

PROMOTING PRE-TRIAL JUSTICE IN AFRICA



Promoting Pre-trial Justice in Africa *Quarterly Newsletter 1*

21 October 2011

The Promoting Pretrial Justice in Africa Newsletter (PPJA) is published quarterly by the Civil Society Prison Reform Initiative, Community Law Centre, University of the Western Cape with the support of the Open Society Foundations Rights Initiative Global Criminal Justice Fund

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Commemorative Activity of the 30th Anniversary of the African Charter on Human and Peoples' Rights

22 - 23 October 2011, Banjul, The Gambia. Access the programme [here](#).

50th Session of the African Commission on Human and People's Rights

24 October - 17 November, Banjul, The Gambia. Access the programme [here](#).

Introducing PPJA

Inspired by the need for a central depository for resources on pre-trial justice in Africa, the Civil Society Prison Reform Initiative of the Community Law Centre has established [PPJA](#) (Promoting Pre-trial Justice in Africa). Through PPJA, you can browse information on pre-trial detention by country or by region in Africa, or search across the entire website.

We hope that you will share ownership with us by submitting publications, news and events from your country or region and telling us about your needs, through an email survey following this newsletter.

It is hoped that PPJA will be a trusted resource for governments, civil society and donors, that promotes good practice and enables sharing and consolidation of information on pre-trial justice in Africa.

You are reading the very first newsletter of PPJA which focuses on the southern African region, and on the need for and impact of legislative limits on police detention and detention awaiting trial. All of the research referred in this newsletter can be accessed directly on [PPJA](#).



[Legal research on South Africa](#) – the country with the largest prison population in Africa – argues that the longer an accused person is in custody, the greater should be the burden on the state to justify continued detention. The research calls for a constitutional challenge to be brought challenging South Africa's Criminal Procedure Act for failing adequately to protect accused persons from unreasonable delay. Such a challenge, the researchers argue, should seek to secure legislative custody time limits in South Africa.

Malawi is legislatively ahead of South Africa, in that custody time limits have recently been introduced. However these are yet to have a measurable effect. We feature [research on the Malawian criminal justice system](#) which indicates delays in the commencement of trials. Custody time limits apply in relation to trial commencement in Malawi, but as yet it is unclear who is responsible for ensuring these limits are met and how to ensure they are met.

In Zambia – which has a legislative limit of 24 hours on police detention for bringing a suspect before court rather than the customary 48 hours – appears to have succeeded in progressively reducing the average time spent in police custody before release since 2006. We feature [research in Zambia](#) which shows that despite this steady decrease, there still remained very high occupation levels in police detention cells in Zambia. A strategic plan to improve conditions of detention incrementally over time is recommended by the researchers.

We welcome comments on this newsletter and suggestions for future issues!

The PPJA team

"South African bail law is unconstitutional"

South African bail law leads to unconstitutional delay and must be challenged, argues CSPRI researcher Ballard.

As many as 3403 people detained on remand for more than a year and 972 for over two years were in South African prisons on 31 March 2010. Clare Ballard points to the problem posed by South African jurisprudence which has tended to determine the “unreasonableness” of delay by reference to the *average* delays experienced in South African courts – particularly when the average itself is increasingly cause for concern. South Africa has the largest known total prison population in Africa. Around 30% of the South African prison population comprises people held on remand.

Ms. Ballard argues [in a recent publication](#) that constitutional norms should govern the question of whether or not a delay is reasonable, and not the “average” benchmark. She points to jurisprudence which suggests that after a certain period of time, the continued detention of a suspect can no longer be justified by the reasons that did so when the suspect was initially denied bail as over time, these reasons diminish in weight.

“As the infringement of an accused person’s right to liberty becomes increasingly burdened with the passing of time, so too must the state’s obligation to justify it. The right not to be arbitrarily detained requires that the reasons for the detention of an accused on remand be continuously

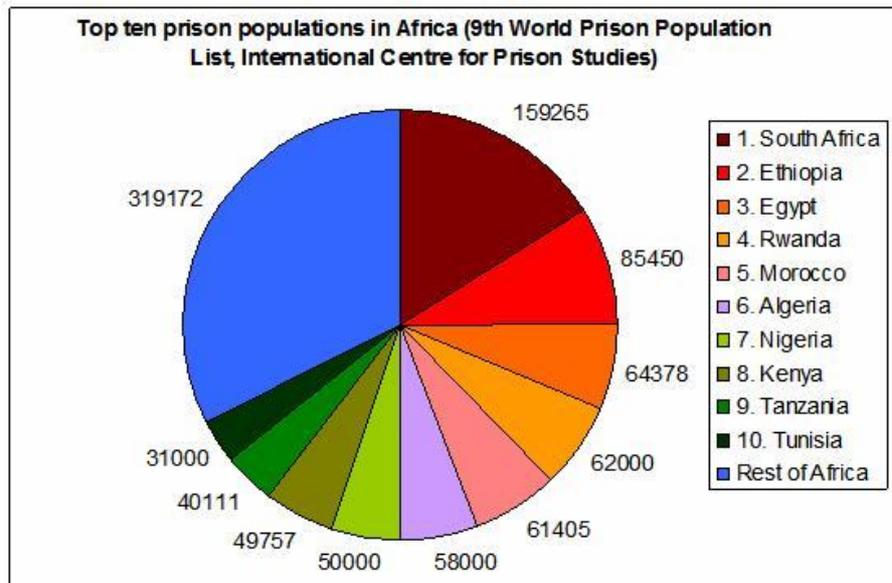
interrogated so as to ensure that such reasons remain relevant and sufficient as time passes. Detention for a period in excess of that which is justified by the reasons given, is no longer done in the name of a ‘just cause.’”

Litigation has tended to focus on individual cases of unreasonable delay but this has its limitations. “Approaching courts on a case-by-case basis is time-consuming, messy and not well suited to the aim of establishing a quantifiable minimum standard of constitutional protection,” says Ms. Ballard about the options for addressing the increasingly systemic delays experienced by people denied bail in South Africa.

Ms. Ballard argues instead for an action brought in the public interest with the aim of establishing one outcome applicable to all remand detainees. The remedy sought would be an order directing that Parliament remedy its failure adequately to protect the rights of remand detainees through the enactment of legislation. Procedures best suited to the protection of liberty interests which could be enacted in such legislation are custody time limits and mandatory automatic oversight of bail decisions. These mechanisms, Ms. Ballard argues, “maximise the potential of courts to interrogate whether there is sufficient justification to continue the detention of the accused.”

As Ms. Ballard points out, “A remand detainee, presumed innocent, is effectively enduring what is intended to be punishment for a sentenced offender and often in far worse conditions than those experienced by sentenced prisoners.” Constitutional challenge to South Africa’s Criminal Procedure Act provisions seems increasingly likely.

Clare Ballard BA LLB (UCT) LLM (Cornell) is a researcher with the Civil Society Prison Reform Initiative (CSPRI) project of the Community Law Centre. Ms Ballard’s complete report, which was funded by the [Open Society Foundation for South Africa](#) can be accessed [here](#).



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Radical custody time limits in Malawi

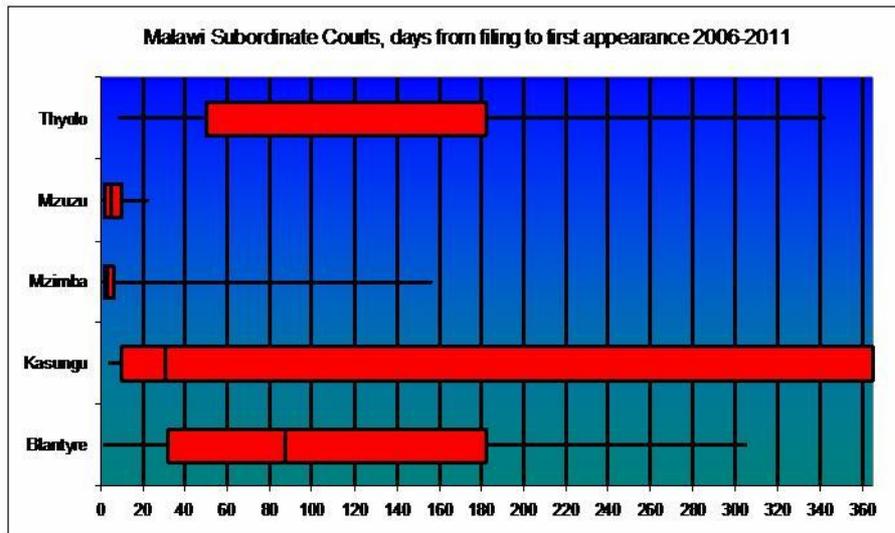
Malawi has introduced radical custody time limits to the commencement of trial - but these are yet to bear fruit.

“Perhaps the most radical changes to the criminal justice system in Malawi since 1994 are custody time limits introduced by amendments to the Criminal Procedure and Evidence Code,” comments Pacharo Kayira in a [recent research report on pre-trial detention in Malawi](#) funded by the [Open Society Initiative of Southern Africa \(OSISA\)](#).

Maximum lengths of time accused people may be held in lawful custody while waiting for the commencement of their trials are stipulated by the reforms in Malawi. A person accused of a subordinate court offence can may be held in custody pending the commencement of trial for a maximum of 30 days, while a person accused of an offence to be tried in the High Court may be held in lawful custody pending committal for trial in the High Court for 30 days. After committal, the maximum period of lawful custody pending commencement trial is sixty days. Ninety day limits apply to the most serious offences.

That the legislative custody time limits refer to commencement of trial is significant, as the pre-trial detention research report found that the period of most egregious court delay in Malawi to be the time between filing and first appearance – with many accused being in custody throughout this time.

The illustration to the right shows the maximum actually measured in Blantyre from filing to first appearance to be around 305 days, with a median (middle) of 85 days. The data indicated that only the first quartile of cases reach first appearance within the legislative limit of 30 days.



"The legislative time limits have not been accompanied by adequate processes and record-keeping to track custody time periods," says consultant Jean Redpath in the same report. Furthermore, it is unclear which institution is responsible for monitoring compliance with the custody time limits and, moreover, what steps must be taken by whom when the limit is exceeded. 'Until a system is developed, the radical legislative reform of custody time limits is unlikely to have an impact in reality,' says research report project co-ordinator Lukas Muntingh.

The research report [Pre-Trial Detention in Malawi](#) was a joint project of four Malawian partners, viz. Centre for Human Rights and Rehabilitation (CHRR); Centre for Human Rights, Education, Advice and Assistance; the Paralegal Advisory Services Institute (PASI) and the Catholic Commission for Justice and Peace (CCJP); co-ordinated by the Civil Society Prison Reform Initiative (CSPRI), and funded by the [Open Society Initiative for Southern Africa \(OSISA\)](#).

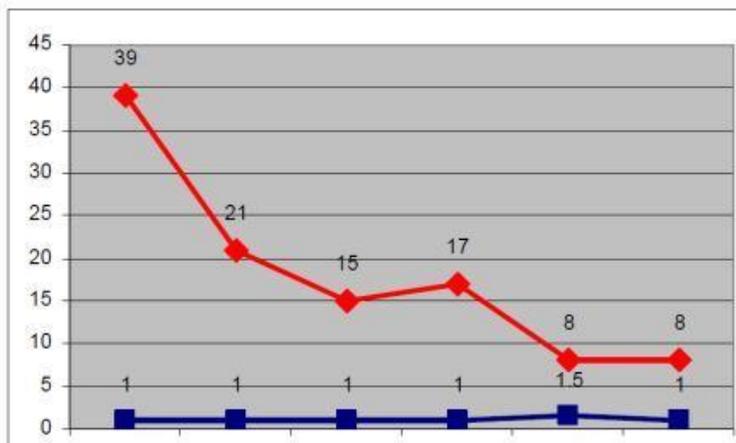
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Average days in police detention in Zambia declining

Average time in police detention in Zambia shows a steady decline since 2006

The average time an arrested person spends in police detention in Zambia has declined from 39 days in 2006 to 8 days in 2011, a [recent research project on pre-trial detention](#) funded by the Open Society Initiative for Southern Africa shows.

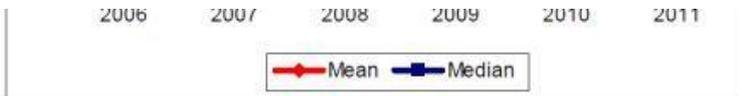
Average and median days to release, police detention, Zambia 2006-2011



"The steady decline in the average shows that the 'outliers' are getting fewer and spending less long in police custody," says project consultant Jean Redpath.

The median has remained at around one day – in line with the Zambian 24 hour rule – since 2006, suggesting half of arrested people spend a day or less in police detention in Zambia.

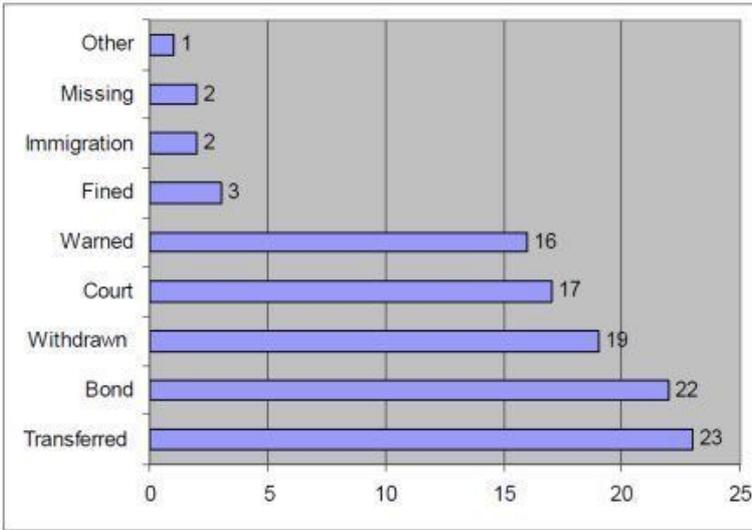
The [Zambian Human Rights Commission](#), research partner on the project, attributes some of the excessively long police detention to the police practice of requiring two working sureties for release on bond. "The police make it difficult for a



person to be released on bond by insisting on the person having two working sureties, preferably civil servants. In rural towns, where most people are not in formal employment it becomes very

difficult to find working sureties," says Rumbi Mutasa of the Commission. The data showed that persons released from police detention on bond had amongst the longest average times to release from police detention.

Average days to release, police detention, by reason for release, Zambia



The longer people remain in custody the more concerning are the conditions of police detention in Zambia. The report found very high occupation levels in police detention cells with the available floor space per person ranging from only 0.4m² in Ndola to 1.75m² in Mansa.

In Kabwe and Nakonde, arrested persons are not permitted outside the cells and spend all their time inside the cells.

Neither the police nor any other government agency provides food to persons detained at Zambian police stations. Detainees are reliant on other detainees, friends and relatives for food.

The ratio of toilets to detainees was found to be 1:65 in Lusaka and 1:82 in Nakonde. Only in

Kabwe and Lusaka were there water taps in the police cells. Elsewhere detainees must either keep water in containers in the cells (Livingstone, Mansa, Nakonde, Ndola and Chipata) or rely on relatives to bring them water (Mongu).

"Since many of the problems in relation to conditions of detention will not be resolved overnight, it is recommended that the Zambian police service develop a time-bound plan of action that can be monitored to incrementally improve conditions of detention, including providing access to clean drinking water in cells; flush toilets in cells; and at least one nutritious meal per day," recommended project leader Lukas Muntingh.

The research report [Pre-trial Detention in Zambia](#) was a joint project of the [Zambian Human Rights Commission](#) and the [Civil Society Prison Reform Initiative \(CSPRI\)](#), funded by the [Open Society Initiative for Southern Africa \(OSISA\)](#).

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CSPRI and PPJA welcome your suggestions or comments for future topics for the PPJA newsletter. ppja@communitylawcentre.org.za

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