PRISON AUDIT
MALAWI
A DATA DRIVEN APPROACH TO
MEETING SDG 16.3.2

Central region | Maula | Kachere | 5 June-8 August, 2023
Northern region | Mzuzu | 11-29 September, 2023

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SECTION I

Introduction

Methodology Highlights

Preamble
Introduction

**The Justice Audit:** Data-driven methodologies to inform justice reform

- **Direction:** Justice (retired) Johann Kriegler (a founding Justice of the Constitutional Court, South Africa)
- **Production:** Governance and Justice Group (UK) | Justice Mapping (USA) [www.justiceaudit.org]

**Prison Audits:** Consolidated analysis of prison population drivers and indicated opportunities for safe and just reductions under existing law towards meeting SDG 16.3.2

- **International Advisory Council:** Chaired by Prof. Dirk van Zyl Smit (Nottingham Univ., UK | UCT, South Africa)
- **Implementation:** Paralegal Advisory Service Institute with GJG and JM

**Malawi Prison Audit:** Maula, Kachere and Mzuzu Prisons

- **Conduct | Analysis:** 10 PASI paralegals with MPS prison officers | Governance and Justice Group
- **Audit Tenure:** Launched 5 June, 2023 | Completed 29 September, 2023
- **Financial Contribution:** Irish Embassy and Irish Rule of Law International
Methodology Highlights

Consent and Preparation

- Consent of Commissioner General | Endorsement of the Chief Justice | Coordination with Officers in Charge
- Paralegal training | Questionnaire field testing | Prisoner notification of purpose

Survey Administration, Content, and Protocol

- Maula + Kachere: 6 PASI paralegals and MPS officers interviewed 2409 prisoners | 90% of the prison population: 2675
- Mzuzu: 4 PASI paralegals and MPS officers interviewed 850 prisoners | 94% of prison population: 903

  Questionnaire content: i) cross-checked with prison file; and, ii) no cross-check available
  i) name, offence, time in custody, status of bail, length of sentence, whether confirmed by High Court
  ii) education, income, time spent in community, previous convictions, time spent in police custody

- Interviews commenced with questions to elicit informed consent and ended with response review for interviewee confirmation

Analytical Categorization

- Population groupings applied regarding: Status (remand/sentenced), Gender (men/women), and Age (under 21/21 and over)
- In absence of existing definitions, ‘serious’ vs. ‘minor’ offence classifications were formulated; examples include:
  Dishonesty (>MK50,000 =serious) | Property (burglary=serious; vandalism=minor) | Violence (robbery=serious; fighting=minor)

- Eligible release categories in line with Laws of Malawi formulated: Seven (7) for remand; and, eight (8) for sentenced prisoners
**Preamble**

**Data Quality and Analytical Reliability**
- Categories of **Eligible Release criteria** structured around the **Laws of Malawi**
- **Data** collection cross-checked by MPS Prison Officers against committal warrants and orders of the courts

**High Ranking Against SDG 16.3.2**
- Malawi’s remand rate (17.6%) consistently under 20%—among the lowest in Africa (4th lowest of 53 African countries)

**Institutional Openness and Transparency**
- Open-door policy of the Malawi Prison Service and cooperation with legal aid providers (as with PASI)
- Pro-active practices of the Judiciary (as with caseload screening—camp courts)
- Coordination among providers of justice services (as with Court User Committees wherein police, prosecutors, judiciary, prisons, paralegals, and traditional authorities regularly convene at the district level to find solutions to local problems)
- **Conduciveness** of the political environment to innovation and reform, as with:
  - Championing of the Lilongwe Declaration on Legal Aid, 2004 (sitting Chief Justice chaired the drafting committee)
  - Government of Malawi’s imminent passage of the new Prison Act and Diversion of Adult Offenders Act
  - President’s initiative to reduce pressure on prisons

**In spite of existing efforts, prisons near urban centers remain overcrowded**

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Data Note:

[Highest to lowest Pre-Trial Detainees / Remand Prisoners in Africa - World Prison Brief]

1. CAR 84%
2. Gabon 80%
3. DR Congo 75%
...
6. Nigeria 68.5%
...
20. Tanzania 50%
...
24. Uganda 48.7%
...
28. Kenya 41%
...
33. South Africa 32.9%
...
48. Algeria 19%
49. Zambia 17.6%
49. Malawi 17.6%
...
51. Ethiopia 14.9%
52. Rwanda 13.5%
53. Ghana 11.5%
SECTION II

Actionable Takeaways
1. Poverty is the key determinant of whether a person is held in prison

2. Socio/economic impact of incarceration directly affects women and children

3. ‘Equality of arms’ in theory; not working in practice

4. Prison space is more congested than previously believed

5. Majority of remand prisoners eligible for release:
   - Sixty-six percent (66%) Maula + Kachere
   - Sixty-seven percent (67%) Mzuzu

6. Majority of sentenced prisoners eligible for release:
   - Eighty percent (80%) Maula + Kachere
   - Sixty-six percent (66%) Mzuzu

7. Prison is not used primarily as a measure of ‘last resort’

8. High proportion of remand ‘overstayers’ and sentenced prisoners not confirmed by High Court

9. Nearly all people arrested, are held too long in police stations with no legal assistance

10. Prisoners are inhibited from exercising their right to appeal
1. **Poverty** is the **key determinant** of whether a person is held in prison

![Graph showing the percentage of prisoners who are 'too poor' to retain a lawyer.](image)

**Earned MK 50,000 (USD $50) or Less per month**

- **Remand Prisoners**
  - 80% | 74% of women and 90% | 57% of men say they are 'too poor' to retain a lawyer to represent them on remand

**Sentenced Prisoners**

- 100% of sentenced young men (under 21) claim that no lawyer represented them at court

**Remand Prisoners granted bail by the court**

- 16% | 11% (146 | 19 individuals) were unable to meet the condition of paying cash surety

**Appeal?**

- 20%

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In Cooperation with Malawi Prison Service

Malawi Prison Audit: Maula | Kachere | Mzuzu Prisons: 5 June – 29 September, 2023
2. Socio/economic impact of incarceration directly affects women and children

Vast majority of adult prisoners (men and women) have families

Parents and Children

- Over 80% of prisoners in each prison have children
- 55% (Maula + Kachere) / 47% (Mzuzu) of sentenced adult men say they have at least one child under 5-years old

Breadwinners

- Over 90% of prisoners in each prison say they were in employment at the time of their incarceration

Data Note:

All 44 women in Kachere Women’s Prison were interviewed + all 30 women in the women’s section of Mzuzu prison.

The women married to men in prison and their children also bear the impact of imprisonment.

The loss of the main breadwinner threatens to drive them into deeper poverty.
3. ‘Equality of arms’ in theory, not working in practice

<table>
<thead>
<tr>
<th>Women</th>
<th>Adult Men</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Remand</strong>, charged with homicide, who say they have a lawyer</td>
<td></td>
</tr>
<tr>
<td>Kachere: 2 of 18</td>
<td></td>
</tr>
<tr>
<td>Mzuzu: 4 of 5</td>
<td></td>
</tr>
<tr>
<td><strong>Remand</strong>, charged with homicide, who say they have no legal representation</td>
<td></td>
</tr>
<tr>
<td>Maula: 6%</td>
<td></td>
</tr>
<tr>
<td>Mzuzu: 39%</td>
<td></td>
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<tr>
<td><strong>General Remand</strong>, who say they have no legal representation</td>
<td></td>
</tr>
<tr>
<td>Maula: 91%</td>
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<tr>
<td>Mzuzu: 74%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Women</th>
<th>Adult Men</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sentenced</strong> who said they were represented by a lawyer in court at plea or trial</td>
<td></td>
</tr>
<tr>
<td>Kachere: 5 of 26</td>
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<tr>
<td>Mzuzu: 8 of 24</td>
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<tr>
<td><strong>Sentenced</strong>, who say they had no legal representation</td>
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<tr>
<td>Maula: 96%</td>
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<tr>
<td>Mzuzu: 86%</td>
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</tbody>
</table>

**Young Men Under 21**
100% of sentenced young men (101 in Maula | 25 in Mzuzu) claim no legal representation at plea or at trial

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Malawi Prison Audit: Maula | Kachere | Mzuzu Prisons: 5 June – 29 September, 2023

Data Note:
Significant number remandees said they did not apply for bail in Maula:
- 48% Under 21 remand
- 62% Homicide remand
- 27% General remand

In Mzuzu:
- 48% Under 21
- 67% Women
- 45% Men

Most sentenced prisoners, although not legally, represented understood the court proceedings in Maula:
- 96% Women
- 90% Under 21 (Men)
- 92% Men

In Mzuzu:
- 63% Women
- 57% Under 21 (Men)
- 54% Men
4. **Prison space** is more congested than previously believed

**International Prison Standards**

**Mandela Rules (R 11):**

**Untried prisoners shall be kept separate from convicted prisoners.**

- **Space in cell:** Minimum 3.4m² per prisoner
- **Sanitation:** Minimum 1 toilet per 50 prisoners
- **Accommodation:** Dormitories with bunk beds, the following should be taken into account:
  - Total floor space
  - Space available for beds
  - Space available for moving around

**International Committee of the Red Cross (ICRC) Recommended Minimum Standards:**

**Space in cell:** Minimum 3.4m² per prisoner

**Sanitation:** Minimum 1 toilet per 50 prisoners

**Accommodation:** Dormitories with bunk beds, the following should be taken into account:

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**Prison Conditions**

**Remand and sentenced prisoners (young vs old) + Foreign nationals (immigration charged vs non-criminal) All share the same cells.**

- **Space in cell:** Official measure of prison capacity, unclear
- **Sanitation:** 1 toilet per 100+ prisoners (Maula and Mzuzu)
- **Accommodation:** Cell area paced out in Mzuzu
  - Applying 3.4m² per prisoner, 12 cells averaged 300%-700% occupancy over [ICRC recommended minimum] capacity
  - Foreign nationals in Mzuzu (216) boost population by 24%
  - 92% aged 30 years or under
  - 98% in prison more than 3 months
  - 34% (74) in prison 11-15 months

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**Malawi Prison Audit: Maula | Kachere | Mzuzu Prisons: 5 June – 29 September, 2023**

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5. **Majority of Remand Prisoners Eligible for Release**

Total Remand Prisoners Interviewed: Maula/Kachere (897) | Mzuzu (170)

<table>
<thead>
<tr>
<th>Maula</th>
<th>Kachere</th>
<th>Mzuzu</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bail as of Right</strong> (22)</td>
<td><strong>Bail Granted by Lower Court</strong> (154)</td>
<td><strong>Overstayed Minor Offence</strong> (48)</td>
</tr>
<tr>
<td>**MAULA</td>
<td>KACHERE**</td>
<td><strong>MZUZU</strong></td>
</tr>
<tr>
<td>9% indicated guilty pleas</td>
<td>66%</td>
<td>67%</td>
</tr>
<tr>
<td>(Lists of named prisoners submitted to courts)</td>
<td>eligible for release</td>
<td>eligible for release</td>
</tr>
</tbody>
</table>

**Malawi Prison Audit: Maula | Kachere | Mzuzu Prisons: 5 June – 29 September, 2023**

In Cooperation with Malawi Prison Service
6. **Majority of sentenced prisoners eligible for release**

Total Sentenced Prisoners: Maula/Kachere (1512) + Mzuzu (462)

<table>
<thead>
<tr>
<th>Men</th>
<th>Interviewed</th>
<th>Eligible for Release</th>
<th>Youth Under 21</th>
<th>Interviewed</th>
<th>Eligible for Release</th>
<th>Women</th>
<th>Interviewed</th>
<th>Eligible for Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maula/Kachere</td>
<td>1385</td>
<td>1094 (79%)</td>
<td>Mzuzu</td>
<td>413</td>
<td>270 (65%)</td>
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<tr>
<td># Men by Eligibility Categories</td>
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<td></td>
<td></td>
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<tr>
<td>Maula/Kachere + Mzuzu</td>
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<tr>
<td>Non-violent offence &lt; 3 years (101 + 18)</td>
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<tr>
<td>Offence against person or property &lt; 3 years (34 + 0)</td>
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<tr>
<td>Offender already served 2/3 of sentence (19 + 3)</td>
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<tr>
<td>Sentence pending confirmation by High Court (940 + 249)</td>
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</tr>
</tbody>
</table>

| # Youth Under 21 by Eligibility Categories | | | | | | | | |
| Maula/Kachere + Mzuzu | | | | | | | | |
| Non-violent offence < 3 years (0 + 0) | | | | | | | | |
| Offence against person or property < 3 years (21 + 11) | | | | | | | | |
| Offender already served 2/3 of sentence (0 + 0) | | | | | | | | |
| Sentence pending confirmation by High Court (77 + 12) | | | | | | | | |

| # Women by Eligibility Categories | | | | | | | | |
| Maula/Kachere + Mzuzu | | | | | | | | |
| Non-violent offence < 3 years (3 + 4) | | | | | | | | |
| Offence against person or property < 3 years (4 + 1) | | | | | | | | |
| Offender already served 2/3 of sentence (1 + 0) | | | | | | | | |
| Sentence pending confirmation by High Court (16 + 10) | | | | | | | | |

A Guilty plea avoids the costs of a trial (to the courts) and pain of reliving the experience (to the victim/witness). Guilty pleas are also considered to be expressions of remorse.

For these reasons, many countries discount the sentence the defendant would have received following a trial and finding of guilty. This is not the case here.

**Prison officers in Maula | Mzuzu provided details of:**
- 8 | 21 terminally ill prisoners
- 6 | 3 mentally ill prisoners
7. **Prison is not used** primarily as a measure of ‘last resort’

Proportion of Population in Custody for Non-Violent Offences

<table>
<thead>
<tr>
<th>Women</th>
<th>Youth Under 21</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kachere</td>
<td>38%</td>
<td>38%</td>
</tr>
<tr>
<td>Mzuzu</td>
<td>62%</td>
<td>62%</td>
</tr>
</tbody>
</table>

Populations in Custody For Whom **Less Restrictive Conditions** Could Be Applied

1/3 of all prisoners—remand and sentenced—are charged with or sentenced for:

**CRIMES OF DISHONESTY**
(thief, handling, personation)

- Approximately 700 Prisoners

**Bailable Remand**
[Maula/Kachere | Mzuzu]
- [16% : 11%] could not meet bail conditions, mostly cash surety [146 : 19] people
- Most bail eligible prisoners have fixed places of residence and are first offenders

**Sentenced to 3 Years or Less**
[Maula/Kachere | Mzuzu]
- Women: [11 (42%) : 7 (29%)]
- Under 21: [40 (40%) : 13 (48%)]
- Adult Men: [205 (15%) : 49 (12%)]

- Increase application of bail by 10%
- Substitute community-based sanctions
- Release 100 prison places
- Release 200 prison places

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Data Note:
The Prison Audit Maula further found:
- 5% remand prisoners awaiting a court ruling on their bail application (n48)
- General remand population:
  - 2 remandees had breached their bail conditions (failing to report to police)
  - 2 had been rearrested after absconding
- Homicide remand population:
  - 2 remandees had breached their bail conditions (failing to report to police).
  - One claimed he had been sick on the reporting day and had reported the following day but had bail revoked.
8. **High proportion of remand ‘overstayers’ and sentenced prisoners not confirmed** by High Court

<table>
<thead>
<tr>
<th>Remand</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>49%</strong></td>
</tr>
<tr>
<td><strong>41%</strong></td>
</tr>
<tr>
<td>![Clock icon]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sentenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>![Circle graph]</td>
</tr>
<tr>
<td>![Circle graph]</td>
</tr>
</tbody>
</table>

- **49%** Maula/Kachere (Women) |
- **42%** Mzuzu (Women) |
- **48%** Maula (Youth Under 21) |
- **52%** Mzuzu (Youth Under 21) |
- **62%** Maula (Men) |
- **40%** Mzuzu (Men) |

Please refer to attachment on sentencing inconsistencies.
9. Nearly all **people arrested**, are **held too long** in police stations with **no legal assistance**

Almost everyone arrested and **detained by police** is...

- ...held **longer than the 48 hours permitted**
- ...**without access** to legal aid or assistance
- ...formally interviewed **without a lawyer** or paralegal

Data Note:

Those who claim to have been held by police more than 48 hours in Maula | Mzuzu...

Remand:
- 96% | 96% - Under 21.
- 100% | 100% - Women.
- 96% | 91% - Men.

Sentenced:
- 98% | 79% - Under 21.
- 100% | 96% - Women.
- 96% | 89% - Men.

Sentence population - few accompanied by a lawyer / paralegal during formal interview:

Women: 1 | 1
Under 21: 0 | 1
Adult men: 33 | 18
10. Prisoners are inhibited from exercising their right to appeal

Very few of those convicted lodged an appeal

<table>
<thead>
<tr>
<th>Location</th>
<th>Men (%)</th>
<th>Youth Under 21 (%)</th>
<th>Women—Kachere (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maula</td>
<td>9</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Mzuzu</td>
<td>11</td>
<td>0</td>
<td>8</td>
</tr>
</tbody>
</table>

Of those asked why they did not appeal...

<table>
<thead>
<tr>
<th>Reason</th>
<th>Men (%)</th>
<th>Under 21 (%)</th>
<th>Women (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31%</td>
<td>36%</td>
<td>58%</td>
<td>58%</td>
</tr>
<tr>
<td>58%</td>
<td>44%</td>
<td>28%</td>
<td>44%</td>
</tr>
<tr>
<td>52%</td>
<td>33%</td>
<td>28%</td>
<td>33%</td>
</tr>
</tbody>
</table>

Claimed they...  
- did not know how or had no assistance  
- feared a longer sentence
SECTION III

Policies and Guidelines
Policy Recommendations

**Policy Makers**

- Detainees not to exceed 48 hours in a police station without being produced at court. As a rule, detainees shall then be remanded to a prison to await trial.
- Require police to allow all detainees access to legal assistance from an accredited legal aid provider.
- Require investigating police to ensure an accredited legal aid provider is present at interview.
- Equip police stations with audio visual equipment to record interviews.
- Custody time limits in minor cases (60 days) and serious cases (120 days) are not applied, and should be reviewed.
- Sentencing powers of the lower courts should be reviewed in line with regional trends. Where a higher sentence is deemed appropriate, the Magistrate can refer the case to the High Court.
- Alternatives to incarceration should be available to sentencers—especially as concerns adult diversion and community service orders. As a rule foreign nationals infringing immigration controls should not be held in prison. Early release mechanisms, such as Parole, should be available in appropriate cases.

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**Maximum sentencing powers:**

- **Malawi:**
  - 1st Grade Magistrate: 14 years.
  - 2nd Grade Magistrate: 10 years.
  - 3rd Grade Magistrate: 3 years.

- **South Africa:**
  - 3 years

- **Kenya:**
  - 7 years

- **Zambia:**
  - 9 years

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In Cooperation with Malawi Prison Service

Malawi Prison Audit: Muda | Kachere | Mzuzu Prisons: 5 June – 29 September, 2023

JUSTICE Mapping

Irish Rule of Law International

In Cooperation with Malawi Prison Service
Policy Recommendations

Practice Directions

- No accused should have to await judgment. Rulings on bail shall be prompt. The court shall announce verdict at the conclusion of the trial.
- The CRM shall keep him/herself informed as to the capacity of prisons within his/her jurisdiction and take the necessary measures to ensure overcrowding does not reoccur.
- Prisoners shall be informed of their right to appeal and be assisted by Legal Aid.
- The High Court shall confirm sentences promptly and where enhancement is foreseen, invite counsel to address the court.

Police Directives

- Detainees not to exceed 48 hours in police station without court order
- Detainees to be allowed access to and not be interviewed without accredited legal aid provider

Bail Guidelines

- Bail not to be denied due to the poverty of the accused, with weight to be given to community ties
- Bail to be reviewed where custody time limits have been exceeded

Sentencing Guidelines

- Non-custodial options to be considered in open court where a person is a first offender and the offence is not serious
- Where a plea of Guilty is entered the convicted person shall be credited with a discount amounting to at least 1/3 of the sentence s/he would have received following a trial
- Like offences should attract like sentences. In cases of defilement, the court shall take into account the ages of the parties and nature of any relationship in passing sentence
- Where a consecutive sentence is imposed, the total sentence must not exceed the maximum laid down in law

Malawi Prison Audit: Maula | Kachere | Mzuzu Prisons: 5 June – 29 September, 2023
In Cooperation with Malawi Prison Service