

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

- Section I. Introduction
Methodology Highlights
Preamble
- Section II. 10 Actionable Takeaways
- Section III. Policies and Guidelines



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



JUSTICE MAPPING



In Cooperation with Malawi Prison Service

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

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%

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)

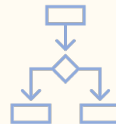
Institutional Openness and Transparency

- **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

SECTION II


Actionable Takeaways



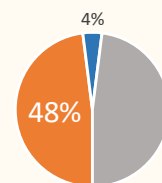
10 Actionable Takeaways

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**

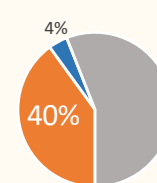
1. Poverty is the key determinant of whether a person is held in prison

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

 Earned MK 500,000 (USD \$500) or More per month



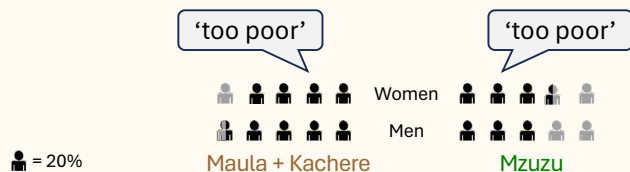
Maula + Kachere



Mzuzu

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



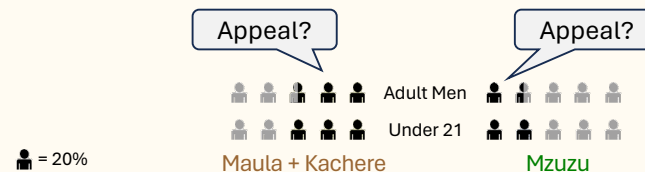
Of remand prisoners granted bail by the court, **16% | 11%** (**146 | 19** individuals) were **unable to meet the condition of paying cash surety**

Sentenced Prisoners



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

52% | 33% of **adult men** and **58% | 44%** of **young men** under 21 said they did not appeal because they either did not know how, or had **no assistance to lodge an appeal**



Data Note:

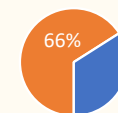
All 44 women in Kachere Women's Prison were interviewed + all 30 women in the women's section of Mzuzu prison.

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

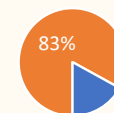
The loss of the main breadwinner threatens to drive them into deeper poverty.

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

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



Maula + Kachere



Mzuzu

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:

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

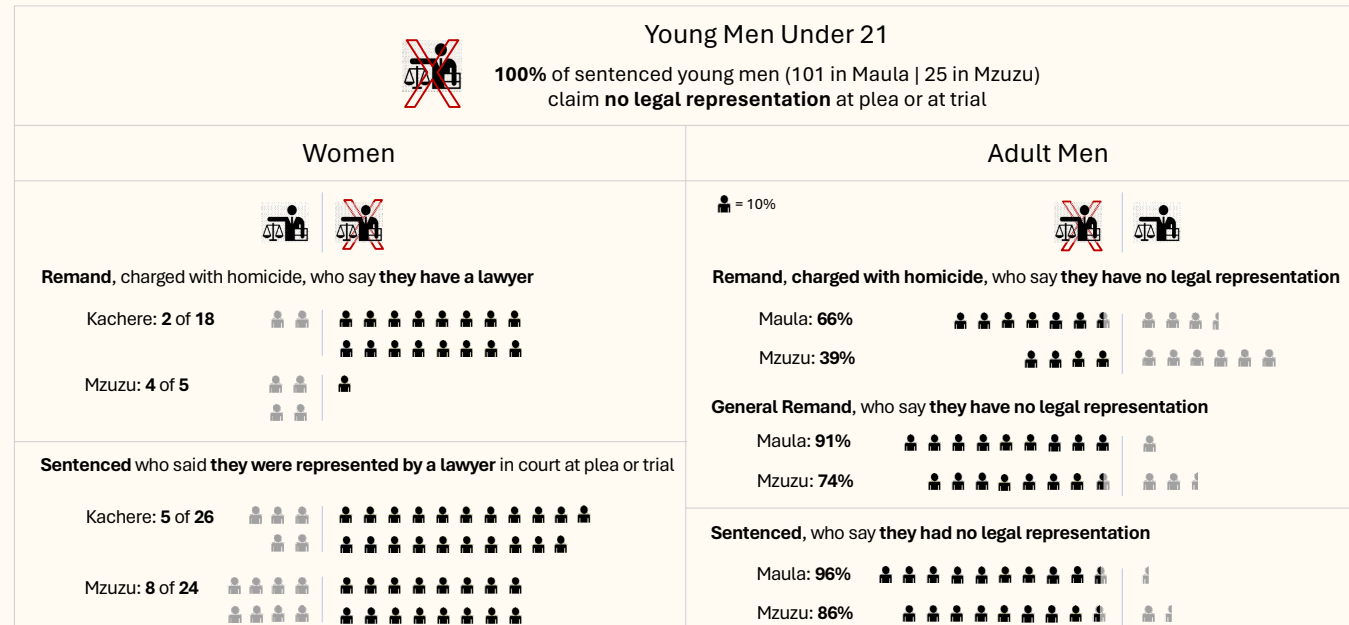
Most sentenced prisoners, although not legally, represented understood the court proceedings in Maula:

- 96% Women
- 90% Under 21 (Men)
- 92% Men

In Mzuzu:

- 63% Women
- 57% Under 21 (Men)
- 54% Men


3. 'Equality of arms' in theory, **not working** in practice



Data Note:

1. Lock up during the Prison Audit was at 16h00 in Maula and 15h30 in Mzuzu and Unlock at 07h30 in Maula and 06h30 in Mzuzu. Prisoners have on average 8,5 hours outside their cells.
2. Permission was not granted to measure (by pacing out) cells and dormitories in the remand or convicted sections in Maula. As in Mzuzu, each cell is only equipped with one toilet in Maula (servicing over 100 prisoners).
3. An objective national standard (in line with international standards) would enable a prison Officer in Charge to inform the CRM of over-capacity ("My prison is full") - enabling the Commissioner General to inform his line Minister that the prison system is full.

4. Prison space is more congested than previously believed

International Prison Standards	Prison Conditions												
<div><p>The United Nations Standard Minimum Rules for the Treatment of Prisoners The Nelson Mandela Rules</p></div> <p>Mandela Rules (R 11): Untried prisoners shall be kept separate from convicted prisoners.</p>	<p>Remand and sentenced prisoners (young old) + Foreign nationals (immigration charged non-criminal) All share the same cells.</p>												
<p>International Committee of the Red Cross (ICRC) Recommended Minimum Standards:</p> <ul style="list-style-type: none">▪ 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:<ul style="list-style-type: none">❖ Total floor space❖ Space available for beds❖ Space available for moving around	<table><tr><th>Prison</th><th>Official Capacity</th><th>At Lock Up</th><th>Percent of Capacity</th></tr><tr><td>Maula</td><td>1200</td><td>2675 (14 Aug.)</td><td>222%</td></tr><tr><td>Mzuzu</td><td>600-700</td><td>903 (11 Sept.)</td><td>150%</td></tr></table> <ul style="list-style-type: none">▪ 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<ul style="list-style-type: none">❖ 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%<ul style="list-style-type: none">• 92% aged 30 years or under• 98% in prison more than 3 months• 34% (74) in prison 11-15 months	Prison	Official Capacity	At Lock Up	Percent of Capacity	Maula	1200	2675 (14 Aug.)	222%	Mzuzu	600-700	903 (11 Sept.)	150%
Prison	Official Capacity	At Lock Up	Percent of Capacity										
Maula	1200	2675 (14 Aug.)	222%										
Mzuzu	600-700	903 (11 Sept.)	150%										

ROADMAP TO SDG 16.3.2

1.Reduce remand population by taking early pleas in court:

- PASI conduct PLCs in Maula | Mzuzu for:
 - 15 | 3 Under 21
 - 2 | 3 Women
 - 63 | 23 Men

- LAB and IRLI lawyers assisted by PASI meet those in prison who still maintain a plea after the PLC and advise
- LAB indicate to prosecution / court those to be listed for plea
- Court list for plea and proceed to sentence

2. Reduce Under 21 Remand population by X% and set down for trial those who have overstayed:

- Camp courts visit Maula | Mzuzu and assisted by MPS and PASI review bail situation of...
 - 4 | 0 - eligible for bail as of right]
 - 12 | 1 - previously granted bail but could not meet the conditions of the court
 - 6 | 1 - overstayed on 'minor' offences
- Camp courts list by age of offence those who have overstayed on serious offences and refer...
 - 17 | 6 for trial on a fixed date

3. Reduce Adult Men Population by Y% and set down for trial those who have overstayed:

- Camp courts visit Maula | Mzuzu and assisted by MPS and PASI review bail situation of...
 - 13 | 5 - eligible for bail as of right
 - 75 | 18 - granted bail but could not afford the cash surety
 - 28 | 13 - overstayed on minor matters and bail or list for trial
- Camp courts list by age of offence those who have overstayed on serious offences in Maula | Mzuzu and refer...
 - 6 | 0 women for trial on a fixed date; and
 - 168 | 59 adult men for trial on a fixed date

4. Reduce homicide remand population by Z% and set down for trial those who have overstayed:

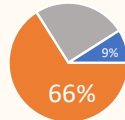
- Camp courts visit Maula and assisted by MPS and PASI review bail situation of
 - 48 adult men granted bail but could not afford the cash surety

- Camp courts list by age of offence those who have overstayed on serious offences in Maula | Mzuzu and refer...
 - 40 | 16 awaiting trial > 4 years to court for trial date to be fixed
 - 175 | 21 adult men for trial on a fixed date

5. Majority of remand prisoners eligible for release

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

MAULA | KACHERE



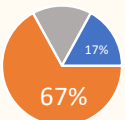
9% indicated guilty pleas

66% eligible for release

(Lists of named prisoners submitted to courts)

- = Youth Under 21 (15)
- = Women (2)
- = Adult men (63)

MZUZU



17% indicated guilty pleas

67% eligible for release

(Lists of named prisoners submitted to courts)

- = Youth Under 21 (3)
- = Women (3)
- = Adult men (23)

Bail as of Right (22)

Maula | Kachere

- 👤 = Youth Under 21 (4)
- 👤 = Adult General Population (13)

Mzuzu

- 👤 = Adult General Population (5)

Bail Granted by Lower Court (154)

Maula | Kachere

- 👤 = Youth Under 21 (12)
- 👤 = Adult General Population (75) - 2 women
- 👤 = Adult Homicide-Charged Population (48)

Mzuzu

- 👤 = Youth Under 21 (1)
- 👤 = Adult General Population (18) - 2 women

Overstayed Minor Offence (48)

Maula | Kachere

- 👤 = Youth Under 21 (6)
- 👤 = Adult General Population (28)

Mzuzu

- 👤 = Youth Under 21 (1)
- 👤 = Adult General Population (13)

Overstayed Serious Offence (471)

Maula | Kachere

- 👤 = Youth Under 21 (17)
- 👤 = Adult General Population (174) – 6 women
- 👤 = Adult Homicide-Charged Population (215)

Mzuzu

- 👤 = Youth Under 21 (6)
- 👤 = Adult General Population (59)

Data Note:

Many sentenced prisoners in Maula | Mzuzu entered a Guilty plea at court

- 58% | 63% women
- 74% | 72% Under 21
- 46% | 52% Adult men

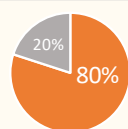
A Guilty plea avoids the costs of a trial (to the courts) and pain of reliving the experience (to the victim / witness). Guilty pleas are also considered to be expressions of remorse. For these reasons, many countries discount the sentence the defendant would have received following a trial and finding 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

6. Majority of sentenced prisoners eligible for release

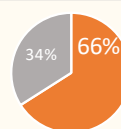
Total Sentenced Prisoners: Maula/Kachere (1512) + Mzuzu (462)



80% eligible for release (1216)

(Lists of named prisoners submitted to the courts)

Maula | Kachere



66% eligible for release (308)

(Lists of named prisoners submitted to the courts)

Mzuzu

Men

	Interviewed	Eligible for Release
Maula Kachere:	1385	1094 (79%)
Mzuzu:	413	270 (65%)

Men by Eligibility Categories Maula/Kachere + Mzuzu

- 👤 = Non-violent offence < 3 years (101 + 18)
- 👤 = Offence against person or property < 3 years (34 + 0)
- 👤 = Offender already served 2/3 of sentence (19 + 3)
- 👤 = Sentence pending confirmation by High Court (940 + 249)

Youth Under 21

	Interviewed	Eligible for Release
Maula Kachere:	101	98 (97%)
Mzuzu:	25	23 (92%)

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

	Interviewed	Eligible for Release
Maula Kachere:	26	24 (92%)
Mzuzu:	24	15 (63%)

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)

Data Note:

The Prison Audit Maula further found:

- 5% remand prisoners awaiting a court ruling on their bail application (n48)

- General remand population:

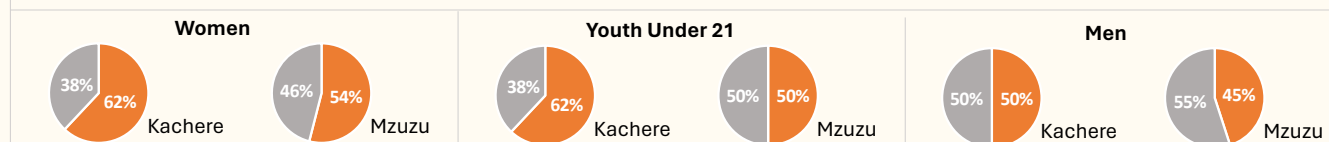
- 2 remandees had breached their bail conditions (failing to report to police)
- 2 had been rearrested after absconding

- 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.

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

Proportion of Population in Custody for **Non-Violent Offences**



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
(theft, 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



Increase application of bail by 10%

☒ Release 100 prison places

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%)]



Substitute community-based sanctions

☒ Release 200 prison places

Please refer to attachment on sentencing inconsistencies.

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

Remand



49%

Maula/Kachere

41%

Mzuzu

of remand population **OVERSTAYED** statutory custody time limits for misdemeanor and felony charges



- **57%** (Maula/Kachere) and **14%** (Mzuzu) charged with homicide, have **not been to court for > 1 year**
- **13%** (Maula/Kachere) and **11%** (Mzuzu) charged with homicide, have **been waiting > 4 years for trial**

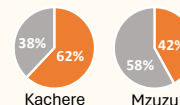
Court may grant bail on expiry of time limit (s161l, CrPEC)

Sentenced

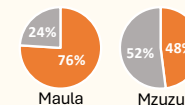
People whose sentences are **pending confirmation by High Court**

Court may release people on bail pending confirmation by High Court (s16(1) CrPEC)

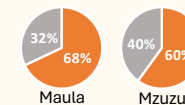
Women



Youth Under 21



Men



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.

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

Women: 1 | 1
Under 21: 0 | 1
Adult men: 33 | 18

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:

High Court Confirmation –
Enhancement of sentence a
feature especially in defilement
cases.

- Lower court sentence:
144 months enhanced by HC to
408 months (34 years)

- Lower court sentence:
72 months enhanced by HC to
216 months (18 years)

No representation by counsel.

10. Prisoners are **inhibited** from exercising their right to **appeal**

Very few of those convicted **lodged an appeal**

Maula: Men (9%) | Youth Under 21 (2%) | Women— **Kachere** (4%)

Mzuzu: Men (11%) | Youth Under 21 (0%) | Women (8%)

Of those asked **why they did not appeal...**

31% | **36%** | Women
(8) (8)

58% | **44%** | Under 21
(59) (15)

52% | **33%** | Men
(723) (136)

Claimed they...
did not know how

or

had no assistance



58% | **41%** | Women
(15) (9)

20% | **16%** | Under 21
(15) (4)

28% | **25%** | Men
(351) (104)

Claimed they...

**feared
a longer sentence**



SECTION III

Policies and Guidelines

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

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.

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