehabilitation and re-integration services to pre-trial detainees and their families and sensitise communities to re-integration and crime prevention.

RODI's Pre-trail Detainees and Crime Prevention Project (PDCPP) initially had two components, "Pretrial Detainees' Justice", and "Community and Schools Crime Prevention". In 2015 the two components were separated out into independent projects: the Pretrial Detainees' Justice and Life Skills Project (PDJLP) which targets the empowerment of pretrial detainees and their families using a peer-educator model, and the Community and Schools Crime Prevention Project (CSCPP), which works toward crime prevention and reintegration of ex-inmates by working with families and communities.

(xiv) Pre-trial Detainees' Justice and Life skills Project

The PDJLP project adopts some of the aspects of the PRISCCA "triage" paralegal model discussed above in relation to Zambia. The project has the following key elements:

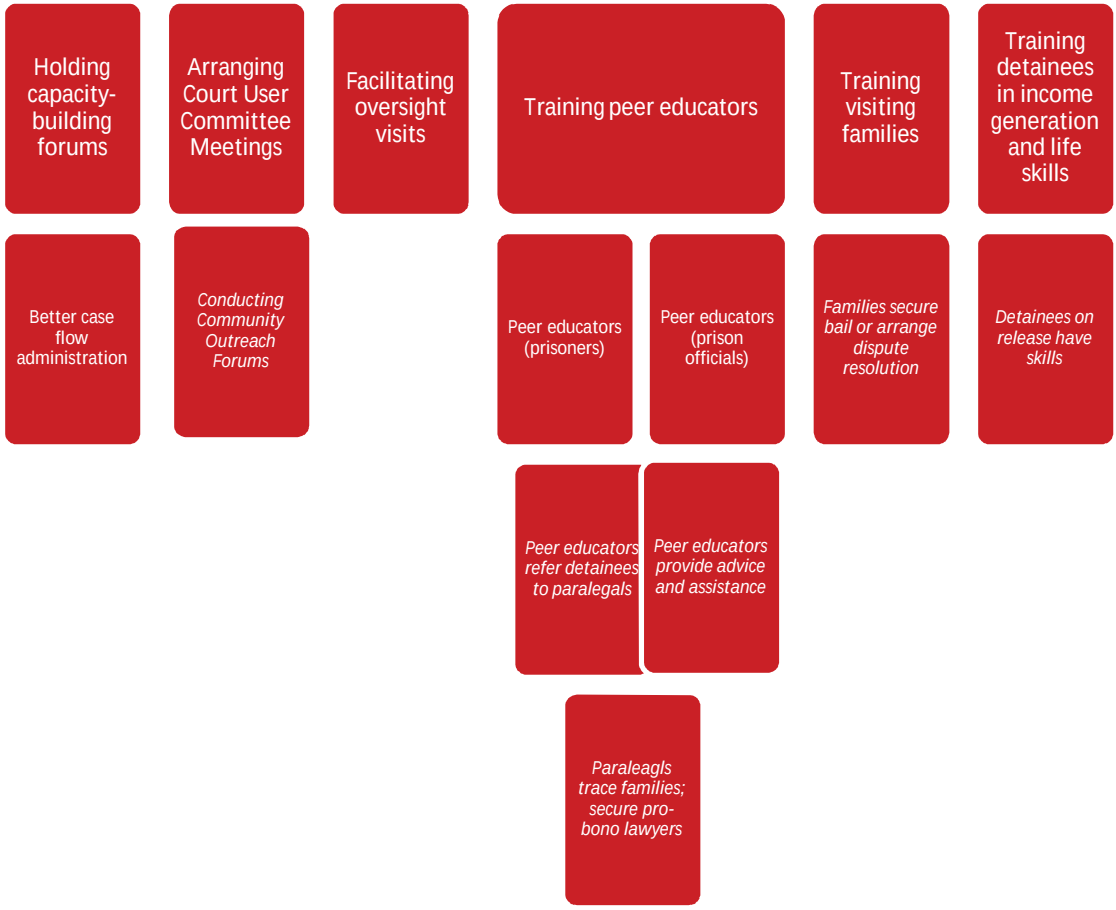
- Training pretrial detainees and prison officers as peer educators, who screen and refer detainees where necessary to paralegals
- Conducting paralegal clinics with pretrial detainees at which detainees receive advice, or have families traced or secure pro-bono legal assistance
- Training family members during visiting hours at awareness forums so that they can assist pre-trial detainees in securing bail and/or with dispute resolution
- Facilitating Court User Committee meetings to enhance co-operation among criminal justice system stakeholders toward better case flow
- Carrying out capacity-building of criminal justice system officials to enhance skills relevant to pre-trial issues
- Facilitating oversight visits between key criminal justice system actors and pre-trial detainees to enhance understanding of pre-trial issues
- Conducting life skills training with pre-trial detainees so that detainees have skills on release.

Training peer educators

The PDJLP project builds the capacity of detainees and of prison officers in paralegal skills. This leads to peer learning within the prison community. Detainees and prison officers are

provided with relevant information on a range of legal topics, including on the Kenyan Constitution, human rights, criminal law and criminal procedure law. Those who are trained are awarded certificates as peer educators. The trained peer educators then screen inmates. Screening is used to determine the legal support an individual pretrial detainee requires. The screening is done by peer educators together with prison liaison officers who identify cases which need paralegal intervention and advice. The result of screening is either that advice is provided directly, or the detainee is referred on to a paralegal officer.

Figure 6: RODI's Pre-trial Detainees' Justice Project



Training families during visits

In addition to peer-training and screening along the lines of the PRICCA model, the project conducts awareness sessions with family members during their visits to the prisons. In some instances, pre-trial detainees who were not initially contact with their families, are linked with their relatives. Practical matters such as the bond refund process and case withdrawal process are explained to families. This enhances families' understanding of legal procedures, and raises their ability to support their detained family. Families are also sensitised to the importance of alternative dispute resolution in restoring relationships within the communities who may have been affected by the incident leading to the detention of the pre-trial detainee. Some families are ultimately able to pay bail after asking for the relevant terms of bail to be reviewed in court. In other cases, through their families' interventions, accused persons engage in alternative dispute resolution processes, which ease their return to the community.

Arranging Court User Committee meetings

Court User Committees, which are facilitated by the project, hold Community Outreach Forums to enhance public understanding of legal processes. Capacity-building forums with criminal justice system actors enhance skills and knowledge relevant to pre-trial issues. A further component of the project is the facilitation of prison oversight visits by criminal justice stakeholders. These visits provide a forum of interaction between important actors in the criminal justice system and pre-trial detainees.

Training on income generation and life skills training

The life skills component of training includes information and knowledge related to topics such as sexual and reproductive health covering HIV prevention, modes of transmission, infections, sexually transmitted and opportunistic infections, drug and substance abuse prevention and management, hygiene and sanitation. Income generation training includes training in appropriate technology. In relation to income generation, one example of the training provided is in the preparation and making of products such as liquid soap, shampoo, powder soap, and bleach, as a potential means of income generation and enterprise creation. Other examples include food processing such as leading to the making of juice, yoghurt, and baked goods.

Resource Oriented Development Initiative (RODI)

Resource Oriented Development Initiative (RODI) was formed in 1989 as a community-based organisation (CBO) promoting alternative forms of agriculture within the reach of poor farmers, and was originally known as the Organic Farming Outreach Programme (OFOP). RODI is registered as an NGO in Kenya and as a charity in the UK. RODI now has two strategic programmes: Schools Organic Agriculture Programme (SOAP) and Prisoner Rehabilitation Programme (PREP). Under PREP, RODI has a Pre-trial Detainees and Crime Prevention Project. The project seeks to capacitate pre-trial detainees and their family members to know and understand their legal rights and the legal procedures which need to be followed in their cases, so that they know what actions to take and where to seek help. Where detainees are taken in custody without the knowledge of their families, the project links detainees with their families. The project builds the capacity of RODI staff, prison officers, probation officers, police and local leaders around legal rights and procedures. In addition public education on rights and procedures using local media seeks to empower Kenyan communities to know their legal rights and legal procedures. Finally, ex-detainees are used to educate the community on rights and legal procedures. RODI currently works with 33 penal institutions in Nyanza, Western, Central, Rift Valley, Coast, Eastern and Nairobi Provinces. RODI's main office is in Ruiri, 25km north-east of Nairobi.

RODI-Kenya currently works with 25 Kenyan prisons across five Kenyan provinces, of which 7 are women's prisons (Rift Valley, Western, Nyanza, Nairobi, and Central). Its programmes benefit poor prisoners, ex-prisoners and their communities. Since 1989, RODI has trained 7000 offenders in sustainable income generation and life skills.

Lessons learnt

Legal assistance can be leveraged by training peer educators and empowering families. Using paralegals to empower families of detainees helps detainees to ensure release. Re-integration and rehabilitation may work to prevent re-entry into pre-trial detention.

Involvement in Court User Committees ensures systemic issues are addressed on an ongoing basis.

Liberia

Liberia became independent of the United States in 1847, after settlement of freed slaves from the United States had begun in 1822. Between 1847 and 1980, the state of Liberia was governed by a small minority of African-American colonists and their offspring. Nominal enfranchisement of indigenous Liberians occurred in 1964. In 1980, a military coup led by Samuel Doe, an indigenous Liberian, resulted in a decade of authoritarian rule. In December 1989, Charles Taylor launched a rebellion that led to a prolonged civil war. A period of relative peace followed but fighting resumed in 2000. An August 2003 peace agreement ended the war. Liberia has a mixed legal system of common law based on Anglo-American law and customary law, and is amongst the poorest of countries in Africa.[41]

6. Tackling systemic weaknesses in Liberia

Problem statement

A dysfunctional justice system unable to process cases

After the cessation of Liberia's second civil war in 2003, the criminal justice system remained in a weak state. The United Nations Mission in Liberia (UNMIL) was established to support the implementation of the ceasefire agreement and the peace process; assisting in national security reform was part of the mandate.[42]

Data collated by UNMIL's Legal and Judicial System Support Division (LLJSSD) after 2003 found that key urban courts are chronically overburdened with dockets, while citizens in rural areas have few formal justice options; those accused of crimes, particularly if poor and unrepresented, frequently face long periods of pre-trial detention in overcrowded prisons, and victims rarely see convictions.[43] An estimated 80% of those imprisoned nationwide at any one time have not had a trial[44] while the estimated average length of pre-trial detention is 169 days.[45] The prison system only had capacity for just over 1 000 prisoners resulting in prison conditions which were described as "appalling".[46]

Pervasive underlying systemic weaknesses contribute to the problem in Liberia. Allegations of corruption are rife at all levels, fueling negative public perceptions of a formal system that is broadly misunderstood.[47] The high level of prolonged pre-trial detention of suspects is a symptom of inter-related deficits in the country's justice system. Liberia's security and justice sector institutions do not possess the oversight, coordination and capacity to

[41] See http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?order=wbapi_data_value_2013+wbapi_data_value&sort=asc
[42] UN Security Council Resolution 1509 (2003) Adopted by the Security Council at its 4830th meeting, on 9 September 2003
[43] UNMIL LJSSD's 2011 Court Report finds only 44 trials were completed in 2011 in the 12 circuit courts surveyed. Trials completed accounts for around half of all cases disposed of at the circuit court level.
[44] Information derived from UNMIL Corrections Advisory Unit (CAU) nationwide prison records for September 2012.
[45] As of September 2012, UNMIL CAU's prison records show the average duration of pre-trial detention for those incarcerated was 169 days.
[46] Amnesty International, 21st September 2011 (http://www.amnesty.org/en/news-and-updates/report/appalling-prison-conditions-liberia-must-be-improved-2011-09-21)
[47] Blume, T. Security and justice institutions in Liberia. From state collapse towards institutions? Research note prepared for the 16 May 2007 research seminar of the Crisis States Research Centre, Development Studies Institute, London School of Economics and Political Science, 24 May 2007, p8.

effectively track and manage a case from arrest to conviction.[48] The progression of a criminal case through the justice system in Liberia can be affected by a range of factors, including the competence of police, judges, court clerks, public defenders, prosecutors, and prison officers. The speed with which cases are processed is adversely affected by a lack of both human and institutional capacity in Liberia. This is further aggravated by consistently poor coordination among key justice sector actors, including corrections bureau officials, law enforcement, and the judiciary.

Because of poor case flow management, it is unlikely that an accused's case to make it onto the court roll without legal representation or intervention from an outside party, leaving such detainees to languish indefinitely in prison. Yet few Liberians can afford legal representation. In 2009, the Supreme Court of Liberia established the Public Defenders' Office (PDO) to provide legal representation to indigent criminal defenders in line with Article 21(h)(i) of the Constitution of Liberia.[49] The PDO is part of the judiciary and not included as an autonomous entity in the national budget. The Office has limited capacity to perform its duties; for instance, many public defenders have insufficient knowledge and skills to take on a more pro-active and effective role in providing legal aid, and at the end of 2014 there were 30 public defenders in Liberia, including one female public defender.[50] Thus the PDO lacks the oversight, coordination and resources necessary to represent Liberia's high numbers of indigent detainees.

Compounding these problems is the wide-spread feeling in a society still recovering from years of violent civil conflict that alleged "criminals" should remain in custody regardless of their guilt or innocence. The combination of these factors has resulted in the apparent continuous violation of detainees' basic rights under Liberian and international law in the formal justice system.

(b) Innovative solution

Provide legal assistance to those detained for long periods while working with government to identify and address systemic weaknesses in the criminal justice system

The legal assistance and reform intervention is being spearheaded by Prison Fellowship Liberia (PFL) and the Catholic Justice and Peace Commission (JPC) Liberia. Lawyers (JPC) and paralegals (PFL) work in partnership to provide legal aid, prison monitoring and facilitated dispute resolution in support of government-led initiatives that aim to alleviate prolonged pre-trial detention and prison overcrowding in Monrovia Central Prison. The intervention combines both long-term and short-term solutions working in parallel. The intervention is multi-faceted and focuses on Monrovia Central Prison, which houses more than 50% of all inmates in Liberia.

The intervention commenced in 2009 initially as a partnership among the American Bar Association Rule of Law Initiative (ABA ROLI), and the two civil society organisations, JPC and PFL. Since 2013 the intervention has been led by JPC and PFL. The long-term aspect of the intervention includes a government-led pretrial detention Taskforce established in 2009, which brings together justice and security sector actors, civil society and international

[48] Ibid. p9

[49] See UNODC "Final Independent project evaluation: Promoting Rule of Law and Governance in the Criminal Justice System in Liberia" available at <https://www.unodc.org/documents/evaluation/Independent_Project_Evaluations/2015/Independent_Project_Evaluation_Report_of_ROA2014_2015.pdf> p2. Ibid.

[50] Ibid.

partners to examine systemic weaknesses in the criminal justice system to catalyse and co-ordinate action to address these problems.
In the short-term, PFL and JPC operate together to ensure legal aid and mediation options are available to pretrial detainees. This is done mainly through the Magistrate Sitting Programme at Monrovia Central Prison, which sits six days a week and processes cases of detainees who have been held for prolonged periods.

To summarise, the intervention spans a number of core activities:

1. Providing legal aid in Magistrates' Courts:

a. PFL paralegals monitor Magistrate Sitting Program (MSP) hearings and assist Magistrates in prioritizing the cases to be reviewed in the hearings.

b. JPC lawyers provide legal aid at hearings conducted by the Magistrate Sitting Program (MSP) at Monrovia Central Prison.

2. Monitoring Monrovia Central Prison and providing alternative dispute resolution options:

a. PFL paralegals provide "tok palaver" (informal dispute resolution) for detainees charged with minor crimes or misdemeanors, which may lead to withdrawal of charges and/or facilitates reintegration.

b. PFL paralegals monitor conditions at Monrovia Central Prison and assists with reintegration for detainees who are released.

3. Providing legal aid in Circuit Courts:

a. JPC lawyers file motions for the release of detainees heled for prolonged periods who are accused of serious crimes within Circuit Courts.

b. PFL paralegals monitor Magistrates' and Circuit Court case processing.

4. Empowering government's Pre-trial Detention Taskforce toward change:

a. Transferring information and knowledge from JPC lawyers and PFL paralegals to state and judicial actors.

b. Conducting advocacy by both lawyers and paralegals toward reform of the law and judicial oversight toward strengthened case flow managements processes.

The intervention aims to build the capacity of Liberian civil society organizations to provide legal representation and assistance to indigent persons, to reduce the pre-trial detention population in Monrovia Central Prison, and to work with government counterparts and international partners to identify long-term solutions for addressing prolonged pre-trial detention in Liberia.

(i) **1. Legal Aid at Magistrate Sitting Program (MSP) and Montserrado County hearings**

The Magistrate Sitting Program (MSP) is a mechanism by which on a rotational basis, six Magisterial Courts around Monrovia and Montserrado County send a Magistrate and necessary court personnel to Monrovia Central Prison six days a week. Montserrado County is home to approximately one thid of the population of Liberia. The Magisterial Courts sitting

at Monrovia Central Prison review the cases of pre-trial detainees to determine the status of each case and decide how the Court should proceed on each case. The MSP seeks to:

- Examine the records of each inmate
- Release those inmates who have committed petty offences but are still in prison beyond the statutory period applicable had they been convicted and sentenced
- Transfer inmates' cases to the appropriate Circuit Courts, where the Magisterial Court does not have trial jurisdiction and where the defendant failed to request a preliminary examination
- Conduct preliminary examinations and determine whether the inmates can be discharged or their cases transferred.[51]

The JPC attorneys, with the help of the PFL paralegal monitors, prepare and represent almost all of the detainees whose cases are processed in the MSP.

Although the MSP hearings increase access to courts and legal representation for pre-trial detainees, and in particular secures the release of those accused of minor crimes and held beyond the statutory period, the number of new detainees subject to prolonged pre-trial detention and not eligible for release on this basis remains high. Legal representation is therefore also necessary for persons immediately after their arrest and prior to their initial appearance before a Magistrate.

JPC lawyers rotate among the four magistrates' courts in Montserrado County which have consistently excessive caseloads, providing legal aid for indigent defendants, facilitate the filing of a bail bonds, and providing legal representation during preliminary examinations.

(ii) 2. Monitoring, reintegration support and ADR at Monrovia Central Prison

Monrovia Central Prison houses the majority of detainees in Liberia. PFL paralegals monitor the daily intake and release records at Monrovia Central Prison. They conduct surveys of the prison population which help them to determine the accuracy of prison records. If errors are noted, these are corrected where possible. They also assist the JPC lawyers by gathering information on cases that come before the MSP and the Circuit Courts. The PFL paralegal monitors also bring cases which are absent from Monrovia Central Prison records or court records to the attention of JPC attorneys and the MSP magistrates.

A significant number of detainees who experience prolonged pre-trial detention are charged with minor crimes or misdemeanours which could technically fall under civil law and/or could be resolved outside of the courtroom. Enhanced access to a facilitated dispute resolution processes also called "Tok Palaver"[52] is a potentially significant tool in resolving these cases without resorting to courts. PFL paralegal monitors identify possible cases and travel to communities to propose mediation, and, if accepted, facilitate mediation between the victim and offender. In the event of a settlement, the parties put their agreement into

[51] Objectives of the MSP are taken from the official *Magistrate Sitting Program Mandate*, developed through the support the PTD Team in collaboration of the PTD Taskforce in March 2010.

[52] Tok Palaver" is a Liberian term for structured dialogue or mediation aimed at resolving disputes between two parties outside of the formal justice system.

writing. The written agreement is then presented to court in order to get the charges dismissed.

PFL paralegals also facilitate the reintegration of detainees into their original communities when they are released from Monrovia Central Prison. As discussed in relation to Kenya, detainees are at risk on their release and may have suffered various socio-economic harms. Support to reintegrating detainees includes contacting family members to alert them of the detainee's imminent release; accompanying a released person back to their communities; accompanying released persons in their initial interactions with their communities to stem the initial rejection and hostilities that are often the experience of those who have spent time in corrections facilities; and efforts to sensitize communities receiving the majority of released detainees about the criminal justice process to ensure greater understanding.

Where possible, paralegal monitors negotiate access to necessary resources, ranging from food, to water, medicine, clothing and mattresses. The relationships paralegal monitors develop with detainees allow them to collect information about individual cases that might otherwise be inaccessible.

(iii) 3. Circuit Court motions for release in cases of unreasonable delay

In addition to the legal representation in MSP hearings, JPC lawyers also file motions and petitions on behalf of groups of defendants in the Circuit Courts. Circuit Courts have original jurisdiction in the most serious cases, including aggravated assault, burglary, rape and murder. This intervention was introduced because while there are hundreds of detainees accused of minor crimes who receive legal aid and are released through the MSP hearings, those accused of serious crimes, comprising the majority of the long-term pre-trial detainee population in Liberia, remain incarcerated in appalling conditions for months and often years on end.

In most of these serious cases, there is little to no available information with which to prosecute, resulting in limited will from the Ministry of Justice and the Judiciary to review and process these cases. The JPC attorneys identify those cases involving major crimes that lack sufficient material needed to proceed with prosecution and in which the inmate has been detained for a period exceeding two terms of court. After identifying these cases the JPC attorneys file mass motions to release them in the Circuit Courts.

(iv) 4. Participation in Government's Pre-Trial Detention Taskforce

The Pre-trial Detention (PTD) Taskforce of Liberia is a government-mandated taskforce co-chaired by the Ministry of Justice and the Supreme Court and comprised of justice and security sector representatives, civil society and international partners.

The Taskforce plays a key role in analysing systemic weaknesses that cause prolonged pre-trial detention and coordinates action on these matters. The work of the Taskforce has been conducted through a series of subcommittees that have focussed on critical areas where the challenges facing the current system were identified as most pressing. These pressing areas covered by the subcommittees include case flow management at Magistrate and Circuit Courts; public outreach strategies on pre-trial detention; developing alternatives to incarceration, including probation; police-prosecution coordination; and the Magistrate Sitting Program.

The Justice and Peace Commission (JPC) and Prison Fellowship Liberia (PFL) representatives have played an active role in the Taskforce since its inception, using the experiences and impact of their intervention activities to inform discussions, strengthen other programs and to advocate for much needed oversight and reforms. They inform decisions taken by the Taskforce through the provision of data on their work which provides detailed information on the trends in the criminal justice system.

Prison Fellowship Liberia

Chartered in 1989, Prison Fellowship Liberia (PFL) seeks to provide help and healing for prisoners throughout the country. Chartered in 1989, Prison Fellowship Liberia seeks to provide help and healing for prisoners throughout the country. With the help of volunteers, education and restorative justice programs, mentoring, and legal assistance are available to inmates. In addition, PFL has been active and successful in seeking the release of pre-trial detainees in Liberia through its mediation programme run in partnership with East-West Management Institute. In a country with only 300 lawyers for an estimated 3.5 million people, Prison Fellowship Liberia's Legal Aid programme offers hope to those being held on pre-trial detention illegally. In addition volunteer lawyers and lay people, active in four main prisons, collect data on the prisoners in need of assistance, identify necessary evidence and witnesses for court proceedings, and offer mediation services as an alternative mechanism for processing the case.

The Catholic Justice and Peace Commission (JPC)

The Catholic Justice and Peace Commission (JPC) have played a key role in monitoring and reporting on human rights violations in Liberia since 1991. JPC has worked to promote reconciliation efforts through its Conflict Resolution and Peacebuilding program, using existing traditional mechanisms at the local level where possible. JPC also provides legal aid in rural areas through teams of Community Legal Advisors, who conduct “know your rights” campaigns with support from international partners.

Lessons learnt

Civil society partners can play a leading role in informing and catalysing the work of state-mandated entities such as the sub-committees of the Pre-Trial Detention Task Force, by bringing information and data on trends in the criminal justice system. Bringing civil society and government together can result in shared knowledge and targeted work.

A rotational judicial officer scheme such as the Magistrates’ Sitting Programme, adequately supported by civil society paralegals and lawyers preparing cases for the sittings, can help to expedite urgent cases where state-provided legal aid is inadequate. The scheme has succeeded in processing approximately 800 detainees per year, which over four years is enough to have emptied Monrovia Central of all pre-trial detainees two or three times over. This high turnover points to number of challenges:

- There is a high degree of recidivism among detainees whose cases are heard in MSP hearings. This highlights the need for reintegration support.
- There is a steady influx of detainees whose cases are eligible for MSP hearings. This highlights the need for informal dispute resolution and other methods of reducing the influx.

- While the MSP has been an efficient mechanism for processing prolonged detainees accused of minor crimes, it was planned as an emergency intervention, not a solution to the consistent backlog of Magistrate Court dockets. The efficiency of the MSP relieves some of the pressure needed on the Magistrate Courts to reform and strengthen case flow management procedures.

- Scheduling of cases has been affected by corrupt practices, resulting in the most deserving matters possibly not being heard first.

A small proportion of detainees held in pre-trial detention can be released through implementing informal dispute resolution processes in appropriate cases. The PFL paralegal monitors have been able to resolve approximately 5-10 such cases through informal dispute resolution each month.

Court motions brought in relation to unreasonable delay have an effect through the releases they secure and also through the pressure brought to bear on the system. There has been significant resistance from the prosecution and from judges to the release of persons accused of serious offences on the basis of unreasonable delay. The resistance is fuelled by the visible backlash from the public when persons accused of crimes, such as rape or armed robbery, are released from prison. Nevertheless bringing such motions operate to put pressure on government officials to act with greater responsibility toward the backlog of cases in the Circuit Courts.

Mozambique

Mozambique became independent from Portugal in 1975 after ten years of a war of independence lead by the marxist Front for the Liberation of Mozambique (Frelimo). The 1975 Constitution established a one-party socialist state led by FRELIMO (Frente da Libertação de Moçambique), in which there was no separation of powers between executive and judiciary. Civil war followed between Frelimo and the Mozambique National Resistance (Renamo) from 1977. After Frelimo abandoned Marxism in 1989, a peace agreement was reached in 1992. President Joaquim Chissano of Frelimo stepped down in 2004 after 18 years in office; a third post-independence Constitution was adopted, which further strengthened individual rights and the independence of the courts.

7. Monitoring, Representing, Advocating and Litigating

Problem statement

Statutory human rights organisations in Mozambique are not providing oversight of prisons and detainees are without representation.

(v) Under-developed Human Rights Culture and Lack of Oversight

The human rights culture in Mozambique is in the process of being developed. In 2009 Mozambique enacted laws toward the creation of a Human Rights Commission, the statutory *Comissao Nacional dos Direitos Humanos*[53] (CNDH) with the general mandate to promote and protect human rights in Mozambique. The CNDH is autonomous and reports to the President and the National Assembly on the situation of human rights in Mozambique.

[53] Law 33/2009 on 22 December 2009

Although the law establishing the *Comissao Nacional dos Direitos Humanos* was promulgated in April 2010 and the Ministry of Justice was mandated to establish the CNDH, the Commissioners only took oath in late 2012. The challenge faced by the 11 appointed CNDH commissioners is the lack of a clear detailed mandate for the CNDH, including a detailed mandate in relation to prison monitoring. The slowly developing human rights culture in Mozambique may result in its broad mandate to promote and respect human rights being interpreted in a limited way.

(vi) Lack of Legal Representation

The Constitution of Mozambique provides for the right of an accused (*arguido*) to a defence, legal assistance and aid: 'it shall be ensured that adequate legal assistance and aid is given to accused persons who, for economic reasons, are unable to engage their own lawyer'.[54] A person may request the right to have their status changed from that of a suspect to an accused in order to have the right to full legal representation and defence. The law also sets out that certain procedural acts, such as interrogation of the accused, which may not take place without the presence of a lawyer, under penalty of the interrogation becoming null. If the accused cannot afford a lawyer, the state must nominate a representative from the Mozambican Bar Association (OAM). The statutes of the OAM provide that its members should accept being appointed in such cases as a duty and should represent their clients free of charge. If for good reason, a member of the OAM is not available, the state may request legal representation from the state's Institute for Legal Assistance and Representation (Instituto de Assistência e Patrocínio Jurídico - IPAJ).

IPAJ was created in 1994 under the Ministry of Justice, with the aim of providing economically disadvantaged citizens with legal representation and assistance. IPAJ succeeded the National Institute of Legal Assistance (*Instituto Nacional de Assistência Jurídica, INAJ*), which had been created in 1986. In terms of Article 8 of the Statute of IPAJ, "the legal representation and assistance given by IPAJ is free." However it has been reported that in some cases, IPAJ lawyers charge a fee. IPAJ also faces a number of challenges with regard to human and financial resources, as not all their lawyers are duly qualified and there are insufficient lawyers to provide enough coverage for the whole of the country. Failing any other legal representation, the law further provides that the courts, Public Prosecution Service or the investigating judge can appoint an *ad hoc* representative to defend the accused. In practice, there is a persistent pattern of members of the OAM and IPAJ failing to undertake their duties, leading to detainees languishing in prisons.

Innovative solution

Use civil society paralegals and lawyers to carry out the dual function of monitoring and legal representation, creating a methodology and practice of oversight which may be adopted by the Human Rights Commission, and amassing evidence which alters the human rights climate and may be used in strategic litigation.

The intervention profiled here seeks to use monitoring of places of detention, mandated through a memorandum of understanding with the state, to make consistently recorded observations of conditions of incarceration, and at the same time to identify individual cases in which legal assistance is necessary. In addition human rights reports contribute to a

[54] Article 62 of the 2004 Constitution of Mozambique.

changed human rights climate, which can improve the chances of reform efforts. The implementing organisation is The Human Rights League - *Liga Moçambicana dos Direitos Humanos* (LMDH or Liga).

Liga Moçambicana dos Direitos Humanos (LMDH or Liga)

Liga Mocambicana dos Direitos Humanos (Liga) is a non-profit organization established in 1995 which aims to protect and promote fundamental human rights in Mozambique. Liga is based in Maputo and has offices in all provinces. Liga's aim is to promote human rights through advocacy, civic education, monitoring and legal assistance. Its overall goal is to contribute to greater adherence to and respect for human rights in the country by both state institutions and civil society. Liga signed a Memorandum of Understanding with the Ministry of Justice in August 2009. This provides Liga with access to all prisons in Mozambique without restriction for the purposes of both monitoring and the provision of legal assistance. Liga's prison visitors make observations of conditions of incarceration and also identify individual cases in which legal assistance is necessary. Liga's oversight project is represented in four of Mozambique's ten' provinces, that is, Maputo Province which has the largest prison population; Sofala province in central Mozambique which has the second largest prison population, Gaza province in the south which has the largest open prison population and the fourth largest prison population, and Nampula province in the north which has the third largest prison.

The primary goal of Liga is to improve oversight and accountability by the state in respect of places of detention by:

- Monitoring prisons to identify human rights violations and record conditions of detention in prisons and police stations using a standard instrument
- Reporting on violations of human rights and conditions of detention to heads of Prisons and the Ministry of Justice with a view to remedial action
- Raising awareness among pre-trial detainees about fair trial and human rights to which they are entitled
- Advocating for reform in the criminal justice system through the publication and dissemination of human rights reports and through on-going engagement with heads of prisons and with the Ministry of Justice.

(vii) Prison Monitoring

Prison monitoring by Liga in the provinces occurs using standard monitoring tools and questionnaires. Visits generally take place once per week. The information gathered during monitoring visits is structured and there is engagement with the Head of Prisons at each monitored facility. The visit is followed by submission of two reports to the Minister of Justice for the attention of the National Prison Service. These reports detail any unresolved human rights violations and problems. A summary Human Rights Report on criminal justice and conditions of detention is also produced once a year, based on the information gathered through the monitoring process. The impact is observed directly through interactions with the Head of Prisons. The reports submitted to the National Prison Service of unresolved

violations provide the Head of Prisons with strong incentives to correct any problems, while the yearly report in turn holds the National Prison Service itself accountable.

(viii) Legal assistance

Liga has established and maintained contact and dialogue with the authorities (both administrative and operational) in order to formalize access at police stations and prisons. During the monitoring visits, Liga engages in pre-selection of pre-trial detainees requiring legal assistance based on defined criteria. These may include those who have overstayed custody time limits, are illegally detailed, are imprisoned as a result of unaffordable bail, have not been given the option of bail, or are being detained in violation of domestic or international standards.[55] Interviews are then carried out to select cases based on priorities and verification of the possibility of court settlement. Settlement of disputes, preferably using mediation and conciliation, is used if the nature of the cases allows it, that is it is amendable to dispute resolution and not of a serious nature.

(ix) Advocacy and strategic litigation

Information gathered through the oversight and access to justice arms of the project is compiled to strengthen advocacy efforts aimed at compelling the state to adhere to international human rights last and standards and in order to mainstream human rights in public policy. This is done with reports, debates, press releases and submissions to the state where appropriate. Liga also conducts strategic litigation both at the high court and constitutional court level where appropriate. Liga has made four successful constitutional challenges in Mozambican criminal procedural law which represent a revolution in the pre-trial detention legislative framework. These successful challenges were as follows:

Only the judiciary may order pre-trial detention

The Mozambique Constitution in Article 64(2) provides that it is the judiciary which has the power to deprive a person of their freedom, yet there were provisions[56] in the Criminal Procedure code providing that administrative authorities and prosecutors could order a person to be held in pre-trial detention[57]. Liga in its monitoring work had observed that the police's control of the criminal justice process had led to abuses of the provision. Liga initiated a process to collect two thousand signatures across Mozambique, to meet the requirements for the filing of an action of unconstitutionality before the Constitutional Council, and then challenged these provisions, which were ultimately declared unconstitutional on the basis that the Constitution provides that only the judiciary may order pre-trial detention.

The charge alone is insufficient for preventive detention

Liga further found through its monitoring that a great many people are held in pre-trial detention simply because they are facing a charge on an offence punishable by a sentence of imprisonment, as provided in Article 291 of the Code. Liga challenged this provision too, and the Constitutional Council found that preventive detention cannot simply be applied, but that it is necessary to assess whether the prosecution has a concrete evidential foundation and whether there is a risk the accused will flee, interfere with the investigation or commit

[55] Such as children detained with adults, or detainees with psycho-social or physical disabilities among others.
[56] Paragraphs 1 , 2 and 3 of Article 293 of the Criminal Procedure Code, amended by Law No. 2/93 and Article 43 of the Organic Law of Prosecutors,
[57] Termed "preventive detention" in Mozambique.

further crimes. This finding was based on paragraph 2 of Article 59 of the Constitution, which provides for the presumption of innocence.

Incommunicado detention unconstitutional

Article 311 of the CPC which provides for *incommunicado* detention of an accused person before their first interrogation was also found to be unconstitutional, as it contradicts paragraph 4 of Article 63 of the Constitution, which provides that the lawyer of an accused person may communicate with the accused at any time.

Remand must be for a defined period

Finally the Constitution prohibits penalties and security measures of indefinite or unlimited duration, in paragraph 1 of Article 61. Paragraph 3 of Article 308 and paragraph 1 of Article 311 of the CPC, which permit indefinite remand detention, were consequently also found unconstitutional by the Constitutional Council.

Lessons Learnt

(x) Oversight

Cordial relations with prison officials have ensured that issues raised by Liga are managed in a non-confrontational manner.. Through an MOU with SNAPRI, Liga has formal access to prisons. The regular oversight carried out encourages prison officials to ensure rights are respected, and ensures that credible evidence and insights are obtained for advocacy. on the basis of which advocacy and strategic litigation can be based. Likewise through supporting efforts of the Ministry of the Interior to set up its model police stations, Liga has created an environment of trust and are now negotiating a formal MOU with the toward formal access to police stations. Conditions at Maputo Central, despite overcrowding and a high admission rate, have improved and are reasonable.

(xi) Legal representation

An increasing number are relying on legal aid provided by civil society organisations such as Liga, who have assisted many pre-trial detainees in obtaining release pre-trial. The situation in relation to remand detainees has improved, with remand detainees now comprising 35% of the prison population, which is a relatively low proportion by Southern African standards. The model of using the opportunities provided by monitoring to identify cases for representation appears to work in the Mozambique context.

(xii) Advocacy and Strategic Litigation

Through monitoring, insights can be obtained which can suggest avenues of advocacy and strategic litigation. Advocacy in turn can create an environment more receptive to reform. .

Conclusion

The African context for pre-trial detention is particularly challenging. Relevant factors include an environment of extremely limited resources, which results in poor conditions of detention, and a lack of access to state-provided legal assistance. Recent history also suggests an undeveloped human rights culture. Innovative interventions from civil society which address these challenges and maximise available resources have developed over the last decade. The lessons learnt from the implementation of these innovations can be adapted for use in other contexts.

A number of themes emerge when considering the problems faced by low and lower middle-income countries in Africa. Key amongst these is the limited affordable availability of lawyers for private defence of detainees, and limited access to state-funded legal aid for indigent detainees. This is in the context of the limited ability of formal justice processes to resolve matters timeously and satisfactorily, leading to prolonged detention of detainees, particularly in relation to serious offences.

In terms of the innovative solutions, key amongst these is the leveraging of available legal skills through innovative models which see detainees themselves, long-term prisoners, prison officials, or even families of detainees, being empowered with basic legal advice and assistance which may lead to the successful release of detainees. Where lawyers are available, their utility can be maximised with models which see only the most serious cases being referred to lawyers, with the remainder of cases being resolved through administrative support offered by paralegals or even peer educators.

The use of alternative justice processes allied to traditional justice systems, which in turn are closely allied to reintegration support processes, is another key innovation theme. In many countries across Africa traditional and informal justice processes are as important and indeed sometimes preferred by citizens, particularly where the formal system is absent or lacking. Innovations which synergise the best of both models of justice while ameliorating the shortcomings of each have been pioneered and show great potential.

Many of the civil society organisations profiled here are fulfilling roles which institutions of state are unable to fill adequately, such as providing legal assistance or ensuring oversight to prevent human rights abuses. For such work to be successful, the co-operation and partnership with government institutions is necessary. Without the explicit agreement and co-operation of the state no work within the formal system of prisons, courts, police stations, and other places of detention is possible. All of the organisations here have maintained good relations with the state in order to carry out their interventions.

The need for legal formalisation (such as adult diversion or right of appearance for paralegals) in order to ensure sustainability also emerges from this review. Co-operation among civil society organisations is also evident, whether it is in carrying out interventions or in banding together to create a greater voice or to ensure standards.

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