Pre-trial detention in Malawi:
Understanding caseflow management and conditions of incarceration
This report was prepared as part of a research project on pre-trial detention and case flow management in Malawi. The project was a collaboration between the Open Society Initiative for Southern Africa (OSISA), the Open Society Foundations Global Criminal Justice Fund (OSF-GCJF), the Open Society Foundation for South Africa (OSF-SA), the University of the Western Cape – Community Law Centre (CLC), the Paralegal Advisory Service Institute (PASI), the Catholic Commission for Justice and Peace (CCJP), the Centre for Human Rights Education, Advice and Assistance (CHREAA) and the Centre for Human Rights and Rehabilitation (CHRR). The project was governed by a Memorandum of Understanding with the Malawian Ministry of Justice.
Following a review of the literature, data was
trial detainees and issues pertaining to conditions
information on both the legal status of awaiting
partnership with the Open Society Foundation
Initiative for Southern Africa (OSISA) – in
the rule of law, access to justice and adherence
detention in southern Africa and its impact on
families and communities.

In order to better understand the use of pre-trial
detention, it was found that
police
of case flow.

In respect of the police, it was found that excessive
arrests, lack of knowledge of the law, lack of prosecution skills, poor coordination and
and supervision by the Directorate of Public
Proscriptions (DPP) contribute to delays in case
flow management. Therefore, it is recommended that
alternatives for arrest and detention must be
be utilised, or established if lacking, and
the officers should receive the necessary training
to perform their duties in accordance with
the Constitution and laws of Malawi.

The DPP lacks enabling legislation, a binding
bidding policy and a code of ethics for
prison service. The DPP also lacks the
required to effectively supervise police prosecutors.
Therefore, it is recommended that appropriate
legislation be enacted and that the DPP
National Policy be finalised and adopted. A
key element for reform is the decentralisation
of the DPP’s authority as outlined in the DPP
Strategic Plan 2009-2014. The DPP needs to build
on effective interventions, such as the Homicide
Working Group.

The prison service is regulated by antiquated
legislation (1955) and houses prisoners in every
old buildings. The 2003 Prisons Bill, when
enacted, will provide strategic direction to the
service.

The judiciary has a key role in playing in
delay pre-trial management by exercising effective
judicial oversight when accused people are
available for extended periods.

The subordinate courts need to be provided with the necessary resources
for the effective handling of cases.

Members of the judiciary also need to be trained to
stay abreast of latest developments in law

Access to legal aid remains extremely difficult, but the Legal Aid Act (2011) provides hope that
this will change. All efforts should be made to
implement this legislation as soon as possible and
enable cooperation between the Legal Aid Bureau
and civil society organisations.

The legislative framework for pre-trial
detention

The Constitution and recent case law provides
a solid legal framework for regulating pre-trial
detention, in particular the fair trial rights of
accused people. The recent enactment of pre-trial
detention time limits further strengthens these
provisions. In view of this, it is recommended that
officials (especially members of the judiciary)
receive the necessary training to exercise firm judicial control over the criminal justice process and enforce custody time
limits. All efforts should be made to improve coordination between functionaries – for example,
through users meetings and the Homicide
Working Group.

Conditions of detention – police cells

While some good practices were identified, the overwhelming picture is that conditions of
detention in police cells are poor, violate the
development of rights in material ways and frequently
exceed the 48-hour rule.

The police training curriculum needs
to enable the effective handling of cases.

Limited resources place constraints on all criminal
institutions, and the police are not
the exception. Adequate staffing would,
indeed, be one of the cornerstones of a human rights-based detention
system. The police training curriculum needs to be reviewed in relation to its focus on human
right standards and refresher training should be
conducted on a regular basis.

Conditions of detention – prisons

As with police detention, some good practices were
identified, but the overwhelming picture is that conditions of detention are
poor, fall short of what is generally accepted as
human standards. An important development in Malawian case law is the Gable Masangano
decision, which placed an obligation on the state
to improve conditions of detention within 18
months; this deadline expired in May 2011.

The government of Malawi is encouraged to
improve the systems for monitoring conditions
in prisons, while the prison service needs to seek
and use funds for improvements. The government
needs to provide adequate and sustainable solutions.

Resulting from the Gable Masangano
decision, the Malawian police stations and the insufficient
capacity and nature of cell accommodation are
limited. In particular, the overcrowded and unhygienic
conditions in Malawian prisons will only
increase in the years to come. The prison reform
project confirms that the delays are mostly
attributable to the criminal justice process, and a mechanism for
implementing these improvements is already in
place.

The government’s efforts to improve conditions
in prisons are

incremental process of reform and improvement

are

 progresses are

improvements in the prison system should be
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The Malawian Police Service should develop a
programme to
improve the systems for monitoring conditions
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attributable to the criminal justice process, and a mechanism for
implementing these improvements is already in
place.

The research results indicated a great deal of
variation among the various sites in Malawi,
not only in terms of time periods but also in terms of
the overall situation. This strongly suggests that
trends in the Malawian criminal justice system are
determined by local conditions.

The available data also suggests that the custodial
times varied widely.

Cases can take an extremely long time to reach
the High Court in Blantyre. The data collected in
this project confirms that the delays are mostly
prior to commencement of the trial in High Court.

DPP
Prosecutions (DPP) contribute to delays in case
flow management.

The institutions of the criminal justice system and their functions

The inadequacy of the DPP’s authority raises serious concerns about effective
supervision of police prosecutors.

Meanwhile, a comprehensive cost analysis of
similarly aspire to increase self-sufficiency and
environmentally-friendly, low-cost and
tech-solutions to some of the practical challenges
to conditions of detention. Most
prisons
are
underfunded
and
understaffed
and
in
the
prison
service
needs
to
implement
time
bound
and
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The data suggests that 8,000 people, mainly young men, are admitted on remand to the six selected prisons every year – amounting to 1 out of every 250 men in Malawi. Since there are 23 prisons in Malawi, the actual yearly exposure of the population to prison on remand may be as high as 1 in 100. On this scale, the socio-economic impact of pre-trial detention at a societal level becomes significant.

By far the most common offences are theft and burglary. Violent offences are a relatively small percentage, although they appear to be somewhat more prevalent in the north. However, of concern are small but significant categories such as illegal immigrants, ‘rogue and vagabond’ and touts. In some constitutional jurisdictions many of the offences leading to incarceration in Malawi would not be considered crimes at all. There is a need for an overhaul of the criminal code in the light of Malawi’s human rights obligations and to ease the burden of remand detention on the poor.

The court outcomes suggest a significant proportion of cases end in acquittal or are otherwise discharged. This provides a strong indication that a person charged with a serious offence may not ultimately be found guilty in a court of law, after spending long periods of time on remand.

Incomplete records and lost files are the most problematic findings of this study. A person on remand, whose records or files have been lost, has little hope of getting out of the system unless he receives external help. A further consequence of poor record-keeping is that it limits the extent to which any intervention aimed at improving case-flow management can be monitored and assessed to determine if it is having the desired effect.

Further research and reform is recommended to:
- Identify local factors affecting the speed and application of criminal justice;
- Streamline the process of referral to the High Court;
- Develop a consistent national system of record-keeping and archiving in all criminal justice institutions;
- Develop a mechanism, which will be implemented nationally, to trigger the release of people on remand when custody time limits are exceeded; and,
- Review offences in the Malawi Criminal Code with the view to decriminalising certain acts.

Acknowledgments
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We are also grateful to the many officials at police stations, prisons and courts who assisted the fieldworkers in their work.
I. INTRODUCTION

By Lukas Muntingh and Louise Ehlers

“A global problem

African prison systems face a host of serious problems, especially in miles, with many remaining in custody for weeks, months or even years before they go to trial, if at all. 2

This deprivation of liberty exposes detainees to a range of human rights violations, particularly torture and ill treatment. This deprivation of liberty is one of the most serious of human rights violations, particularly torture and ill treatment. It has been noted by other researchers 6 that the average detention duration and percentage of prisoners on remand in developing countries is relatively high. 7 In eight countries, for example, over two thirds of prisoners are remand detainees, as seen in Table 1. 8

According to the Global Campaign for Pre-trial Justice, people in pre-trial detention risk:

- Losing their employment during excessive periods of detention and watching their families slip deeper into poverty, hunger and homelessness;
- Increased propensity for crime since those who experience prolonged pre-trial detention are more likely to commit a criminal offense after release and their children are also more likely to commit a criminal offense later in life; and,
- Exposure to institutional violence, initiation rituals and gang violence, which contribute to the significantly higher homicide and suicide rates among pre-trial detainees compared to sentenced prisoners;
- Contracting infectious diseases due to overcrowded and unsanitary conditions - diseases which the detainees carry back to their home communities when they are released; and
- Social stigmatisation, including estrangement from family and community, and difficulty finding and retaining employment;

And pre-trial prisoners are frequently worse off than their sentenced counterparts.

One of them - the Ouagadougou Declaration, adopted by the African Commission on Human and People’s Rights (ACHPR) in 2003 – pays particular attention to un-sentenced prisoners and recommends:

- Better co-operation between the police, the prison services and the courts to ensure trials are speedily processed and to reduce delays in remand detention through regular meetings of caseload management committees, including all criminal justice agents at the district, regional and national levels; making costs orders against lawyers for unnecessary adjournments; and, temporary detention orders;
- Ensuring that people awaiting trial are only detained as a last resort and for the shortest possible time through increased use of cautioning, greater access to bail by expanding police bail powers and involving community representatives in the bail process, restricting time in police custody to 48 hours, and setting time limits for people on remand in prison;
- Good management of case files and regular reviews of the status of remand prisoners; and,
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The African context

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The poor, the uneducated, ethnic minorities and the elderly grind, if at all. Where corruption is pervasive in the means to secure legal representation, they are powerless that are discriminated against. It is primarily the poor and the uneducated people who are targeted for bribes and other forms of corruption and are brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

Compromising the rights to liberty and dignity

Excessive pre-trial detention threatens people’s basic right to liberty and dignity. Poor living conditions undermine the right to dignity, especially when facilities are overcrowded and cannot accommodate the willingness to provide accommodation compliant with minimum standards of humane detention. While the longer the detention, the more the right to liberty is undermined. In Article 5(3), the ECtHR acknowledges that pre-trial detention may be a necessity in some instances. However, it is clear that detention beyond the time fixed by law results in legitimate concerns and alternatives sought to secure the attendance of the accused at trial. It is therefore within the discretion of the courts to decide when to release the defendant. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also assert whether the competent national authorities displayed “special diligence” in the conduct of the proceedings.

The African Charter on Human and Peoples’ Rights (the Charter) provides for the right to liberty in Article 6.

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

The ACHPR has also been firm in interpreting the fair trial rights in Article 7(1) of the Charter.

As Ballard notes, “such figures indicate that demand for detention is not considered an exceptional measure or seen as a last resort, but used excessively and frequently without sufficient justification.” This last resort is also articulated in Article 9(3) of the ICCPR.

The right to a fair trial is also compromised since a lengthy pre-trial detention may be an incentive to plead guilty. In addition, detained people encounter numerous difficulties in defending themselves because they are unable to contact witnesses who may assist their defence or seek legal advice. Unlawful detentions also deprive the financial resources of the accused and their ability to employ the services of legal representatives.

But imprisoning people unnecessarily and for extended periods also incurs significant costs for the state. Funds are needed to cover meals, additional staff to supervise the prisoners, increased health care bills due to poor conditions and the added cost of ferrying the detainees to and from court - funds that could be spent on delivering better social services, health care, housing and education. Excessive pre-trial detention also has a broader socio-economic impact:

- “Pre-trial detainees may lose their jobs, be forced to abandon their education and be forced from their homes. They are exposed to diseases and suffer physical and psychological damage that can last long after their detention ends. Their families also suffer from lost income and forfeited education opportunities, including the psychological effect in which the children of detainees suffer reduced educational attainment and lower lifetime income. The ripple effect does not stop there: communities and States marked by the overuse of pre-trial detention must absorb its socio-economic impact.”

Many accused people are eventually acquitted because they have lost their cases after the cruelly long periods in detention. Their detention ultimately serves no purpose, except to harm them and their families - and the legitimacy of the criminal justice system itself.

International jurisprudence recognises the right to liberty and the growing obligation on the state to justify continued detention. What may initially have been good enough reasons for detention may no longer be sufficient or justified with the lapse of time, as the European Court of Human Rights (ECHR) concluded in the Bahmutsky case:

135. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also assert whether the competent national authorities displayed “special diligence” in the conduct of the proceedings.

136. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional detention to cease before it becomes unreasonable.

From this perspective, the obligation rests firmly with the state to justify continued detention: it must present good reasons why the accused should remain in custody, and the longer the duration of detention, the more onerous this obligation on the state becomes.

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Recognising the challenges described above and in order to better understand the use of pre-trial detention in southern Africa and its impact on the rule of law, access to justice and adherence to human rights standards, the Open Society Initiative for Southern Africa (OSISA) - in partnership with the Open Society Foundation for South Africa (OSF-SA) and the Open Society Foundations Global Criminal Justice Fund (GCIF) - commissioned an audit of a sample of police stations, prisons and courts in Malawi to gather information on both the legal status of awaiting trial detainees and issues pertaining to conditions of detention. A similar process was undertaken in Zambia and a separate report has been compiled for that country.

The information contained in this report provides rigorously researched, empirical evidence, which can be used to underpin future efforts by both government and civil society to influence legislation, policy and practice with a view to ensuring the appropriate use of pre-trial detention, promoting the speedy resolution of trials and improving prison conditions in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. OSISA and its partners will also explore how this information and the tools that were designed during the audit process might contribute to regional work on criminal justice reform e.g. how might this research be used in the development of regional standards for the management of pre-trial detainees.

As noted above, a similar project was undertaken in Zambia. Given both countries’ histories as well as their socio-economic and demographic profiles, the findings are in many instances very similar and so are many of the recommendations. Indeed, there may be significant scope for cooperation and synergy between the two countries in respect of criminal justice reform.

### METHODOLOGY
By Lukas Muntingh and Jean Redpath

#### 2.1 Partners and institutional arrangements

The project was the result of an agreement between the Government of Malawi and the Open Society Initiative for Southern Africa (OSISA) with the Community Law Centre (CLC) at the University of the Western Cape, South Africa. CLC was responsible for overseeing the research while four Malawian non-governmental organisations were responsible for conducting the fieldwork and commissioning the literature reviews – the Centre for Human Rights and Rehabilitation (CHRRA), the Catholic Commission for Justice and Peace (CCJP), the Centre for Human Rights Education, Advice and Assistance (CHREAA) and the Paralegal Advisory Service Institute (PASI). Over the course of the project a number of partner meetings were held to review progress and plan the following phases.

#### 2.2 Goal and objectives

The overall goal of the project was to collect accurate and reliable information relating to pre-trial detainees (PTDs) so that future policy reform and development in Malawi would be based on firm evidence. To achieve this, the partners agreed to:

- **Conduct a comprehensive assessment and analysis of case flow management in the Malawian criminal justice system in so far as it relates to PTDs**
- **Conduct a comprehensive assessment of the PTD population with respect to the conditions of detention and the management of the PTD population**
- **Provide the Government of Malawi and other stakeholders with a comprehensive report, including detailed recommendations, on the realities of pre-trial detention.**

In pursuit of these objectives, the partners committed themselves to:

- **Undertake an in-depth review of the current legislative and policy architecture, any pending legislation and all previous research on Malawi’s criminal justice system that had been conducted in the last five years**
- **Use data collection tools that were appropriate to case flow**

“The overall goal of the project was to collect accurate and reliable information relating to pre-trial detainees (PTDs)”
The project was divided into five broad phases: scoping of the project, research on case-flow management, conditions of detention and prison management, and the consolidation and release of the findings.

Data collection tools for investigating prison conditions
- Background report on ATDs in Malawi
- Overview of Malawian legislation governing the ATDs
- The views and experiences of key stakeholders, including magistrates, prosecutors, attorneys, paralegals and NGO representatives, which provided critical data for further investigations, availability of information and witnesses;
- The number of accused people;
- The current ratio of sentenced to unsentenced accused people;
- The average length of time spent in prison awaiting trial – including time in custody, court level, geographical distribution, age, gender, charges and conditions;
- The length of time that it takes for cases to be finalised – including an analysis of the adjudication of cases: conviction, acquittal, strike from roll or withdrawn;
- The number of court appearances per prisoner;
- The reasons for the postponement of cases – including further investigations, availability of information and witnesses;
- The level of access to qualified legal counsel;
- The level of access to legal aid services; and,
- The time from conviction to sentence.

In order to understand case flow management in Malawi thoroughly, the partners also:
- Prepared a report providing a structural-functional description of the institutions and bodies that have a mandate in respect of case flow management and the detention of PTDs;
- Compiled a report detailing current Malawian legislation and subordinate legislation governing pre-trial detention;
- Held a workshop on case flow management with key stakeholders, including magistrates, prosecutors, attorneys, paralegals and NGO representatives, which provided critical data on current practices and – along with the two reports focusing on the legal and institutional arrangements – assisted the researchers to thoroughly describe at the global level – so as to transfer to the prison – including age, gender, trial - including their age, gender, geographical distribution and charges as well as their knowledge of the legal system and the rights of accused people;
- The number of prisoners currently awaiting trial – including their age, gender, geographical distribution and charges as well as their knowledge of the legal system and the rights of accused people;
- The current ratio of sentenced to unsentenced prisoners – including age, gender, offences and bad conditions;
- The length of time spent in police cells prior to transfer to the prison – including age, gender, offence and bad conditions;
- The length from conviction to sentence.

The aim of this phase was to determine the exact scope of the project and to ensure that as much relevant information as possible was gathered. To this end, the partners undertook a number of key activities, including:
- Identifying specific sites for the fieldwork phase to ensure an appropriate cross-section. Data was gathered from nine sites – Blantyre, Kasungu, Lilongwe (two prisons), Mzimba, Mzuzu, Ntcheu, Thyolo and Zomba – where there is a police station, a court and a prison. Data was also collected from the High Courts with jurisdiction over these sites.

The link between case flow management during trials and the detention of PTDs has been thoroughly described at the global level – so as to transfer to the prison – including age, gender, trial - including their age, gender, geographical distribution and charges as well as their knowledge of the legal system and the rights of accused people;
identify the correct variables to investigate in the subsequent stages of the project; and,

• Collected data from a sample of case file records and registers to investigate case flow management based on the range of identified outcomes, indicators and measures.

2.3.3 Research on conditions in prisons and police cells

In this third phase, the researchers assessed access to basic services – such as health care, food, water, sanitation, exercise, recreation etc. – in prisons and police cells as well as whether detainees had contact with their families and the outside world.

In relation to PTDs, the researchers also:

• Prepared a report describing Malawian prison law and conditions of detention from the available literature to provide the background information necessary for subsequent data collection;

• Conducted fieldwork using structured data collection instruments at five prisons and five police stations where PTDs are detained; and,

• Compiled reports on conditions in prisons and police stations where PTDs are detained.

2.3.5 Consolidation and release of findings

All the research findings and project reports were combined into this final report – with a focus on ensuring that the recommendations:

• Priorise reforms that will produce the maximum benefit at the lowest cost;
• Identify government officials who will be responsible for implementing the recommendations; and,
• Estimate the cost and resources required for implementing the recommendations.

2.4 Fieldwork and data collection

Six different data collection tools were used. Two forms related to conditions of detention – in police cells and prisons. The four other data collection tools required the drawing of random samples from registers at police stations, prisons or courts. Forty entries for each of the past five years were recorded, except for the High Courts, where 40 entries from the whole five-year period were recorded. A sample of 40 per year was chosen to allow for non-random data so that the eventual sample would still be sufficiently large (n>30) for statistically valid estimates to be made. A smaller sample was drawn from the High Court registers since these courts process fewer cases each year.

The institutions, data collection tools and sources are summarised in Table 1.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Data collection tool</th>
<th>Sources</th>
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<tbody>
<tr>
<td>Prison</td>
<td>Data form: Conditions of detention – awaiting trial prisoners</td>
<td>• Observation and existing records</td>
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<td></td>
<td>Data form: Condition of detention – police detention</td>
<td>• Data tool: Remandee prison register</td>
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<tr>
<td>Police</td>
<td>Data form: Police station custody book</td>
<td>• Custody book</td>
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<td></td>
<td>Data form: Conditions of detention – police detention</td>
<td>• Data tool: Police station custody book</td>
</tr>
<tr>
<td>Subordinate Court</td>
<td>Data tool: Subordinate court register and case files</td>
<td>• Registry (Criminal)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Case files</td>
</tr>
<tr>
<td>High Court</td>
<td>Data tool: High Court register – murder cases</td>
<td>• Registry for murder cases</td>
</tr>
</tbody>
</table>

2.5.1 Police dataset

During the scoping study it was determined that the police stations were the most suitable data sources. The project planned to collect quantitative data from a number of prisons, police stations and courts from 2006–2011. Despite extending the fieldwork period for a considerable time, not all the planned data was captured. The shaded blocks in Table 2 show the years that data was successfully gathered. It was also planned to collect qualitative data on detention conditions at nine prisons and eight police stations. Table 3 shows the prisons and police stations for which data was received. Each police station or prison was selected for the sample as it is a juvenile detention facility.

2.5 Research methods and limitations

The primary objective of the case flow management section of the project was to estimate the amount of time accused people spend in custody. The estimates were reliant on data that is usually stored by institutions of the criminal justice system. While a large amount of relevant data was made available, the researchers faced a large number of limitations.
to record a random sample from the custody diary for each available year dating back to 2006. The random sample was selected by establishing how many entries there were in the custody diary in each year and then dividing that by 40 to determine the selection interval.

The main limitation involved access to the custody diary. In some police stations this was not permitted or was granted too late for the data to be incorporated into the dataset. Therefore, the police dataset does not reflect the time periods for police stations that were unwilling to provide access to their custody diaries.

2.5.2 Subordinate court dataset

During the scoping study it was determined that subordinate court records are kept in court registers with one for each magistrate. Fieldworkers were instructed to record a random sample for each year dating back to 2006. These were selected from the registers of all magistrates presiding at each court. The total number of cases in any particular year was divided by 40 to obtain the selection interval.

Fieldworkers were required to draw the files of the selected cases to obtain the necessary information, including case number, date filed, age and gender of accused, village, tribe, offence, date of first hearing, whether bail was granted, bail amount, whether surety was requested, date the case concluded, custody status prior to conclusion, outcome and sentence (where relevant).

The major limitation lay in accessing the case files. These were not necessarily stored systematically and when in use (i.e. the
2.5.4 High Court dataset
During the scoping study it was determined that there is a court register for murder cases heard in the High Court. However, very little information was recorded in the register and very few cases were heard each year. Fieldworkers were instructed to select 40 cases from each High Court over the five-year period. The selection interval was determined by dividing the total number of cases for each High Court since 2016 by 40.

The registers provided information relating to case number, age, gender, offence, date of offence, date of arrest, date of committal, plea, outcome, date of sentence (where relevant) and sentence (where relevant).

The major limitation was that of access to the case files, which were not necessarily stored systematically and which could not be studied when the matter was before court. Furthermore, the pertinent information was not written on the case file cover but had to be gleaned from documents inside the file, which were often handwritten. Where these were missing or illegible the information could not be recorded. Therefore, the High Court dataset will not reflect time periods in relation to cases that were before court or where the files had been lost, were in disarray or were incomplete.

2.5.5 Detention conditions in police cells and prisons dataset
Data on conditions of detention in police cells and prisons were collected by means of a structured instrument that looked into a number of thematic areas, including the right to physical and moral integrity, prisoners’ property, the right to an adequate standard of living, adequate food and drinking water, clothing and bedding, health care, safety and security, contact with the outside world, and complaints and inspection procedure, women in prison, children and management. Questions pertaining to each thematic area were adapted to suit police detention and prison detention.

The data collection instrument included some open-ended questions and some questions that could be answered yes or no. However, fieldworkers were instructed to record comments and/or a motivation if the answer were yes or no since more information means a more accurate analysis.

The level of recorded detail was the major limitation in these two datasets. Fieldworkers would sometimes tick the Yes/No option but provide no motivation so the response means very little. In other instances, fieldworkers did not record the responses to certain questions.

2.6 Lessons learned
Sites differ: During the scoping exercise attention was paid to sites in and around Blantyre. However, during the fieldworker training in Blantyre, it was noticed that there are minor differences between how records are kept in Lilongwe and how there are kept in Blantyre. Therefore, it must not be assumed in a national survey of this nature that ‘everything will be the same everywhere’. Maintain flexibility during development of the data collection tools: Since sites differ, it is necessary to be flexible so that last minute adjustments can be made to the data collection tools. This was done as far as possible.

Use international standards due to antiquated domestic law: In the development of the qualitative data collection tools to assess conditions of detention, it was decided to rely on accepted international norms and standards due to the antiquated Malawian legislative regulating conditions of detention. This was done as far as possible.

Give practical training to fieldworkers: Providing practical training on the use of the data collection tools is essential since classroom-based training was clearly not sufficient to deal with the practicalities of gaining access, finding records and establishing good rapport with officials in the various government departments. Even though the partners followed the required procedure at national level by informing the relevant government departments about the project and obtaining the necessary authorisation, this did not always mean that officials at a particular police station, for example, were aware of the project and understood that access to certain records had been approved. Much time and energy can be saved by ensuring that officials at the operational level are informed of the project well in advance.

Authorisation must be very specific: Detailed authorisation is needed so that officials at the operational level are clear about which records will be accessed, how data will be recorded and what data collection instruments will be used. Maximum transparency will greatly assist the process.
“regrettably none of the key justice institutions have undergone the necessary, radical reform”

1. Introduction

In 1995, Malawi adopted a new Constitution that included fair trial rights but regrettably none of the key justice institutions have undergone the necessary, radical reform – creating a gap between the ideals articulated in the Constitution and day-to-day practice. Both formal and informal measures have been implemented to try and bring the system into line with the demands of the new constitutional order but to little, or no, avail.

There is clearly a need for a penetrating functional and structural review of the entire criminal justice system but regrettably none of the key justice institutions have undergone the necessary, radical reform.

This chapter focuses more narrowly on those institutions and bodies that are involved with case flow management and makes recommendations – as well as highlighting initiatives undertaken by the Malawian government and its partners (e.g. donor agencies) to improve the criminal justice system.

For purposes of this research, PTDs include detainees who have not been formally charged; who have been formally charged and are waiting for their trials to start; whose trials are underway, and, who have been convicted but not sentenced.

The operations of the Malawi Police Service in terms of PTDs are regulated by the:

- The Constitution of Malawi 1995;
- The Police Act No. 12 of 2010;
- The Criminal Procedure and Evidence Code (CPEC) as amended by Act No.14 of 2010, Chapter 8:01 of the Laws of Malawi, and;
- The Penal Code, as amended in 2010, Chapter 7:01 of the Laws of Malawi.

2. Malawi police service

The operations of the Malawi Police Service in terms of PTDs were identified by looking at four key processes in the handling of PTDs – namely the arrest of a suspect, the decision to continue detaining him, the decision processes in the handling of PTDs – namely the arrest of a suspect, the decision processes in the handling of PTDs – namely the arrest of a suspect, the decision processes in the handling of PTDs – namely the arrest of a suspect, the decision processes in the handling of PTDs – namely the arrest of a suspect.

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The chapter identifies key bottlenecks and areas of concern and makes recommendations – as well as highlighting initiatives undertaken by the Malawian government and its partners (e.g. donor agencies) to improve the criminal justice system.

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2.1 Organisational structure

The Malawi Police Service was established by the Constitution as an independent organ of the executive charged with the responsibility for ensuring public safety and protecting the rights of people in line with the Constitution and any written law in Malawi. The Police Service is under the political authority of the Minister of Internal Security and Public Safety. The complete structure of the Police Service is established by Section 5 of the Police Act and as follows:

- Inspector General (appointed by the President and confirmed by the National Assembly);
- Deputy Inspector General;
- Commissioners;
- Assistant Commissioners;
- Deputy Commissioners;
- Assistant Deputy Commissioners;
- Senior Assistants;
- Assistant Superintendents;
- Inspectors;
- Sub Inspectors;
- Sergeants; and,
- Constables.

The Service’s national headquarters are in Lilongwe with four regional offices in the south, east, centre and north. There are currently 34 police stations across the country as well as smaller sub-stations, posts and units. The Service is also divided up into a number of operational branches. The branches that are relevant for this research are:

- Administration – responsible for the day-to-day running of the service;
- Community policing services – responsible for working with communities to prevent and detect crime;
- Criminal investigations department – responsible for detecting and investigating crime and for apprehending suspected offenders; and,
- Prosecutions and legal services – responsible for prosecuting cases in Magistrates’ Courts.

Each police station is headed by an officer-in-charge and assisted by a station officer, who deals with the day-to-day operations, such as handling crime reports.

2.2 Core functions

The functional description of the Malawi Police Service is provided for in Section 4(1) of the Police Act as amended in 2010 and includes the:

- Prevention, investigation and detection of crime;
- Apprehension and prosecution of offenders;
- Preservation of law and order;
- Protection of life, property, fundamental freedoms and the rights of individuals; and,
- Due enforcement of all laws with which the Police are directly charged.

This research focused on two of these core functions – the apprehension and prosecution of offenders.

2.2.1 Prevention of offenders

Most arrests in Malawi are carried out by police under the directive of their superiors or on the directives of other agencies such as the Directorate of Public Prosecutions and the Anti-Corruption Bureau. The police play a crucial role not only in the decision to arrest suspects but also in the decision about what happens immediately after the arrest – such as detaining the suspect until first appearance or granting bail. Under certain conditions, the police can grant bail to suspects in minor cases, who are required to report regularly to the police while awaiting trial.

The apprehension of offenders is largely led by the Criminal Investigations Department. Once a suspect is apprehended, the department prepares a case docket, which is then passed on...
to prosecutions for court proceedings. A critical area of concern is the failure by the police in many instances to meet basic legal requirements in dealing with suspects during and immediately after apprehension. Section 42 of the Constitution and Section 20A of the CPEC require offenders to be informed of their rights on arrest and to be brought before a court of law as soon as is practically possible and certainly within 48 hours of arrest – but these requirements are often not fulfilled.

2.2 Prosecution of offenders

It has been suggested that police prosecutors handle about 95 per cent of all criminal prosecutions in Malawi with little or no supervision. There are no procedures for complaint or disciplinary action against police prosecutors and they are only minimally supervised by the DPP. A classic example involves cases where the DPP’s express consent is required before prosecution can commence, e.g. incest cases. In most cases, police prosecutors commence and conclude such cases without the consent of the DPP’s office. In addition, the referral of cases by local prosecutors to regional and national headquarters is strictly followed by the police bureaucracy. For example, a homicide caseocket cannot be sent directly to the DPP’s office without being channelled through the police’s regional prosecutors office. While this is good for record keeping, it does unfortunately also result in delays. Police prosecutors do sometimes seek direct guidance from the DPP’s office but this is very much the rare exception rather than the rule.

Considering that there is very little likelihood that prosecution by police prosecutors will be phased out soon, it is vital to find ways to improve training methods for police prosecutors.

2.3 Key gaps

The research identified the following concerns relating to the operations of the police service: -

- Insufficient supervision of prosecutors by the DPP;
- Inadequate powers to transfer cases for prosecution or appeal;
- Prosecution of otherwise uncharged cases.

In terms of structure and operations, the DPP is assisted by the Chief State Advocate, Deputy Chief State Advocate, Senior Assistant Chief State Advocate, Principal State Advocate, Senior State Advocate and the Regional Advocates.

3.1 Organisational Structure

The structure of the DPP’s office has not changed for over 40 years despite the adoption of the new Constitution in 1995 - and this out-dated structure cannot cope with all the demands placed on it. The DPP has powers to appoint public prosecutors and delegate prosecutorial authority as provided in Section 100, which states that:

1. Save as provided in section 99 (3), such powers as are vested in the office of the Director of Public Prosecutions may be exercised by the person appointed to that office or such other persons in the public service, acting as his or her subordinates and in accordance with his or her general and specific directions and instructions in accordance with an Act of Parliament.

3.2 Core functions

The functions and powers of the DPP are primarily set out in section 99-102 of the Constitution. Section 99(2) of the Constitution provides that:

The law requires the complete independence of the office of the DPP. However, he is subject to general and special directions from the Attorney General in line with Section 101(2) of the Constitution and this - coupled with the location of the office - may make the DPP somewhat concerned about the independence of the of the office and prompted suggestions that this provision should be removed.

While the DPP’s office has regional branches in Blantyre and Mzuzu, it is not readily accessible in much of the country and this has hampered its ability to supervise other agencies, especially police prosecutors. The DPP has also powers to appoint public prosecutors and delegate prosecutorial authority as provided in Section 100, which states that:

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3. Recommendations

The research shows that there is a need for:

- The police service to move away from a culture of arrest and detention, especially when there are no legal ways of ensuring that suspects attend court; and
- Officers to be trained so they are more aware of constitutional and human rights requirements.

The following laws and documents cover the structure and functions of the DPP:

- The Constitution of Malawi 1995;
- The Criminal Procedure and Evidence Code;
- Ministry of Justice Strategic Plan 2009-2014;
- The National Prosecution Policy; and,
- Democratic Governance Paper

3.3 Framework Paper

The following laws and documents cover the structure and functions of the DPP:

- The Constitution of Malawi 1995;
- The Criminal Procedure and Evidence Code;
- Ministry of Justice Strategic Plan 2009-2014;
- The National Prosecution Policy; and,
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While the DPP’s office has regional branches in Blantyre and Mzuzu, it is not readily accessible in much of the country and this has hampered its ability to supervise other agencies, especially police prosecutors.

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b) An Act of Parliament shall prescribe restrictions relating to the exercise of powers under this section by any member of the Malawi Police Force.

The CPEC, in sections 76–82, provides greater detail on the powers of the DPP, particularly with regard to the appointment of public prosecutors and the delegation or prosecution of public powers. Section 79 of the CPEC states that:

(1) The Director of Public Prosecutions may by writing under his hand, appoint generally or in any case or any class of cases, any person employed in the Public Service or such other person legally qualified to be a public prosecutor.

(2) Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions. Section 79 of the CPEC entrusts the DPP with the duty to prosecute all crimes and offences against the laws of Malawi. While the DPP can institute criminal proceedings on his own motion, the Act does not give investigative powers.

As such, the institution of criminal proceedings by the office often follows investigations by police and recommendations by competent investigative institutions such as the police, the Anti-Corruption Bureau and the immigration service among others. For serious offenses that can only be tried by the High Court – such as murder and treason – the investigation dossier is referred to the DPP to decide whether to institute proceedings or not or for further directions to the police. In most cases, the suspect would have already been detained.

The period between the arrest and detention of a suspect and when the matter or file is handed over to the DPP varies. In the treason case, the Prisons Act, which provides for discontinuance is acceptable before any discontinuance is properly recorded. However, in practice, discontinuance is acceptable in oral form.

3.3 Key gaps

Based on the research, the shortcomings of the DPP and the arrested are:

• Lack of enabling legislation for the DPP to build on the constitutional provisions relating to the office;
• The office is not - in practice - the central prosecuting authority in Malawi;
• Lack of a legally binding policy and code of ethics for all public prosecutors, which results in inconsistent prosecutorial practices;
• Insufficient capacity to effectively supervise public prosecutors;
• Inconsistency in the discontinuance of cases, and;
• Questions over the independence of the office.

3.4 Recommendations

In view of the above, the report recommends:

• Restructuring the DPP’s office in line with the draft National Prosecution Policy to ensure speedy decision-making processes;
• Adopting and implementing the National Prosecution Policy to guide prosecutors in key decision making processes;
• Implementing the Strategic Plan of 2009–2014, particularly in relation to decentralising the DPP’s authority;
• Considering enabling legislation for a single independent prosecution agency;
• Building on current inter-agency cooperation initiatives such as the Homicide Working Group.

4. Malawi Prison Service

The legal framework that provides for the operations, structure and mandate of the Malawi Prison Service is contained in the Constitution and the 1955 Prison Act.

4.1 Organisational Structure

The prison service is headed by a Chief Commissioner, who is tasked with meeting the proper and efficient administration of the prisons, protection of human rights, respect for judicial orders and directions, and adherence to international standards. The Chief Commissioner is assisted by other officers such as the Assistant Commissioner, Senior Superintendent, Assistant superintendent, Warder class I, Warder class II and Warder class III.

The Malawi Prison Service has a significant role in the administration and structure of the service, which results in inconsistent initiatives such as the Homicide Working Group.

The Service has its headquarters in Zomba with regional offices in the south, centre and north. Every prison is headed by an Officer-in-Charge, who is the supervisor and controller of both prison officers and prisoners.

4.2 Core functions

The main responsibility of the Chief Commissioner for Prisons is to ensure the proper and efficient administration of the penal institutions that come under his charge. The Act relating to the Prisons Act, a prisoner means any person, whether convicted or not, under detention in any prison, whether convicted or not, and whether convicted prisoner may be tried, duly committed to custody under a warrant, in whatever form such imprisonment may take – but does not include holding cells in police stations. The prisons Act, which provides for the administration and structure of the service, was enacted in 1955 and is in urgent need of a total overhaul.
separately from convicted prisoners and males separately from females 21;

• Enactment of the 2003 draft Prisons Act.

• Adoption of a National Prison Policy; and,

improve the operations of the service:

Recommendations

4.4

1) There shall be a Supreme Court for the Republic which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law.

3) There shall be a Supreme Court of Appeal for Malawi which shall be superior to and shall have jurisdiction and powers as may be conferred on it by this Constitution or by any other law.

2) The Supreme Court of Appeal shall be the highest appellate court and shall have jurisdiction to hear appeals from the High Court and such other courts and tribunals as an Act of Parliament may prescribe.

The Supreme Court of Appeal is exclusively an appellate court without any original jurisdiction. Being the highest court of the land, it handles very few criminal cases. However, the Court plays a significant role in the review of the rights of convicted prisoners by making decisions that are binding on all courts in Malawi.

5.1

Organisational Structure

The judiciary consists of the Supreme Court, High Court, Magistrates’ Courts and the anticipated Local Courts. The judiciary is headed by the Chief Justice and the Justice of Appeal (not less than three), judges, registrars, chief resident magistrates, deputy chief magistrates, senior assistant chief magistrates, resident magistrates, first grade magistrates, second grade magistrates, and third grade magistrates.

5.1.1

Supreme Court of Appeal

The Supreme Court of Appeal is established in section 104 of the Constitution which states that:

The High Court exercises its power in three instances. Firstly, it is a court of original jurisdiction and hears serious criminal offences such as homicides, treason and fraud. Secondly, the court has powers under the superior courts: the assistant chief magistrates, resident magistrates, first grade magistrates, second grade magistrates, and third grade magistrates.

The High Court exercises its power in three instances:

1) There shall be a Supreme Court of Appeal for Malawi which shall be superior to and shall have such jurisdiction and powers as may be conferred on it by this Constitution or by any other law.

2) The Supreme Court of Appeal shall be the highest appellate court and shall have jurisdiction to hear appeals from the High Court and such other courts and tribunals as an Act of Parliament may prescribe.
Core functions

The Judiciary has the responsibility of interpreting, protecting and enforcing the Constitution and all laws in accordance with the constitution in an independent and impartial manner with regard only to legally relevant facts and the prescription of law.\(^{32}\) In interpreting the provisions of the Constitution, the courts have to take full account of the Bill of Rights in Chapter IV of the Constitution\(^ {33}\) - so courts have to ensure that all laws in accordance with the constitution are employed.\(^ {32}\) The judiciary is the most independent institution dealing with PTDs and can intervene at practically any stage during criminal proceedings. However, the ability of the courts to intervene is challenged by the failure of the state to comply with the requirement to bring suspects before a court within 48 hours of their arrest. As a result, pre-trial detaines do not come under the jurisdiction of the courts as early as envisaged by the constitution. The exception to the regular course of events is when a PTD is represented by a legal practitioner, who promptly makes a habeas corpus application for the suspect to be brought to court. Traditionally, the pace of criminal cases has been prosecution-driven. However, with the amendments to the CPEC establishing pre-trial custody time limits, it is envisaged that the judiciary will assume firm control of judicial proceedings.\(^ {33}\)

Key gaps

The following gaps were identified during the research:

1. Criminal cases are largely prosecuted driven thereby limiting firm judicial control of pace of proceedings;
2. Several capacity constraints, particularly in magistrates’ courts where most criminal cases are heard;
3. The lack of an impartial and the review and confirmation system where higher courts analysed decisions of the lower courts; and,
4. Lack of awareness of some key criminal justice reforms, such as amendments to the CPEC and the enactment of Child Justice Act.\(^ {34}\)

Recommendations

1. Establish the recommended Criminal Division in the High Court.
2. Undertake research into aspects of legal aid; and,
3. Provide more resources to magistrates’ courts, which handle most criminal cases; and,
4. Establish the recommended Criminal Division in the High Court.

Provision of legal aid

Legal aid has been broadly defined as legal advice, legal assistance, representation in any court, tribunal or similar body or authority, and the provision of civic education and information about the law. The mandate of the Bureau is broad, particularly as it includes the provision of civic education and information about the law as part of legal aid services. The Bureau is also expected to provide legal aid to PTDs across the country, which will improve access to legal aid services for those most in need of them. Previously, the Legal Aid Department only had offices in Blantyre, Lilongwe and Mzuzu.

Section 4 of the Legal Aid Act provides for the duties and functions of the Bureau as follows:

1. Provide legal aid;
2. Liaise and cooperate with civil society organisations and other bodies in the provision of legal aid;
3. Undertake research into aspects of legal aid; and,
4. Provide reports and make recommendations to the Minister of Justice.

Organisational Structure

The Legal Aid Department was previously a department within the Ministry of Justice tasked with providing legal aid to Malawians. However, the enactment of the Legal Aid Act in early 2011 has revolutionised legal aid services in Malawi by establishing the Legal Aid Bureau as a separate entity outside the ministry. Once it is established, the Bureau will perform its functions and duties independent of any person or authority and will help to address the huge shortfalls in the provision of legal aid services. In particular, the operations of the Bureau will be decentralised with the establishment of Legal Aid Centres across the country, which will improve access to legal aid services for those most in need of them. Previously, the Legal Aid Department only had offices in Blantyre, Lilongwe and Mzuzu.

6.2 Core functions

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2. Several capacity constraints, particularly in magistrates’ courts where most criminal cases are heard;
3. The lack of an impartial and the review and confirmation system where higher courts analysed decisions of the lower courts; and,
4. Lack of awareness of some key criminal justice reforms, such as amendments to the CPEC and the enactment of Child Justice Act.\(^ {34}\)

Recommendations

1. Establish the recommended Criminal Division in the High Court.
2. Undertake research into aspects of legal aid; and,
3. Provide more resources to magistrates’ courts, which handle most criminal cases; and,
4. Establish the recommended Criminal Division in the High Court.

Provision of legal aid

Legal aid has been broadly defined as legal advice, legal assistance, representation in any court, tribunal or similar body or authority, and the provision of civic education and information about the law. The mandate of the Bureau is broad, particularly as it includes the provision of civic education and information about the law as part of legal aid services. The Bureau is also expected to provide legal aid to PTDs across the country, which will improve access to legal aid services for those most in need of them. Previously, the Legal Aid Department only had offices in Blantyre, Lilongwe and Mzuzu.

Section 4 of the Legal Aid Act provides for the duties and functions of the Bureau as follows:

1. Provide legal aid;
2. Liaise and cooperate with civil society organisations and other bodies in the provision of legal aid;
3. Undertake research into aspects of legal aid; and,
4. Provide reports and make recommendations to the Minister of Justice.

Organisational Structure

The Legal Aid Department was previously a department within the Ministry of Justice tasked with providing legal aid to Malawians. However, the enactment of the Legal Aid Act in early 2011 has revolutionised legal aid services in Malawi by establishing the Legal Aid Bureau as a separate entity outside the ministry. Once it is established, the Bureau will perform its functions and duties independent of any person or authority and will help to address the huge shortfalls in the provision of legal aid services. In particular, the operations of the Bureau will be decentralised with the establishment of Legal Aid Centres across the country, which will improve access to legal aid services for those most in need of them. Previously, the Legal Aid Department only had offices in Blantyre, Lilongwe and Mzuzu.

6.2 Core functions

The following gaps were identified during the research:

1. Criminal cases are largely prosecuted driven thereby limiting firm judicial control of pace of proceedings;
2. Several capacity constraints, particularly in magistrates’ courts where most criminal cases are heard;
3. The lack of an impartial and the review and confirmation system where higher courts analysed decisions of the lower courts; and,
4. Lack of awareness of some key criminal justice reforms, such as amendments to the CPEC and the enactment of Child Justice Act.\(^ {34}\)

Recommendations

1. Establish the recommended Criminal Division in the High Court.
2. Undertake research into aspects of legal aid; and,
7. Civil Society

In recent years, there has been a sharp increase in the involvement of civil society in the criminal justice system and the role of civil society organisations has been duly recognised in the new Legal Aid Act, which states that the Legal Aid Bureau can enter into cooperative agreements with them in the provision of legal aid. Previously, similar arrangements were largely informal. The work of civil society organisations in the criminal justice system – mainly through paralegals – has been recognised in several international declarations. The Dakar Declaration of the African Commission on Human and Peoples’ Rights – has been recognised in several international declarations. The Dakar Declaration of the African Commission on Human and Peoples’ Rights notes that paralegals should be enabled to provide legal assistance to suspects at the pre-trial stage, the ‘Plan of Action’ of the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa promotes the greater use of paralegals in the criminal process cardio arena, legal literacy, assistance and advice at a first aid level’.37

8. Summary of key steps in the criminal justice process

8.1 Decision to prosecute

The decision to prosecute a suspect is made at the discretion of the prosecutor. However, such a decision has to be made objectively based on available evidence and a legal basis. Clear and binding enabling legislation for the prosecution services in Malawi or a detailed prosecutorial policy would provide the necessary legal basis. This will in turn ensure that there is no delay in making decisions to prosecute offenders after arrest, and that any decision to prosecute is properly supported by a clear legal threshold and sufficient evidence. 8.3 Decision to keep the suspect in detention

The decision to hold suspects in custody pending trial is usually made by the prosecution with the courts, legal aid body and civil society organisations as potential interveners. The key challenge remains a culture of detaining suspects even when the matter does not warrant it. For example, the lack of implementation of recent reforms, such as legislative reforms in the criminal justice system, including:

• Institutional capacity of the police both in terms of numbers and knowledge about the rights of pre-trial detainees;
• Violation of the 48-hour rule; and,
• Inadequate record keeping relating to detained suspects and the movement of dockets.

8.2 Conduct of the trial

In an adversarial system like Malawi’s, the pace of cases is driven by the prosecution service. However, there is increasing realisation that – given the basic right to liberty – the prosecution cannot be provided with a blank cheque to conduct cases at their preferred pace. Moreover, considering the poor conditions of detention, a detained person’s right to dignity is threatened – if not categorically violated – the longer he is in custody. While lack of resources is well documented, there is other evidence that contributes to unreasonable delays in the conduct of trials. These include the lack of firm judicial control over the pace of criminal proceedings and the lack of implementation of recent reforms, such as statutory pre-trial custody time limits.

9. Good practices

While the Malawian criminal justice system faces a number of challenges, there is also an urgent need for institutional reforms in the criminal justice sector. But while well intentioned, these reforms will not have much of an effect unless they are fully implemented and unless practical steps are taken to address the current system’s many shortcomings. Along with the much-needed legislative advancements, there is also an urgent need for institutional and administrative reforms of the criminal justice institutions.
“a holistic rather than a piecemeal approach is necessary to address the major shortfalls crippling the justice.”

1. Introduction

Since Malawi adopted a new constitutional order in 1994, the criminal justice system has laboured to adhere to the fair trial and human rights standards set out in the Constitution. The Bill of Rights contains a solid cluster of fair trial rights, which are generally in line with international standards, and this has created substantial obligations for the state to ensure the full enjoyment of rights accorded to people in detention.1

Undoubtedly, the criminal justice system has attempted to ensure the substantiality of these rights, and much progress has been made in reform efforts. Recent amendments to criminal procedure rules represent the most radical overhaul of the criminal justice system to date, especially in relation to pre-trial detention.

The recent amendment to the CPEC 2 has brought radical changes to the law governing pre-trial custody. This is a welcome and practical step towards a significant reduction in the number of pre-trial detainees languishing in Malawian prisons and is essentially built on the pillars of constitutional guarantees of fair trial and personal liberty. But since it is a recent amendment, it is an aspect of the law that has not yet to be tested.

Meanwhile, the enactment of the Child Care, Protection and Justice Act3 addresses some concerns regarding children in conflict with the law, and reinforces the constitutional requirement that children should not be detained except as a measure of the last resort.

However, the implementation of rights, such as the presumption of innocence and the right to be released from detention, has remained big challenges – as have difficulties in ensuring the speedy conclusion of criminal cases and the alarming number of pre-trial detainees.4

2. General rights of pre-trial detainees

Section 42 of the Constitution provides what are collectively known as fair trial rights and extends these to people in detention and sentenced prisoners as well as children who are in detention as a special vulnerable group,5 giving everyone the right:

• To be charged within 48 hours;
• To challenge the lawfulness of the arrest;
• To be released where the arrest is unlawful;
• Not to be detained without trial;
• To be presumed innocent;
• To be charged or informed of the reason for continued detention; and
• To have his/her trial concluded within a reasonable time.

2.1 The right to be brought to court within 48 hours

Wanda describes the right to be promptly brought to court as consisting of three independent rights: the right to be brought before an independent and impartial court of law within 48 hours of arrest; the right to be charged or informed of the reasons for continued detention; and, on failing to be charged or informed of the reason for further detention, the right to be released from detention.6

This requirement affords an opportunity for the detained person to be charged promptly or at least be informed of the reasons for his arrest. It is also an opportunity for the state to continue detaining a suspect with the sanction of the court, thereby ensuring that such detainment is lawful. In addition, it offers the court an early opportunity to assess the evidence against a suspect and whether there is any justification whatsoever for continued detention. In Republic vs. Brigadier Mfonde and Others, the suspects were detained on allegations of treason and conspiracy to commit murder. The State duly brought them to court within the 48 hour period and applied for their continued detention. The court decided to order further detention on the basis that the evidence presented by the State did not justify it.7 When the State has failed to bring a suspect to court within 48 hours, his continued detention is unconstitutional and the court should order his immediate release. Therefore, a strict adherence to the 48 hour right is the first legal opportunity to prevent unnecessary pre-trial detention.

As Mwanguza J Stated in The Republic vs. Lavelue:

The right under section 42 (2) (b) of the Constitution should be seen as more than a right. Like most rights, it is an ideal. In my judgment it is also a test of the efficiency of our criminal justice system. For separation of powers and removal of interference in the criminal process, the 48 hour right ensures prompt judicial control and check on executive actions affecting citizen’s rights. To the citizen, the forty-eight hour right affords the citizen a prompt opportunity to assert and sample rights the Constitution creates for the citizen and test the reasonableness of the state’s deprivation of those rights. The framers set forty-eight hours as the efficiency standard for our criminal justice system to bring the citizen under judicial surveillance. In my judgment there are no operational problems.8

2.2 Presumption of innocence and the right to bail

The right of a suspect to be presumed innocent is at the heart of a fair criminal justice system. It is one of those principles that influences the treatment an accused person experiences from the investigation to the trial to the final appeal.9

The right is solidly provided for in international instruments, such as Article 11(1) of the Universal Declaration of Human Rights (UDHR), Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), and Article 7 (1) (b) of the African Charter on Human and Peoples’ Rights.

Commenting on the right to be presumed innocent under the ICCPR, the Human Rights Committee in General Comment No. 13 stated that:

The principle of presumption of innocence means that the burden of proof of the charge is on the prosecution and the accused enjoys the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to...
The granting of bail in Malawi is governed by the Bail (Guidelines) Act. 

A detained person can be released on bail until his or her guilt has been proved in a court of law. The law clearly stipulates that he is still presumed innocent and it has to be proved that the accused if released on bail will tamper with witnesses or interfere with the relevant evidence or obstruct the course of justice.

The determination of this issue will involve a considerable amount of time. This is because the accused is aware of the identity of the witness and the nature of their evidence. The presence of witnesses therefore has already made the task of either proving or discrediting their statements or the police to the case is still under investigation, whether it is probable that they may be influenced or intimidated by him or her.

The court will also consider whether there is a reasonable likelihood that if released on bail, the accused will commit further offences. This approach did contribute to the creation of a large population of pre-trial detainees, especially murder suspects. At the same time, there were indications that many individuals were becoming less moral in terms of granting bail and bail (Guidelines) Act was passed to clarify the principles for granting of bail. For example, the Act stated that suspects are ‘guilty until proven otherwise’, such as treason cannot be granted bail, a provision which has been noudly ignored by the courts.

The persistence of reasonable suspicion that the accused has committed a criminal offence, although it may in some instances take the form of other measures which carry the implication of such an allegation and likewise substantially affect the situation of the suspect.

The right to bail is not absolute; bail is limited only by the interests of justice and, as a result, the State must show why bail should not be granted.

The High Court has power to grant bail in any offence, including murder. The right to bail is not absolute and is limited by the interests of justice. The onus is on the state to show that it is not in the interests of justice not to release the accused on bail.

The accused person has the right to be tried within a reasonable time. This right is enshrined in Article 5 of the European Convention on Human Rights. The European Court of Human Rights has stated that: the time limit to a trial is set by the law of the land, but the Court must examine whether the trial has started or not within a reasonable time and whether it has begun and ended within a reasonable time. This right is enshrined in Article 5(3) of the European Convention. The European Court on Human Rights has stated that: the time limit to a trial is set by the law of the land, but the Court must examine whether the trial has started or not within a reasonable time and whether it has begun and ended within a reasonable time.
There is no judicial decision which has determined what constitutes ‘reasonable time’ and what remedies should be available when this right is violated. An attempted murder trial in the High Court, 2005 for alleged corruption and released on bail although the case did not commence for close to ten years. The High Court acquitted an accused person v Kutengule, when the suspect was arrested in 2005 for alleged corruption and released on bail although the case did not commence for more than a year. The suspicion applied to the High Court to determine whether his right to a fair trial was being violated. Unfortunately, the issue was never matter was never pursued and the court missed an opportunity to lay down broad and decent standards on the enjoyment of this right.3

In a more recent case, Bakali Bauti vs. Republic34, the High Court acquitted an accused person charged with a murder charge, who had been on remand without trial for close to ten years. The High Court determined that it was ‘impossible’35 for the accused to have a fair trial as his right to be tried within a reasonable time had been violated. This decision is a step in the right direction, for two reasons. Firstly, the constitutional protection against unreasonable detention is absolute. Secondly, when this right has clearly been violated, the victim’s case has not been granted any effective remedy, such as a permanent stay of proceedings or an acquittal. In other words, this right has not been factually observed although it is very significant in the broader scope of fair trials.

The situation of the right to a trial within a reasonable time in Malawi can be summarised as follows:

- It applies to all PTDs.
- It is solidly protected in the Constitution; it is not or so strictly enforced.
- It is a need for judicial pronouncements.
- There is a lack of effective remedy for violations.

3. Recent legislative reforms
3.1 Pre-trial custody time limits

Perhaps the most radical changes in the criminal justice system since 1994 have been recently enacted through the amendment of the CPEC. In Part IV A the Act introduces pre-trial custody time limits. Time limits are specific periods of time the accused person is in lawful custody pending commencement of his trial. The prosecution is at liberty to apply for an extension of custody time limits. An extension of custody time limits shall not necessarily delay the trial. The prosecution provides the court with good and sufficient reason for an extension. However, the Act does not define what constitutes good and sufficient cause.

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The pre-trial custody time limits are determined and categorized firstly by the jurisdiction of the courts, secondly by the seriousness of the offence. A person accused of an offence that can be tried in a subordinate court can be held in custody pending commencement of his trial for a maximum period of 30 days.36 The maximum period that a person accused of an offence triable in the High Court may be held in lawful custody pending committal for trial is that court’s 30 days. Where a person accused of an offence triable in the High Court is committed to the High Court for trial, the maximum period that he may be held in lawful custody pending commencement of his trial is sixty days.37 The maximum period that a person accused of treason, genocide, murder, rape, defilement and robbery may be held in lawful custody pending commencement of his trial in relation to that offence is sixty days.

3.2 Extension of the pre-trial custody period

The prosecution is at liberty to apply for an extension of the custody time limit as long as the application is lodged before the court that is seized with the matter at least seven days before expiry of the custody time limits. An extension of custody time limits can only be granted if the prosecution provides the court with good and sufficient reason for an extension. However, the Act does not define what constitutes good and sufficient cause.

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In summary, the scope of pre-trial custody laws in Malawi includes:

- The period in pre-trial detention determined by the jurisdiction of the courts.
- The seriousness of the alleged offence.
- The extension of custody time limits.
- The period in pre-trial custody.

38

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- The period in pre-trial detention determined by the jurisdiction of the courts.
- The seriousness of the alleged offence.
- The extension of custody time limits.
- The period in pre-trial custody.
4140 sufficient cause has been demonstrated.

42 The right to apply for bail remains available throughout the period.

43 There is a mandatory release after expiry of the (extended) period; and,

44 Judicial control over detaines.

3.3 Other measures to prevent excessive pre-
trial detentions

The CFCE and the Child Care, Protection and Justice Act introduce a wide range of measures that can be used by authorities to prevent the detention of suspects or to help in the quick disposal of cases. These include cautioning and releasing peoples suspected of less serious offences40, referring cases involving children suspected of less serious offences 38, granting temporary custody or cautioning and releasing peoples suspected of less serious offences away from formal court proceedings with or without conditions in a process known as diversion41, providing remuneration in less serious cases originally fixed to start on 2 January 1996 - just within the custody time limit of 112 days from the date of arrest,62 settling of joint defendants to arrangement imposed by regulation 5 of the Prosecution of Offences (Custody Time Limits) Regulations 1987. In January 1996, the trial was postponed and the custody time limit extended, until 19 February 1996. In January 1996 the designated judge withdrew from the case because he knew one of the prosecution witnesses. On 26 January 1996, the new judge heard applications by the prosecution and two defendants for a further adjournment, which the applicant opposed. However, due to prior commitments, the judge was unable to start the trial until 1 October 1996. Since no other judge of sufficient seniority was available to him, the prosecution applied for a further extension of the custody time limit until the new trial date of 1 October. The recorder concurred having concluded that there was ‘good and sufficient cause’ under section 22(3) of the 1983 Act.

The applicant and the three others then offered judicial review, arguing that the uneasiness of the judge did not represent ‘good and sufficient cause’ for extending their pre-trial custody. The court ruled that:

• The formula of the two adjectives ‘good’ and ‘sufficient’ must have some other purpose other than mere emphasis;

• The extension of time must mean some cause for the extension of time sought, not the corresponding need to keep the defendant in custody;

• ‘Sufficient’ means what it says and must require the court when considering a ‘good…cause’ to evaluate its strength;

• On the issue of sufficiency, the court can look at the nature of the case; and,

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In Malawi ‘good and sufficient cause’ is the only statutory justification for which the pre-trial custody period can be extended. In the UK, the court may regard that the court had the opportunity to adopt this law and how the same practice can be adopted in Malawi.

In Regina v Central Criminal Court, ex parte Abu Warda42 the court had the opportunity to adopt this law and how the same practice can be adopted in Malawi.

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In Malawi ‘good and sufficient cause’ is the only statutory justification for which the pre-trial custody period can be extended. In the UK, the law specifically provides that the court can also consider whether the prosecution had acted with all due expedition in handling of the case. It is submitted that although this does not appear under Malawian legislation, our courts can still consider the conduct of the prosecution and indeed the accused in determining whether to order an extension of custody time. In general, the conduct of the prosecution should come under scrutiny when extending a person’s right to be tried within a reasonable time.

In Hadfield v. Manchester Crown Court43 it was considered whether the court had acted with all due expedition. The court approved the test set by Lord Bingham in the Manchester Crown Court v. parts McDonald:

“To satisfy the court that this condition is met, the prosecution need not show that every stage of representation of the case has been accomplished as quickly and efficiently as humanly possible. That is too demanding an exercise. The real question is whether, particularly when the court which reviews the history of the case asks in the impossible benefit of hindsight. Nor should the history be approached with the unreal assumption that all involved on the prosecution side have been able to give the case their undivided attention. What the court must require is such diligence and expedition as would be shown by a competent prosecutor in determining whether to adjourn the case or to release the defendant. The court will of course have regard to:

• The nature of the case; and,

• The extent of preparation necessary; and,

• The conduct, whether cooperative or obstructive of the defence; and,

• The order in which the prosecution is conducted on the cooperation of others outside his control; and,

• The extent of the duration of the proceedings; and,

In Uganda, ‘sufficient’ means what it says and must require the court when considering a ‘good…cause’ to evaluate its strength. Whether a suspect’s trial has been concluded within a reasonable time?

It should be noted that these factors are the same as the court would consider in determining whether a suspect’s trial has been concluded within a reasonable time. 4140

Too severe a standard of the public, or the criminal procedures, or the practice of the court. It should be noted that these factors are the same as the court would consider in determining whether a suspect’s trial has been concluded within a reasonable time. 4140

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• The extent of the duration of the proceedings; and,
accused being committed for trial, while bearing the very grave charge of murder on his head, is so oppressive as to amount to an abuse of court process, warranting the extreme step of ordering a stay of prosecution.

In this regard, the approach adopted by the High Court of Malawi in Bakali Bauti vs. Republic is progressive and in line with the position both in Uganda and in South Africa. 46

3.5 Prosecution time limits for trials

The CPEC also sets down periods for the commencement and completion of a trial. For cases triable in a subordinate court or the High Court, the law provides that trial shall commence within twelve months from the date the complaint arose and be completed within twelve months from commencement of the trial. 47 The only exception is that this does not apply to offences punishable by imprisonment for more than three years. When a trial does not commence or is not completed within the prescribed period, the accused shall be discharged. The only exception is when the cause of the delay cannot be attributed to the prosecution, in which case the court shall order an extension in time to ensure the completion of the trial.

4. Conclusion and recommendations

The Constitution lays a solid foundation for the observance of fair trial rights for all accused people, including pre-trial detainees. The challenge has been to reconcile these constitutional standards with criminal procedure rules. The starting point should be strict adherence to the 48 hour rule within which all suspects ought to be brought before a court of law.

The pre-trial custody limits set in the CPEC are a welcome development and will go a long way in ensuring that suspects are not simply detained at the pleasure of the State while awaiting trial. The criminal justice system should connect the time limits to the broader fair trial rights such as presumption of innocence and trial within a reasonable time. In this case, all categories of pre-trial detainees will be duly protected.

The major challenges facing the Malawi criminal justice system are due to structural and functional failures within key institutions. The situation can be improved dramatically by:

• Promoting greater awareness, and full implementation, of recent legal reforms in the CPEC and the Child Justice Act by all key institutions;
• Increasing the use of non-custodial measures such as diversion;
• Enhancing cooperation between criminal justice institutions through mechanisms such as court users meetings and the homicide working group; and,
• Ensuring that there is firm judicial control over every stage of criminal proceedings.

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1. Introduction

On 6 November 2005, the New York Times published an article entitled ‘The Forgotten of Africa, Wasting Away in Jails without Trial’, which painted a grim picture of the general criminal justice system in Malawi and particularly the appalling conditions in Malawian prisons1 – despite the Constitution’s robust human rights provisions for people in detention, which is largely on par with international norms and standards. However, the enforcement of these standards has remained an enormous challenge and prison conditions in Malawi remain a serious blot on the country’s human rights record. In 2009, the High Court decided a case that comprehensively addressed the issue of prison conditions and made several recommendations to the authorities for major improvements, which has resulted in some progress.

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The Constitutional Law and Conditions of Detention

By Pacharo Kayira

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The Malawi Prison Service is required by law to efficiently administer all penal institutions subject to, and in accordance with, the protection of rights in the Constitution or any other law. This report analyses international legal standards relating to the rights of people in detention, and discusses how Malawi has implemented these standards based on the extant literature. The major international instruments and standards on detention rights are the:

• International Covenant on Civil and Political Rights (ICCPR);
• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
• Universal Declaration of Human Rights (UDHR);
• Standard Minimum Rules for the Treatment of Prisoners (UNSMR);
• Basic Principles for the Treatment of Prisoners;
• Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and,
• African Charter on Human and Peoples’ Rights.

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• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
• Universal Declaration of Human Rights (UDHR);
• Standard Minimum Rules for the Treatment of Prisoners (UNSMR);
• Basic Principles for the Treatment of Prisoners;
• Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and,
• African Charter on Human and Peoples’ Rights.
Commenting on this Article, the Human Rights Committee has stated that:

It is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States Parties should inform the Committee of the legislative, administrative and other measures they have taken to prevent and punish acts of torture and cruel and inhuman and degrading treatment in any territory under their jurisdiction.

Article 7 of the ICCPR is complemented by Article 10 (1) of the Covenant which specifies deals with people in detention:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 2 of UNCAT also states that States parties will directly advance the Convention’s overarching aim of preventing torture and ill treatment. Naming and defining this crime will promote the Convention’s aim, inter alia, by shifting everyone, including perpetrators, victims, and witnesses, away from denial to conviction.

Malawi’s 1995 Constitution prohibits torture, cruel, inhuman and degrading treatment or punishment in Section 19(3):

No person shall be subjected to torture of any kind or cruel, inhuman or degrading treatment or punishment.

In addition, Section 44(1)(b) of the Constitution stipulates that this prohibition is not subject to any derogation, restriction or limitation. The prohibition of torture, cruel, inhuman and degrading treatment or punishment in the Constitution is therefore absolute and in line with international legal standards. However, Malawi has not yet submitted a report to the Committee against Torture and the Committee considers that States parties will directly advance the Convention’s overarching aim of preventing torture and ill treatment. Naming and defining this crime will promote the Convention’s aim, inter alia, by shifting everyone, including perpetrators, victims, and witnesses, away from denial to conviction.

Malawi acceded to UNCAT, it has not yet implemented its major provisions as required by the instrument. In addition, Malawi has not yet submitted a report to the Committee against Torture as required by article 19 of UNCAT. Furthermore, although the Constitution clearly prohibits torture, practical steps and procedures that would prevent, detect and punish cases of torture have still not been adopted by the criminal justice system.

While Malawi acceded to UNCAT, it has not yet implemented its major provisions as required by the instrument. In addition, Malawi has not yet submitted a report to the Committee against Torture as required by article 19 of UNCAT. Furthermore, although the Constitution clearly prohibits torture, practical steps and procedures that would prevent, detect and punish cases of torture have still not been adopted by the criminal justice system.

The Committee considers that States parties will directly advance the Convention’s overarching aim of preventing torture and ill treatment. Naming and defining this crime will promote the Convention’s aim, inter alia, by shifting everyone, including perpetrators, victims, and witnesses, away from denial to conviction. One of the main duties of States parties is to ensure the effective implementation of the provisions of the Convention. This includes:

1. Making the Convention known, in its original language or translation, to everyone, including to persons charged with the responsibility of enforcing the law and the public, to the special gravity of the crime of torture.
2. Taking all necessary legislative, judicial and administrative measures to ensure that everyone is aware of the Convention and its provisions.
3. Ensuring that the provisions of the Convention are implemented effectively, especially by making the Convention known to everyone, including to persons charged with the responsibility of enforcing the law and the public, to the special gravity of the crime of torture.

The Committee has also noted that the Convention should be widely disseminated through various means, such as public lectures, seminars, radio and television programmes, and the media. The Committee has also emphasized the importance of ensuring that everyone, including to persons charged with the responsibility of enforcing the law and the public, is aware of the Convention and its provisions.

The Committee has further noted that States parties should also take steps to ensure that the Convention is implemented effectively. This includes providing adequate resources for the enforcement of the Convention, as well as ensuring that the legal and administrative measures taken to implement the Convention are effective.

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of the Schedules, there is a scale listing the quantities to be provided.

Followings a 2001 visit to Malawi prisons, the ACHPR Special Rapporteur on Prisons and Conditions of Detention in Africa noted that the quality and quantity of food supplied to prisoners was adequate and that prisoners receive one meal per day and the meals are not balanced. Several prisons eat the same thing every day. In its 2004 Report, the Malawi Prison Inspection summarised the status of the food in Malawi prisons as follows:

In most of the prisons visited, the inspecteur noted that it was the same day. Prisoners complained that they are always served maize porridge and beans/pigeon peas once a day. However, it is pleasing to note that this diet is supplemented by vegetables in almost all the prisons.

However, the major problem in most Malawian prisons is overcrowding. Overcrowding means prisoners, housed about 2,200, Zomba Prison (South region), built for 900 inmates, housed 2,717; Chichiri Prison in Blantyre, built for 700 prisoners, housed 1,800; and Mzuzu Prison (Northern region), built for 200 inmates, housed 412. The overcrowding resulted in the spread of contagious diseases, including tuberculosis and scabies.

The Malawi Prison Service cannot solely be blamed for the overcrowding of the prisons and overcrowding is a sign of a broken criminal justice system.

The combined impact of poor conditions of detention, particularly overcrowding, has resulted in the spread of contagious diseases, including tuberculosis and scabies. Efforts to address the problem have resulted in the spread of contagious diseases, including tuberculosis and scabies. Efforts to address the problem have included the deployment of health personnel to the prisons and by the end of 2004 to each prison in the country.

2.2.2 Prohibition of discrimination

Discrimination on any basis is prohibited in all forms of detention or overcrowding. The prohibition of discrimination against detained people is found in Article 2 of the African Charter, which states that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

Section 20 of the Constitution of Malawi prohibits the denial to any person of rights and freedoms on any status. Non-discrimination clauses have been interpreted broadly both domestically and in international law. Detainees are entitled to enjoy all their constitutional rights – a view that is in line with South African constitutional jurisprudence in August and Another v. the Electoral Commission and Others, where the Constitutional Court held that:

It is a well-established principle of our common law, predating the era of constitutionalism, that is in line with South African constitutional jurisprudence in August and Another v. the Electoral Commission and Others, where the Constitutional Court held that:

The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Flagrant discriminatory practices based on the status or race of detained people is deplorable. It does not occur as the Malawi Human Rights Commission noted:

The apparent discriminatory treatment being afforded to the prisoners was evidenced by the Human Rights Commission noted:

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The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.
International law clearly recognises the vulnerability of children and there are specific provisions regarding their treatment while in custody. Article 37 of the African Charter on the Rights and Welfare of the Child states that:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

It is in fact the minimum requirement. The framers of the law setting the minimum standards surely must have known that the minimum standards are achievable and must be achieved. No one should be allowed to dismiss the law as mere aspirational rhetoric which will not be complied with.25 The Court held that the Respondents must have known that the minimum standards are achievable and must be achieved.26 The Court held that the Respondents must have known that the minimum standards are achievable and must be achieved.27 The Court held that the Respondents must have known that the minimum standards are achievable and must be achieved.28 The Court held that the Respondents must have known that the minimum standards are achievable and must be achieved.29
The Inspectorate would still depend on resources allocated to it by the Ministry of Internal Security. The Inspectorate is partly considered to be independent of the police service, headed by the Inspector General of Police, who is appointed by the President. The Inspector General is independent of the President and gives rise to concerns about the institution’s independence.

Another significant inclusion in Part VIII of the Penal Reform International, set up a steering committee to promote the implementation of rules governing detention, reporting on detention conditions, observing the treatment of detainees. This is also part of the agreement creating a scheme of independent prison visitors under the Ministry of Justice and the Independent Complaints Commission. The recommendation has been highlighted by reports of the Human Rights Commission, the Prisons Inspectorate, local and international civil society organisations, and the High Court in the Gable Masangano case. The government was given 18 months by the High Court, which expired in May 2011, to improve prison conditions. The past year has seen significant steps in implementing such improvements.

The management of prisons should be based on both a security and rights-based approach, with authorities aware that people in detention do not lose their rights. Any major changes in prison conditions in Malawi with the standards in the 1995 Constitution. However, the Bill has been in draft form since 2003 and there is a need for its provisions to be reviewed in line with the principles of the Chapel of the Child Care, Protection and Justice Act.

The Malawi Human Rights Commission also has the power under its enabling legislation to visit prisons, as well as children’s homes, and investigate police cells, with or without notice - and without hindrance. In this regard, the Commission has previously organised extensive prison visits and included its findings in its annual report.

However, the Commission has been more successful in raising concerns about poor prison conditions than the Inspectorate. The reports of the Commission on prison conditions have suffered the same fate as reports by the Inspectorate, and Parliament has hardly taken note of the Commission’s annual reports.

The Police Act established a community-based lay visitors scheme in Section 124. The scheme is composed of a panel of at least eight members per police station, who are tasked with reporting on detention conditions, observing the implementation of rules governing detention, and examining and reviewing prison conditions. The scheme is significant as it brings an element of community involvement into the monitoring of detention facilities. This is also part of the agreement creating a scheme of independent prison visitors under the Ministry of Justice and the Independent Complaints Commission.

The Malawi Human Rights Commission has previously voiced concerns about general police brutality, and more particularly about methods of handling suspects including beatings, and the deaths of suspects in police custody. It is hoped that the Complaints Commission will be truly independent in its operations in any undertaking to reform police customs.

The effectiveness of this mechanism is yet to find its way through the line. The new Prison Bill was drafted in 2003 and eight years have passed as it yet to find its way through Parliament. The Police Act introduced innovative schemes such as diversion, and giving more powers to officers-in-charge of PTDs, and creating an independent prison visitors scheme. The Bill was a commendable attempt to reconcile prison law relating to the treatment of detained persons with the standards in the 1995 Constitution. However, the Bill has been in draft form since 2003 and there is a need for its provisions to be reviewed in line with the principles of the Chapel of the Child Care, Protection and Justice Act.

The High Court in the Gable Masangano case observed that the dietary standards in the current Penal Code Act were inadequate. In essence, the Act is long overdue for an overhaul. In 2002, the government, with the assistance of consultants from Penal Reform International, set up a committee to draft a new Prison Bill. This is another significant inclusion in Part VIII of the Penal Reform International, set up a steering committee to promote the implementation of rules governing detention, reporting on detention conditions, observing the treatment of detainees. This is also part of the agreement creating a scheme of independent prison visitors under the Ministry of Justice and the Independent Complaints Commission. The recommendation has been highlighted by reports of the Human Rights Commission, the Prisons Inspectorate, local and international civil society organisations, and the High Court in the Gable Masangano case. The government was given 18 months by the High Court, which expired in May 2011, to improve prison conditions. The past year has seen significant steps in implementing such improvements.

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In view of the preceding findings, this report recommends that:

• The 2003 Draft Prison Bill must be reviewed and then enacted without delay to set clear standards for prison administration and justice system. As such, all other measures that can alleviate the pressure on the prison system must be undertaken in line with the Police Act of 2010.
• The operations of the Prisons Inspectorate need to be strengthened in order to provide effective oversight over the prison system and to further reduce to international obligations under Articles 12 and 13 of UNCAT, and.
• Infrastructural work on prisons – including the rehabilitation of old prisons and the construction of new purpose-built prisons – must be undertaken in order to improve conditions of detention.
“Conditions of detention refer to the infrastructural and physical attributes of a detention facility that impact on the human experience of incarceration.”

1. Introduction

Conditions of detention are important in respect of a range of rights and the UN Working Group on Arbitrary Detention stated the following on the right to a fair trial:

Where conditions of detention are so inadequate as to seriously weaken the pre-trial detainee and thereby impair equality, a fair trial is no longer ensured, even if procedural fair-trial guarantees are otherwise scrupulously observed.1

Conditions of detention refer to the infrastructural and physical attributes of a detention facility that impact on the human experience of incarceration. Their establishment, utilisation and management should be aimed at contributing to the safe, secure and humane treatment of all detainees. These attributes include the:

• physical characteristics of the detention facility, including sleeping, eating, working, training, visiting and recreation space;
• provision of beds, bedding and other furnishings;
• nature and conditions of the ablution facilities;
• cleanliness of the living space and maintenance of buildings and infrastructure, and;
• level of occupation of the facility, individual cells and common areas with reference to two and three dimensional space measurements and ventilation.

Whilst an emphasis is placed on the physical attributes, it should be borne in mind that these are strongly influenced by other factors such as staff capacity and the willingness of management to resolve problems or at least ameliorate their negative effects.

International norms and standards in respect of prison conditions are much more developed than standards for conditions in police detention cells. This is despite the fact that many detainees across the world and in Malawi spend extended periods in police detention cells.

The Malawi Constitution in section 42 (1) deals with conditions of detention and section 42 (1) (b) requires conditions of detention to be ‘consistent with human dignity.’ Former South African Chief Justice, Arthur Chaskalson, concluded that in a broad and general sense, respect for human dignity implies respect for the autonomy of each person, and the right of everyone not to be devalued as a human being or treated in a degrading or humiliating manner.2 Therefore, it is with this purpose – to prevent a person from being devalued as a human being – that one needs to view conditions of detention.

2. Police stations

The survey collected data from five police stations across Malawi – Blantyre, Lilongwe, Mzimba, Thyolo and Zomba. Table 1 summarises the information that was collected during the fieldwork visit to each station.

### Table 1

<table>
<thead>
<tr>
<th>Station</th>
<th>Nr. of detainees</th>
<th>Nr. of women</th>
<th>Nr. of children</th>
<th>Longest in custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blantyre</td>
<td>55</td>
<td>0</td>
<td>2</td>
<td>5 days</td>
</tr>
<tr>
<td>Lilongwe</td>
<td>87</td>
<td>4</td>
<td>7</td>
<td>7 months</td>
</tr>
<tr>
<td>Mzimba</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>5 days</td>
</tr>
<tr>
<td>Thyolo</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>4 days</td>
</tr>
<tr>
<td>Zomba</td>
<td>20</td>
<td>0</td>
<td>4</td>
<td>4 days</td>
</tr>
</tbody>
</table>

3. Detainees right to physical and moral integrity

### Key international instruments:

- Art. 5 of the Universal Declaration of Human Rights (UDHR);
- Art. 7 of the International Covenant on Civil and Political Rights (ICCPR);
- Arts. 2 and 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT);
- Arts. 2 and 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Training on the prohibition of torture: Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) requires officials working with people deprived of their liberty to be informed and educated regarding the absolute prohibition of torture. Malawi has never submitted an initial or periodic report to the Committee against Torture (CAT) but nonetheless it was reported that all officers undergo general training and that the prohibition of torture is addressed in this training. However, refresher training appears to be irregular and only one such training course took place in Lilongwe in September 2010.

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1. UN Working Group on Arbitrary Detention

2. Arthur Chaskalson

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By Lukas Muntingh

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SURVEY OF CONDITIONS OF DETENTION IN POLICE CELLS
Investigation of deaths: It was reported that if a detainee dies in police custody then the Criminal Investigations Department (CID) would be tasked with investigating the death. Principle 12(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also requires that: 

Whenever the death or disappearance of a detained person is alleged or the property of a detainee is appropriated or confiscated or an injury, an inquiry into the cause of death or disappearance shall be held by a judicial or other official, or by the public prosecutor. However, in certain cases, instead of a member of the family of such a person or any person who has knowledge of the case. When circumstances as serious, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would prejudice an ongoing criminal investigation.

Impartiality and independence of the investigating authority has been commented upon as follows:

Impartiality is therefore central to effective investigations and the term ‘impartiality’ means free from undue bias and is conceptually different from ‘independence’, which suggests that the investigation is not influenced by outside pressure, be it from close personal or professional links with the alleged perpetrators. The two notions are, however, closely interrelated, as a lack of independence is commonly seen as an indicator of partiality.4 The ECCHR (European Court of Human Rights) has noted that ‘independence’ not only means a lack of hierarchical and functional connection, but also physical independence.5 The ECCHR has also stressed the need for the investigation to be open to public scrutiny to ensure its legitimacy and to secure accountability, in practice as well as in theory, to maintain public confidence in the adherence to the rule of law by the authorities that are to be investigated and to prevent any appearance of collusion or in tolerance of unlawful acts.6,7

In Lilongwe, the Malawi Human Rights Commission is involved in the investigation along with the CID, but this does not appear to be the case in the other police stations. The fact that the police investigating deaths in police custody is reason for concern since they should be investigated by an impartial and independent authority.

Record of detainees: Principle 12(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that the following records must be maintained:

• Reasons for the arrest;
• Time of the arrest and when the arrested person is brought to a place of custody as well as the time of his first appearance before a judicial or other authority;
• Information of the law enforcement officials concerned; and,
• Precise information concerning the place of custody.

At the five police stations surveyed, it was found that, with minor variations, proper records are maintained for people being detained. The Criminal Investigation and Drug Enforcement (CID) booklets report the date of arrest and time of arrival of the suspect at the station, place of origin, traditional authority, trib, district, the reasons for the detention, the date of admission and the date of release. However, in some instances, it was found that the time of admission was not recorded. Upon arrival at the police station, the date of release (e.g. transfer to court) is recorded in the Crime Movement Register and not in the Custody Book.

Information given to detainees: Despite the above, some detainee’s rights are not being treated with dignity and fairness.1 In this regard, it is an important preventive measure in respect of the detainees that the rights which are inalienable should be clearly enshrined in the Constitution. Information given to detainees is seen as an indicator of partiality.3 The ECtHR has also stated that, with minor variations, proper records are maintained for people being detained. The Criminal Investigation and Drug Enforcement (CID) booklets report the date of arrest and time of arrival of the suspect at the station, place of origin, traditional authority, trib, district, the reasons for the detention, the date of admission and the date of release. However, in some instances, it was found that the time of admission was not recorded. Upon arrival at the police station, the date of release (e.g. transfer to court) is recorded in the Crime Movement Register and not in the Custody Book.

In Lilongwe, 11 of the 87 suspects in custody had been there for more than five days at the time of the fieldwork. At Mzimba police station two suspects had been in custody for more than 48 hours, while seven were held for longer than that in Zomba. At Lilongwe, detainees were informed that they have the right to remain silent and that they can contact their relatives and/or legal representative. In Blantyre and Zomba, it was reported that this is done, but the scope of the information was not specified. Meanwhile, in Thyolo, detainees are not informed of the rules of the detention facility. However, in general, it appears that detainees in police custody are informed of their right to apply for bail.

The 48-hour rule: Section 42(2) of the Malawi Constitution requires that:

• Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have:
  • Precise information concerning the place of custody;
  • Time of the arrest and when the arrested person is brought to a place of custody as well as the time of his first appearance before a judicial or other authority;
  • Identity of the law enforcement officials concerned; and,
  • Property belonging to a detainee

The extent to which detainees are provided with information regarding their rights and responsibilities gives rise to some concern. In Lilongwe, detainees were informed that they have the right to remain silent and to contact their relatives and/or legal representatives. However, in Blantyre and Zomba, it was reported that detainees are spending longer than 48 hours in police custody in violation of section 42 (2) (b) of the Constitution. Along with violating people’s constitutional rights, this also places detainees at risk since police stations are not built to cater humanely for the long-term detention of prisoners. In Lilongwe, Zomba, and the Victim Support Unit (VSU) attends to the needs of vulnerable detained persons. In contrast, at Lilongwe police station, PASI and the Department of Social Welfare also assist with vulnerable groups. It was reported that there are no protective measures in place ‘due to a lack of facilities’.

6.3 Property belonging to a detainee

Key international instruments:
- Art. 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Art. 11 of the International Covenant on Civil and Political Rights
- Arts. 9-16, 21, 41 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNMRP)
- Rule 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Rule 43 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNMRP)
- Rule 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

There appears to be a well-established system for assessing the property (cash and valuables) of detainees and this is recorded in the Custody Book. Reportedly each detainee has a property bag that is kept in the storeroom. Detainees sign in a dedicated column in the Custody Book for property handed in or returned.

Detainees who are arrested with medication on their person are not permitted to take the medication into the cells, with the exception of Zomba police station. At the other stations, the custody officer and the station officer decide how the medication will be managed and assurances were given that the detainee will receive his medication on time.

6.4 Right to adequate standard of living

Key international instruments:
- Art. 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Rule 9, 16, 41 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNMRP)
Amount of time per day outside of cells: The UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR) requires a minimum of one hour of outside exercise per day per prisoner. While prison architecture may enable detainees to spend time outside of their cells, police station infrastructure presents significant challenges in this regard. While some prisoners are water taps in the cells. In Mzimba and Thyolo, the cells do not have toilets and a bucket is used at night. The lack of running water becomes problematic and access to water becomes problematic and detainees must keep water in containers in the cells. The storing of water in containers is problematic, especially when cells are severely overcrowded and detainees lack the means to keep containers clean. This places their health as well as the health of officials at great risk.

Lighting and ventilation: While it was reported that open windows exist, the issue of ventilation depends very much on the level of occupation and the time of the year. With an occupation level of 174 percent in Lilongwe it must be concluded that ventilation does not meet an acceptable standard. All stations, except Zomba, reported that there is artificial light in the cells. While other stations reported sufficient light during daytime to enable one to read, this was not the case in Thyolo.

Supervision of detainees: Custody officers are, reportedly, on duty 24 hours a day.

Access to ablution facilities and drinking water: Detainees’ access to a toilet facility was dry and free of rubbish, the ageing nature of the police station buildings cannot be denied. These buildings have received little renovation over the years – except in Lilongwe and Mzimba - despite the high volume of people moving through them.

Mosquitoes are an all-round problem and the presence of lice was reported to be a major concern at Lilongwe police station. Varied measures are taken to control vectors. At Blantyre police station, fumigation is applied to control mosquitoes and at Mzimba fumigation is done by the Department of Health and floors are mopped with chlorine on a daily basis. Floors are also mopped with chlorine at Thyolo. However, at Lilongwe no measures to control vectors were noted.

In stations where there are no taps in the cells, access to water becomes problematic and detainees must keep water in containers in the cells. The storing of water in containers is problematic, especially when cells are severely overcrowded and detainees lack the means to keep containers clean. This places their health as well as the health of officials at great risk.

Adequate food

Key international instruments:

• Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
• Rule 20 and 32 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
• Rule 37 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Adequate food

(1) Every prisoner shall be provided by the administration at the usual hours with food of wholesome quality and well prepared and served. (2) Drinking water shall be available to every prisoner whenever he needs it.
(2) Sick prisoners who require specialist treatment or torture, as well as providing medical treatment interrogation”, procedures involving ill-treatment examining a detainee to determine his “fitness for prohibition should extend to such practices as professional medical associations should take particular importance in places of detention and medical personnel should be instructed on practice is that if a detainee shows visible signs of injury or affected person are notified at the earliest possible moment;” The use of mechanical restraints and use of force and firearms by law enforcement officials shall be: (a) Exercise restraint in such use and act in accordance with the Principles of Medical Ethics relevant to the Role of Health Personnel, they must receive training to perform their duties with a staff of suitable trained officers. (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment;” The Special Rapporteur on Torture recommended as follows: Health sector personnel should be instructed on the Principles of Medical Ethics for protection of detainees and prisoners. Government and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining a detainee to determine his “fitness for trial” procedures involving ill-treatment, or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse. The use of mechanical restraints: Handcuffs appear to be used in three instances – when detainees are transported (e.g. to court), in cases of “elusive offenders” and when the detainees is likely to place the life of a police officer in danger. In the last two instances, it was stated that the police are not able to assist detainees to contact their relatives or legal representative. What generally seems to happen is that officials allow detainees to use mobile phones – either their own phones or those of the police officials’ phones. These calls are obviously not at the detainees’ own will and cannot be paid for either by the detainee or the police officer. This places detinutees in a particularly vulnerable situation as they will have to depend on the willingness of a fellow detainee or police officer to provide assistance – otherwise they will not be able to inform their families or legal representatives of their arrest and so their detention becomes, in effect, incommunicado detention.

Key international instruments:
• Arts. 4-6 of the African Charter on Human and Peoples’ Rights
• Rules 27-34 of the UN Standard Minimum Rules for the Protection of Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
• Principle 7 of the Basic Principles of the Treatment of Prisoners
• Art. 6 of Conduct for Law Enforcement Officials
• Principles 11 and 15-17 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers
• Rules 63-71 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (CJDLR) The Special Rapporteur on Torture recommended as follows: Health sector personnel should be instructed on the Principles of Medical Ethics for protection of detainees and prisoners. Government and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining a detainee to determine his “fitness for trial” procedures involving ill-treatment, or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse. The use of mechanical restraints: Handcuffs appear to be used in three instances – when detainees are transported (e.g. to court), in cases of “elusive offenders” and when the detainees is likely to place the life of a police officer in danger. In the last two instances, it was stated that the police are not able to assist detainees to contact their relatives or legal representative. What generally seems to happen is that officials allow detainees to use mobile phones – either their own phones or those of the police officials’ phones. These calls are obviously not at the detainees’ own will and cannot be paid for either by the detainee or the police officer. This places detinutees in a particularly vulnerable situation as they will have to depend on the willingness of a fellow detainee or police officer to provide assistance – otherwise they will not be able to inform their families or legal representatives of their arrest and so their detention becomes, in effect, incommunicado detention.

Key international instruments:
• Arts. 4-6 of the African Charter on Human and Peoples’ Rights
• Rules 27-34 of the UN Standard Minimum Rules for the Protection of Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
• Principle 7 of the Basic Principles of the Treatment of Prisoners
• Art. 6 of Conduct for Law Enforcement Officials
• Principles 11 and 15-17 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers
• Rules 63-71 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (CJDLR)
Vicky’s relatives are believed to have been found in Zomba. Vicky is alleged to have been repeatedly tortured while in detention.

• The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that:

   a. Detainees and in Mzimba these complaints are most frequently lodged directly with the police.

   b. Procedure for the Protection of All Persons under Any Form of Detention or Imprisonment states that:

   c. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture and other ill-treatment, to the author responsible to, a competent authority distinct from the place of detention or imprisonment. 19

   d. After years of monitoring places of detention, it is well-established and accepted that a lack of transparency and accountability pose a fundamental risk to detainees’ rights, in particular the right to be free from torture and other ill treatment. The Special Rapporteur on Torture is clear on this issue. The most important method of preventing torture is to ensure that the right to independent monitoring is respected, in particular in case of torture or other cruel, inhuman or degrading treatment. To the author responsible to, a competent authority distinct from the place of detention and to higher authorities and, where necessary, to appropriate authorities vested with reviewing or remedial powers.

   e. Moreover, detained people shall, subject to reasonable conditions to ensure security and good order in place of detention: have the right to communicate freely and in full confidence with external visitors.

   f. After consultation with a lawyer is an integral part of the obligation to ensure humane treatment. 16
Juveniles should be provided, where possible, with their legal advisers. Privacy and confidentiality should have the right of legal counsel and not necessarily be restricted to, the following: (a) detention and the legal status and circumstances of the presumption of innocence, the duration of the necessary and appropriate, given the requirements out below, with additional specific provisions as are is detained should be consistent with the rules set 18. The conditions under which an untried juvenile from convicted juveniles. 
detention. Untried detainees should be separated cases to ensure the shortest possible duration of priority to the most expeditious processing of such courts and investigative bodies shall give the highest requirement, it is not always possible 'due to lack of resources'. In Lilongwe, this responsibility shall be avoided to the extent possible and limited and shall be treated as such. Detention before trial awaiting trial (“untried”) are presumed innocent 17. Juveniles who are detained under arrest or from adults at all times. In Lilongwe, they are transported to court. In Mzimba, they are mixed in the visitors’ yard as well as when they are transported to court. In Mzimba, they are the interests of the administration of justice. 
juvenile is a child, the authorities should inform the parents/guardian, family, legal representative or consular representative, as the case may be, about the fact that he/she is detained. In Lilongwe, this responsibility is delegated to Social Welfare Services and PASI paralegals. In Mzimba, the police contact the probation officer when a child is arrested. In order to limit the amount of time that children spend in custody, it is essential that the police inform, without delay, the authorities are responsible for the welfare of children.

6.13 Management

Key international instruments:
- Art. 5 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Art. 10 of the UN Convention Against Torture, CSE and Inhuman or Degrading Treatment or Punishment (UNCAT, 1984) – Principles 18-20 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Rules 81-87 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNJDL)

Rule 47 of the UNSM requires that:
(1) The personnel shall possess an adequate standard of education and intelligence. (2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests. (3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

Staff training: All police officials receive basic training in detainee management, while in Mzimba they are given a one-month course on custody management. However, additional training is needed to assess the scope of the curriculum and if the curriculum deals with the relevant international instruments pertaining to people deprived of their liberty. Refresher training also appears to be sporadic rather than regular and structured. In Lilongwe, the training was provided by PASI.

Recommendations

Most detainees stay in the custody of the police for a relatively short period of time, although some do exceed the legal requirement such as the 12-year-old child who had been in Lilongwe police station for seven months. The ageing state of many Malawian police stations and the insufficient capacity and nature of cell accommodation make the situation of many of the major concerns. Sufficient funds will remain a challenge for the foreseeable future, but this should not be used as an excuse to ignore questions of reform and improvement. While infrastructure improvement may have significant financial implications to the most vulnerable, it is necessary that these should not prevent an incremental process of reform and improvement may have significant financial implications to the most vulnerable, it is necessary that these should not prevent an incremental process of reform and improvement.

1. The Government of Malawi is encouraged to submit a report to the CAT in order to assess compliance with Article 10 of the UNCAT – and should call upon the donor community and civil society for technical assistance.

2. The management of the Malawian Police Service is unable or, given its limited and demonstrable leadership in relation to the human dignity of detainees and their right to physical and moral integrity – as well in relation to transparency and accountability, which are the cornerstones of a human rights-based detention system.

3. The police training curriculum needs to be reviewed in relation to its focus on human rights standards in relation to interrogation methods, rights of suspects, treatment of people in custody and guidelines on the use of force (including firearms). The following key international instruments pertaining to crime prevention and Criminal (UNODC) may be of assistance:
- Model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice;
- Compendium of UN standards and principles on the use of force (including firearms). The following key international instruments pertaining to crime prevention and Criminal (UNODC) may be of assistance:
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All deaths in police custody must be investigated by an independent and impartial authority. Given resource constraints, this may not always be possible and under these circumstances, investigations should be monitored by the Malawi Human Rights Commission or another suitable body and the findings published.

6. Upon admission, detainees must be informed in a comprehensive and comprehensible manner about their rights and responsibilities, as well as the rules of the detention facility. This information should be displayed on a board inside the holding area where detainees would be able to read it, or it could be read to them.

7. All detainees must be brought before a court within 48 hours or as soon as possible thereafter (weekends and public holidays permitting). The officer responsible for detainees must report each case that has exceeded this limit to the officer-in-charge on a weekly basis and is available for inspection by any authorised person.

8. To protect vulnerable people:
   - Officers responsible for detainees should undergo training in how to deal with vulnerable individuals;
   - Each police station should have sufficient cell accommodation to separate detainees in respect of age and gender; and,
   - Children should not have contact with adults during custody.

Right to adequate standard of living

9. The Malawian Government, in cooperation with its partners, should investigate the medium term feasibility of a police station infrastructure improvement plan to develop accommodations that meet the minimum standards of humane detention, with specific reference to adequate capacity, ablution facilities, visitors’ facilities, eating and cooking areas.

10. The police service in Blantyre urgently requires a purpose-built station to provide staff with appropriate working conditions and detainees with suitable detention facilities.

11. Since many of the problems in relation to conditions of detention will not be resolved overnight, it is therefore recommended that the police service develops 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;
   - Basic bedding (e.g. sleeping mats and blankets);
   - At least one nutritious meal per day, including fresh fruit on a regular basis;
   - Regular fumigation of cells to control mosquitos, lice and other disease vectors; and,
   - Electric lighting in cells.

Health care

12. All new admissions must be screened for communicable diseases and injuries upon admission. Since there is a shortage of health care professionals, officers responsible for detainees must undergo basic paramedic training so they can screen new admissions, deal with medical emergencies, and conduct health inspections of facilities.

13. The lay visitors’ committee system needs to be assessed and then measures taken to strengthen it so that the committees can conduct effective inspections and file reports.

14. A standardised assessment toolkit should be developed for use by both the Malawi Human Rights Commission and the lay visitors’ committees.

Contact with the outside world

15. The complaints and requests procedure for detainees needs to be standardised to ensure that detainees have a daily opportunity to lodge complaints and requests.

16. Complaints and requests must be recorded in a dedicated register that is reviewed by the officer-in-charge on a weekly basis and is available for inspection by any authorised person.

17. The lay visitors’ committee system needs to be assessed and then measures taken to strengthen it so that the committees can conduct effective inspections and file reports.

18. A standardised assessment toolkit should be developed for use by both the Malawi Human Rights Commission and the lay visitors’ committees.

Women

19. Female detainees should only be supervised by female officers in all police holding facilities.

20. All female prisoners in need of sanitary towels must be supplied with them by the State at no cost to them.

Children

21. Infrastructure improvements should also ensure that children can be segregated from adults at all detention facilities.

22. The admission criteria for Kashere Ramond Prison may require revision in order to allow younger children to be transferred to it and prevent their detention in police stations.

23. Necessary communication procedures and channels need to be established to ensure that the Department of Social Welfare is informed as quickly as possible once a child has been arrested.

24. In urban areas where more children are arrested, it may be necessary to establish a system of ‘family finders’, whose task it will be to assist both the police and the Department of Social Welfare to locate the families of arrested children.

25. The admission criteria for Kachere Remand Prison may require revision in order to allow younger children to be transferred to it and prevent their detention in police stations.

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1. Introduction

Concerns around conditions of detention in Malawian prisons have been noted by the African Commission on Human and Peoples’ Rights (ACHPR), the media and non-governmental organisations as well as detailed in government-commissioned research. The Malawi High Court, in Gable Masangano v. Attorney General, Ministry of Home Affairs, and Malawi Prison Service expressed deep concerns about detention conditions in prisons and gave the government 18 months to improve them.1 The extent to which the Malawi Prison Service is able to comply with the High Court’s instructions will have significant implications not only for prisoners seeking relief from the courts when conditions of detention become unbearable, but also for the rule of law in general.

It was not part of the scope of this survey to interview prisoners regarding conditions of detention and treatment, but rather to assess the systems and basic infrastructure in place as they relate to conditions of detention. Prisoners’ experience of imprisonment was well documented in a 2005 government study of prisoners and offending in Malawi. 2

7.1 The prison system

Table 1 provides the basic information on the Malawian prison system with specific reference to pre-trial detention. 3

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of prisons</td>
<td>30</td>
<td>100%</td>
</tr>
<tr>
<td>Total number of prisoners</td>
<td>11,672</td>
<td>100%</td>
</tr>
<tr>
<td>Total number of pre-trial detainees</td>
<td>2,160</td>
<td>18.5%</td>
</tr>
</tbody>
</table>

Female prisoners: 152 (1.3%)
Children: 490 (4.2%)
Occupation level: 197.6%
Prison population rate (per 100,000 of national population): 73

7.2 Prisons

The survey collected data from five prisons across Malawi – namely Kachere, Mzuzu, Mzimba and Thyolo. Since sentenced prisoners and pre-trial detainees are not separated as a rule, it was not possible to make rigid distinctions between these two categories of prisoners and the same conditions apply essentially to both. Table 2 summarises the information that was collected on the date of the research visit to each prison.

TABLE 1

<table>
<thead>
<tr>
<th>Prison</th>
<th>Nr. of detainees</th>
<th>Nr. of women</th>
<th>Nr. of children</th>
<th>Longest in custody</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kachere</td>
<td>33</td>
<td>0</td>
<td>32(7)</td>
<td>2 years and 6 months</td>
<td>There are reportedly no children, only juveniles.</td>
</tr>
<tr>
<td>Mzuzu</td>
<td>895</td>
<td>22</td>
<td>0</td>
<td>4 years and 12 months</td>
<td>4 infants with their mothers.</td>
</tr>
<tr>
<td>Mzimba</td>
<td>46</td>
<td>10</td>
<td>0</td>
<td>7 years and 13 days</td>
<td></td>
</tr>
<tr>
<td>Thyolo</td>
<td>64</td>
<td>0</td>
<td>0</td>
<td>2 years</td>
<td></td>
</tr>
</tbody>
</table>

TABLE 2

As far as could be established, there are no recent peer reviewed publications dealing with criminal justice reform in general and pre-trial detention in particular. A 2005 study dealt with prisoners’ experience of imprisonment as well as offending and re-offending patterns4 and there have been a number of health studies looking specifically at TB and HIV and AIDS in the prison context.2

Detainees right to physical and moral integrity

Key international instruments:

- Art. 5 of the Universal Declaration of Human Rights (UDHR);
- Art. 7 of the International Covenant on Civil and Political Rights (ICCPR);
- Arts. 2 and 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT);
- Arts. 2 and 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Rule 10 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR);
- Principle 1 of the Basic Principles for the Treatment of Prisoners;
- Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Rule 87(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDLR);
- Principle 10 of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Prohibition of torture and ill treatment: Malawi acceded to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on 11 June 1996, but has unfortunately never submitted an initial or periodic report to the Committee against Torture (CAT) as required by Article 19 of the Convention. Neither has a report been submitted in respect of the International Covenant on Civil and Political Rights (ICCPR). A review of such reports would have enriched the data presented here.

SURVEY OF CONDITIONS OF DETENTION IN PRISONS

By Lukas Muntingh
The State is also responsible for preventing inter-State violence and it treatment. Moreover, the State’s obligations extend beyond that of its own officials since it has a duty towards non-State actors – in this case all police officers. The CAT has been clear in this regard: The Committee has made clear that where State authorities or others acting in official capacity cause serious injury or death, non-State officials working with people deprived of their liberty should be informed and educated about the absolute prohibition of torture. This training was part of the course at the Prison Training School and periodic lectures are given by officers-in-charge. However, the exact content and frequency of these lectures were not established.

Deaths: The investigation of deaths in custody is initiated by the officer-in-charge, who informs the health authorities and an inquest is subsequently conducted by a magistrate. Deaths must be reported within 12 hours.

Expiration of warrants: The detention of a person may only be carried out in strict accordance with the provisions of the law and as authorized by competent officials or people authorized to act in their capacity. If the detained person is under escort, the authorities must carry out the detention with care and in accordance with the principles respecting the rights and fundamental freedoms of the detained person to understand his/her rights and the guarantees to which he/she is entitled.

Upon admission a prisoner’s valuables and cash are handled over to officials and recorded in the remand register. A column in the register lists the items and cash and the detainee signs for them. The officer-in-charge then issues receipts and gives them to the detainee. The detainee can keep the money on him. In Kachere, if the detainee has no family to sign for him, the officers-in-charge sign for him. At Maula, the family must sign for the cash and valuables, which are then returned to him – for example, upon his release. Cash is kept in the cash chest and at Thyolo this is recorded in a separate register. Children: Children present a particularly precarious group in custodial settings and therefore it is essential that the authorities responsible for the welfare of children are aware of the rules they are subject to and the duties that rest with the State to inform prisoners of the rules of the establishment as well as their rights and responsibilities. It is important that detained people are informed in a way that they understand and can follow, whether in writing or orally. It is therefore essential that authorities inform prisoners of their rights and responsibilities.

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If prisoners are carrying medication when they are admitted, they should see a health care practitioner, who must decide if the prisoner can take their medication. A detainee of the Phalombe police station produces a ‘medical passport book’ – issued by the Department of Health and used to record diagnosis and prescriptions – which can then be handed by the clinic and medical officer, who will decide how the medication will be managed.

Property belonging to a prisoner:

Key international instruments:

- Rule 43 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)
States are under the obligation to ensure that people deprived of their liberty shall be treated with humanity and with due respect for the inherent dignity of the human person.

Available cell capacity and occupation: Since sentenced and unattended prisoners are not separated, occupation levels are calculated for the total prison population. All five prisons in the study have occupied their cells beyond their specified capacity with Kachere at 200% occupation, Mzuzu at 296%, Thyolo at 276% and Mzimba at 248%. These high occupancy levels resulted in available floor space per prisoner of less than 2.5 m². In Thyolo, it was only 0.2 m². This is well below what can be regarded as the absolute minimum space per prisoner (3.5–4.5 m²). Cubic space was equally limited. Even if prisoners were outside of their cells for the full 10 hours per day, the amount of space occupied by their bodies at any point in time would result in cells with volumes of less than 2.5 m². In Thyolo, it was only 1 m².

The prisoners are outside of their cells for most of the day. However, in Kachere prisoners are usually confined to their cells on a regular basis (monthly) and ash is used to deter red ants, while weeding and the drainage of stagnant water occur at Thyolo. In Mzimba, the presence of vectors is reported to the District Environment Officer but it is not clear whether this official takes any steps to address the problem. Despite these efforts, the general level of overcrowding places a severe strain on the prison system and more particularly on hygiene standards.

Quality of infrastructure and building: The buildings were assessed to be in acceptable condition. Roofs were not leaking and walls were not cracked. However, in Mzimba the floors of many cells are very rough and prisoners are required to sleep on the floor due to the absence of beds. These conditions should be addressed against the backdrop of the ageing and insufficient infrastructure of Malawi’s prisons.

Lighting and ventilation: The cells have enough windows to allow for ventilation but with occupancy levels in excess of 250 percent, it is doubtful that the ventilation will be sufficient. It was also noted in Mzulu that there are a lot of ‘dust hangings’ – a combination of dust, cobwebs – in the cells. The cells in all five prisons had electric lights, which reportedly provided sufficient light, but this could not be confirmed as the fieldwork was conducted during daylight hours. Natural light during the day was abundant.

Supervision of prisoners: The overall impression is that the officials on duty at night retreat to the perimeter and there is no active supervision of the prisoners in their cells. This obviously places vulnerable prisoners at risk of victimisation as there is no direct supervision, or control, or would take a considerable time to respond. A 2005 study reported high levels of inter-prisoner violence,18 which is enough of a reason to advocate for more active supervision by officials.

Access to ablution facilities and drinking water: In Maua and Mzuzu, there are flush toilets inside the cells but at Kachere three toilets are outside so during the night a ‘movable toilet bin’ is placed in the cell. The level of overcrowding at Maua and Mzuzu is so severe that one toilet must serve 150 and 150 prisoners respectively at night. In Maula, there are more than five times less toilets than the norm of one toilet per 20 personnel. Nonetheless, the toilets were clean and in good working order. In Mzimba, the prisoners have developed their own rules for keeping the toilet clean under the supervision of the warders. However, in Thyolo, the toilets are neither sufficient nor in good working order as the sewer line next to the cells is broken. Shower facilities are available at all five prisons, either inside or outside the cells. At Mzuzu and Thyolo soap is handout twice per month, while at Kachere soap is provided by religious groups but it was not established if the amount of soap provided per prisoner is sufficient. At Kachere, scissors and razor blades are provided to detainees (juveniles) who want to shave but these are withdrawn after use for fear of violence. From the data it is not clear if razor blades are provided but it was reported that at Mzimba all detained (juveniles) received a shave. A 2005 study on the transmission of HIV in Zambian prisons found, amongst others, that 63 percent of prisoners reported sharing razor blades;19 and similar findings were also reported in a study at a select number of Malawian prisons.20 However, accurate figures relating to the sharing of razor blades among Malawian prisoners are not available.

Access to recreation and religious services: While prisoners are out of their cells for most daylight hours, recreational facilities are lacking. At Mzuzu, prisoners are permitted to go outside but pre-trial detainees must remain inside where there are no recreational facilities. All prisoners appear to have unrestricted access to religious services and it was reported that a number of religious groups visit the prisons. Mzuzu also has a prison chapel.

Unless otherwise noted, all information regarding Malawian prisons is based on a fieldwork conducted in 2009.21

The right to adequate nutrition and water is fundamental to the right to life and the UNCSHR, in Rule 20, requires that:

(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

General prison conditions and specifically diet was the focus of the 2009 case of Gable Masangano vs. Attorney General, Ministry of Home Affairs, and Malawi Prison Service.22 In this case the applicants objected to the one meal that was served per day and the High Court agreed that three meals should be served. The monotonous diet also did not escape the Court’s attention.

We would however wish to encourage the Respondents to remove the monotony in the meal/food plans or beans diet by diversifying within the options given in the Third Schedule of the Prisons Act. We make these observations and comments not because the Respondents have fallen below the national or international standards, which we think they have not, but because of the realization that we need to raise the prisoners’ expectations and to avoid them taking some progressive steps through policy.

Diet: Three meals are served per day, but the intervals between the meals are both short and too long. In Maua, the interval between breakfast and lunch is only 1 hour and dinner three and a half hours between dinner and the next breakfast six and a half hours. By comparison the South African Correctional Services has an interval of not less than four and half hours and not more than six and a half hours, except that there may be an interval of more than eight hours between the evening meal and breakfast.22

In the actual terms of diet, it really is fairly monotonous – consisting of a combination of rice porridge, pigeon peas, maize and beans, although beef is reportedly served once every fortnight in

Key international instruments:

- Art. 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Art. 17 of the International Covenant on Civil and Political Rights (ICCPR)
- Rule 47 of the Standard Minimum Rules for the Treatment of Prisoners (UNSCR)
- Council of the Developmental Assistance Committee (DAC)
- United Nations Rules for the Protection of Juvenile (JDLR)

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Preparation of food: Food at Kachere, Mzuzu, observed at all five prisons. Receive ‘special grand maize meal’ while at Mzimba, prisoners with stomach ulcers care schemes receive medically prescribed meals, not possible at Mzuzu due to a lack of resources. At Kachere, medically prescribed meals are supplied by relatives or prison officers, such as the prisoner from outside and this is normally done for them to supply them with fresh fruit and vegetables. Mzuzu is a prison farm, it is also able to supplement the diet with fresh fruit and vegetables but at Kachere and Maula prisoners are dependent on NGOs and family members to supply them fresh fruit and vegetables.

Pre-trial detainees are permitted to purchase food from outside and this is normally done for them by relatives or prison officers, such as the prisoner from outside and this is normally done for them to supply them with fresh fruit and vegetables. At Mzuzu, fetching firewood, often from far away, places an added financial strain on the prison service due to the continuous deforestation should not be underestimated._fetching firewood, often from far away, places an added financial strain on the prison service due to the continuous deforestation should not be underestimated.

Water: Water for the five prisons is supplied by the local authority (e.g. Lilongwe Water Board) and from boreholes. The cells at Kachere and Maula do not have taps and prisoners have no access to water in containers overnight. The cells at Mzuzu and Mzimba have taps inside, while only one cell in Kachere has taps but renovations are underway to install taps in all cells. The use of containers to keep water overnight poses a risk of waterborne diseases as the cleanliness of containers cannot be assured, especially in the absence of detergents and in severely overcrowded cells.

Clothing and bedding

7.7 Clothing and bedding

Key international instruments:

- Rules 17-18 and 88 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 38 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (CJDLR)

Bedding: Prisoners are not supplied with beds. Mattresses are provided at Kachere but prisoners only have blankets at the other four prisons. Given the condition of the floors, this is a less than satisfactory situation.

7.8 Health care

Key international instruments:

- Art. 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Rules 22-29 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR) medical services
- Rule 26 of the Basic Principles for the Treatment of Prisoners
- Art. 6 Code of Conduct for Law Enforcement

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- Rule 26 of the Basic Principles for the Treatment of Prisoners
- Art. 6 Code of Conduct for Law Enforcement

Bedding: Prisoners are not supplied with beds. Mattresses are provided at Kachere but prisoners only have blankets at the other four prisons. Given the condition of the floors, this is a less than satisfactory situation.

In other research, the following have been identified as common illnesses and ailments suffered by Malawian prisoners: tuberculosis, scabies, diarrhoea, sexually transmitted infections, coughs, malaria, malnutrition, tuberculosis, and bilharzia. Screening and access to services: The medical services aim to ensure that communicable diseases are detected and prevented from spreading into the general prison population.

However, newly admitted prisoners are not properly screened nor do they undergo a health status examination, although prison officers do reportedly perform a ‘layman’s screening’. It is only when a prisoner complains or is visibly sick that he is taken to a clinic or hospital. If the prisoner has a medical passport, this will be consulted. None of the prisoners have their own medication. Since Mzimba has a microscope that is used to screen for TB and sick or injured prisoners are taken to government hospitals, the prison service does not have their own medical facilities they do not have access to basic services. This is of great concern as even minor problems or symptoms are not reported to be TB, malaria, and HIV and AIDS - conditions that can be effectively managed and to a large extent prevented on site through established and proven practices. Instead, prisoners remain totally reliant on the public health care system for all health care services.

Inspections: During the fieldwork, the researchers enquired whether the prisoners are regularly inspected to check for degrading or humiliating. Such clothing shall in no manner be suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be suitable for the climate and adequate to keep him in good health.

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Inspections: During the fieldwork, the researchers enquired whether the prisoners are regularly inspected to check for degrading or humiliating.
The constitutional mandate does not provide for an independent Prison Inspectorate. The lack of presence by the Prisons Act, as indicated in 2004, is therefore commendable, though it is not overpowering. While the Constitution advocates for an independent structure, there is room for compromise for a number of reasons. Firstly, the capacity of the Inspectorate is not sufficient to ensure a continuous presence on a part-time basis without a Permanent Secretariat. This has seriously affected the fulfillment of its mandate. The Inspectorate was reconstituted in 2004. The attempts to strengthen the operations of the Inspectorate were limited. In 2004, the Inspectorate’s independence was enhanced. While it was reported that this is not done, it is also reported that cell leaders (known as nyapala) are employed to exercise control over the prisoners in cells and informants about activity in the cells. No data was collected in the inspection report to determine if the Inspectorate is capable of fulfilling its mandate.

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The overall impression is that prisons are not inspected by health care practitioners.

Deaths: While no deaths due to unnatural causes were reported in 2010, 14 prisoners died at Maula and 12 at Mzuzu due to natural causes. No deaths were recorded at Kachere.

HIV and TB: Efforts to combat the spread of HIV and TB appear to be limited in the five prisons. Periodic information sessions are conducted at Kachere and Maula by counselors and prisoners are encouraged to take medical care and go for voluntary counseling and testing. But no activities are undertaken at Mzuzu to combat the spread of HIV and AIDS. Prisoners who require ARV treatment access this through the Lighthouse Programme at district hospitals, while prisoners diagnosed with TB are taken to district hospitals where they receive treatment. However, further investigation is required to ascertain if there is continuity of treatment when released.

Disabled prisoners: There is very little, if any, provision made for the needs of physically disabled prisoners. Indeed, only Mzuzu prison made any effort by using St. John of God environmental officer is part of the court user group. Periodic information sessions are conducted at Maula but not at the other prisons – in violation of Rule 8 (b) of the UNSMR. However, men and women are separated.

Prevention of contraband entering prison: All prisoners are searched upon admission but no incident register is maintained to record confiscated items, except at Thyolo. In the Prisons Inspectorate, the Malawi Human Rights Commission and PASI paralegals do investigations, the regularity of these inspections is limited and reported to be open to manipulation. It was also confirmed that no prisoner is reported to have been transferred to Zomba Central prison.

Enforcement of discipline and punishment: Rule 28 of the UNSMR states that: 

‘No prisoner shall be employed, in the service of the prison, in any capacity, disciplinary or otherwise, as a punishment or in the exercise of an inculpable, in any disciplinary, capacity. Any practice which is employed, or punishment incapacitates the student or employee or the prisoner, in the exercise of an inculpable, in any disciplinary, capacity.

While it was reported that this is not done, it is also reported that cell leaders (known as nyapala) are employed to exercise control over the prisoners in cells and informants about activity in the cells. No data was collected in the inspection report to determine if the Inspectorate is capable of fulfilling its mandate.

The establishment of psychological torture methods is a violation under international law: corporal punishment; lengthy solitary confinement, etc. for the purpose of obtaining confessions, or as a form of punishment affecting diet (unless approved by a medical officer); long term shackling of prisoners to prevent escapes. In most cases, victims of solitary confinement are prisoners who are unhappy with a punishment imposed on them or who have complained to the prison authorities.

The disciplinary code applicable to prisoners is described in the Prisons Act and Standing Orders and it is doubtful if prisoners are familiar with this. Given that the rules of the prison are not displayed and that prisoners develop their own rules, it must be assumed that the disciplinary process is open to manipulation. It was also confirmed that no prisoner is reported to have been transferred to Zomba Central prison.

Use of force: Force is reportedly used to ‘prevent juveniles from fighting’ in Kachere, and to prevent escapes. Electric shock batons are used, while firearms are also employed. The use of force may only be authorised by the commanding officer. There is no compulsory medical assessment following the use of force and it is only if the prisoner complains that the weapon must be taken to a hospital. At Kachere, a register is kept of the use of force, which records the name of the commanding officer. However, no data was collected in the inspection report to determine if the Inspectorate is capable of fulfilling its mandate.

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Contact with the outside world

Key international instruments:

Rules 37.38, 90 and 92.3 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)

Principle 15.30 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

Rules 5.12 of the National United Nations Rules for the Protection of Juveniles Deprived of their liberty (JDLR)

Art. 276(b) of the Convention on the Rights of the Child

The data reveals different practices at different prisons. At Kachere and Maula, detainees can contact their families or diplomats through the fence. At Mzuzu, this is done by paralegals (presumably prison officers). Similarly, detainees are able to consult with a legal representative.

Contact with diplomatic representatives for foreign nationals is reportedly facilitated by PASI at Kachere, and elsewhere by the immigration department. Detainees are permitted newspapers and magazines at their own cost. Newspapers and magazines are also brought by relatives and NGOs. However, in Mauza, newspapers and magazines are not permitted in the cells. Detainees are permitted to contact their family and their lawyer. Access to a legal representative is only one detainee and his visitor(s) are allowed to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or legal representatives.

A detained person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the members of his family and shall be given adequate opportunity to communicate with his family and friends, and for receiving visits from them, subject only to reasonable restrictions as are necessary in the interests of the administration of justice and of the security and good order of the institution.

Rules 37 and 92 of the UNSMR provide for family contact and Rule 38 provides for the right of detainees to contact their consulate or a diplomatic representative. Rule 39 lays down the right to be kept informed of important news.

In the event of an emergency, while in Mzimba district for example, the detainees are informed upon admission that they have the right to communicate with the outside world. Direct communication is facilitated by a speakerphone setting is activated, presumably so that detainees can contact their families or their lawyer. Access to a legal representative may not be restricted as a disciplinary measure and this was the case at all five prisons.

Information from outside: Radios are available at all prisons – either individually or through a centrally controlled speaker system (Maula). Detainees are permitted newspapers and magazines at their own cost. Newspapers and magazines are also brought by relatives and NGOs. However, in Mauza, newspapers and magazines are not permitted in the cells. Detainees are permitted to contact their family and their lawyer. Access to a legal representative is only one detainee and his visitor(s) are allowed to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or legal representatives.

Punishment (UNCAT)

• Art. 8 of the Declaration on the Protection of the Human Person from Ill-Treatment and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Special Rapporteur on Torture is clear on this issue:

“The most important method of preventing torture to replace the paradigm of opacity by the paradigm of transparency by subjecting all places of detention to independent outside monitoring and scrutiny. A system of regular visits to places of detention by independent inspectors and other independent outside monitoring and scrutiny raises questions about the accessibility of prison information. However, if all outgoing correspondence is monitored and potentially censored, it raises questions about the accessibility of external bodies. Inspections: The Prisons Inspectorate, the Human Rights Commission and third-party inspections. In Mzuzu, the Inspectorate does quarterly visits. However, since the Inspectorate’s last annual report was published in 2004, it is uncertain how progress is monitored. The Parliamentary Legal Affairs Committee may visit the prisons, while the court committee visits the Mtizimba prison. None of the other prisons made reference to any external body visiting them. It was confirmed that prisons are able to communicate freely with the members of any visiting body.

Complaints mechanism: Prisons have the responsibility to look after complaints on a daily basis with the prison welfare officer, who refers them to the legal department. A legal representative may not be restricted as a disciplinary measure and this was the case at all five prisons.

The nyapalas also function as a complaints mechanism and that they route complaints to the officials. This is an undesirable practice for a number of reasons, primarily because it is the duty of officials, and not certain selected prisoners, to receive and deal with prisoner complaints in confidence.
Women in prison

A 2005 study on Malawian prisoners asked female prisoners what they regarded as key health issues and the following were noted: cramped living conditions; sharing blankets; lack of mosquito nets; sleeping on the cold floor; poor hygiene and sanitation; poor bathing facilities and materials; poor hygiene in the toilets; lack of books and magazines; poor diet; and, lack of exercise. A more focussed assessment on the treatment of women in prison may be required.

Segregation: During the fieldwork, many good practices were also highlighted – such as ample time out of the cells. Due to the fact that sentenced and unsentenced prisoners are not segregated, the recommendations apply across the board and are specifically reflect human rights standards as articulated in the international instruments. Refresher training is essential to ensure sustained improvements in the provision of human rights standards. The following resources produced by the UN Office on Drugs and Crime (UNODC) can provide assistance:

Pre- and post-natal care: At Mzuzu, the prison dispensary nurse assists detainees in need of pre- and post-natal care, but at Mzuzu these women are dependent on well-wishers and donors. Pregnant women are taken to district hospitals to give birth. Nutritional supplements are available for breastfeeding mothers and infants but only if they are donated. In Thyolo, supplements were given in the past but this has not happened since 2010.

Sanitary towels: The provision of sanitary towels to female prisoners appears to be practiced consistently. They are supplied by the service at Mzuzu, Mtimba and Thyolo as well as by religious groups. At the other prisons, they are entirely dependent on donations.

Children (juveniles) in prison

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNJDL) set out detailed provisions for the detention of children, including segregation from adults.

Segregation: Only Kachere prison detains children and no adults are detained there. No firearms are carried inside Kachere yard. When there is a need, a government social worker visits the prison. The management has acknowledged that it was not following how regularly the social worker visiting and how long it takes to respond to a request for a consultation.

Management

Staff training: From the available information it does not appear as if officers receive training specifically on juvenile detainees but only general training. However, staff at Kachere did receive training from the National Juvenile Justice Forum in 2002. Refresher training also appears to be sporadic and at Kachere this was last conducted in 2009. At Mzuzu refresher training is organized by NGOs but no details were given about when the last course was run. Similarly, no recent examples of refresher training were reported at Mzuzu.

Staff to prisoner ratio: Since sentenced and unsentenced prisoners are not segregated, the ratio reported reflects the total number of prisoner at a particular prison. At Kachere the ratio was 1.71; at Mzuzu 1.67; at Thyolo 1.3; and at Mzuzu, it was massive at 1.55:1.

Recommendations

While a broad range of challenges were identified during the fieldwork, many good practices were also highlighted – such as ample time out of the cells. Due to the fact that sentenced and unsentenced prisoners are not segregated, the recommendations apply across the board and are aimed at ensuring minimum standards of human detention. The recommendations are based in cognizance of current resource constraints and also acknowledge that one of the main causes of the challenges is the size of the prison population, something that the Malawi Prison Service has little control over. Together with its partners, the Malawi Prison Service needs to seek and advocate for alternatives to excessive and prolonged pre-trial detention. It should similarly aspire to increase self-sufficiency and seek more environmentally-friendly, low-cost and low-tech solutions to some of the practical challenges relating to conditions of detention.

Right to physical and moral integrity

1. The Government of Malawi is encouraged to submit its initial report to the CAT in order to ensure compliance with Article 10 of the UNCAT and should call upon the donor community and civil society for technical assistance.

2. The management of the Malawian Prison Service must provide assertive and demonstrable leadership in relation to the human dignity of detainees and their right to physical and moral integrity – as well in relation to the human right to non-refoulement, which are the cornerstones of a human rights-based detention system.

3. The prison service training curriculum needs to be analysed and adjustments made to specified areas. The recommendations are elaborated as articulated in the international instruments. Refresher training is essential to ensure sustained improvements in the provision of human rights standards. The following resources produced by the UN Office on Drugs and Crime (UNODC) can provide assistance:

Key international instruments:

• Art. 4 of the UN Standard Minimum Rules for the Protection of Prisoners (UNSMR)
• Art. 10(2)(b) of the International Covenant on Civil and Political Rights (ICCPR)
• Rule 8(d) of the UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty (C/81-87)
• Rule 47 of the UNSMR
• Rule 40 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
• Art. 10 of the UN Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
• Art. 13 of the UN Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
• Rules 35-36 of the UN Standard Minimum Rules for the Protection of Prisoners (UNSMR)
1. A warrant is about to expire.

2. Compliance. The Prisons Inspectorate can play and the prison service must jointly ensure strict warrants must be avoided and the courts monitored by these institutions and the recommended that all deaths should also be conducted by an independent body. Given

5. The investigation of deaths in custody should be required once the Prisons Bill (2003) is enacted.

39. UN rules for the treatment of women offenders. 39

• Handbook for prison leaders; and,
• Handbook on prisoner file management;
• Handbook for prison managers and
• Handbook on prisoners with special needs;
• Rules 72-78 of the United Nations Rules for Detention or Imprisonment

6. The detection of pre-trial detainees on expired warrants must be avoided and the courts and the prison service must jointly ensure strict compliance. The Prisons Inspectorate can play a valuable role in cooperation with the judiciary, while a system should also be devised and implemented to provide an early warning when a warrant is about to expire.

7. Upon admission, a detained person must be informed in writing of the rules of the institution, the disciplinary code and procedures, and any other matters that will help him to understand his rights and responsibilities. They should equally be informed of their fair trial rights, the fact that they may challenge their detention, and have access to legal representation. A signboard detailing this information should be placed inside the prison yard and where it is visible to all detainees.

8. When children are detained, the prison service should inform the Department of Social Welfare without delay of the child’s presence – even if this is only to confirm that the department is aware of the child’s detention. A record of the child should be made in the remand register.

9. While the long-term solution to overcrowding lies with other agencies in the criminal justice system, the Malawi Government, in cooperation with its partners, should investigate the medium term feasibility of a prison infrastructure improvement plan in order to establish an accommodation that meets the minimum standards of humane detention.

10. The prison service should ask for research to be conducted to identify low-cost and low-tech sustainable solutions that will assist in improving conditions of detention. Particular attention should be paid to finding alternatives for electricity and toilet water (e.g. solar and bio-gas) as well as enhanced food production, dietary improvements and affordable detergent.

11. A number of problems related to the conditions of detention will not be resolved overnight, it is therefore recommended that the prison service develops a time bound plan of action that can be monitored to incrementally improve conditions of detention, as per the Masangano decision, including providing:

• Access to clean drinking water in cells;
• Access to abolition facilities 24 hours a day;
• Basic bedding;
• A nutritious diet, including fresh fruit;
• Sufficient quantities of soap and other detergents; and,
• Regular fumigation of cells to control mosquitoes.

12. Future prison building programmes and the upgrading of existing facilities should ensure that sentenced and unsentenced prisoners can be segregated.

13. The rules of the prison and disciplinary offences, as well as the disciplinary process, should be displayed on a board where it is visible to all prisoners.

14. The disciplinary system for prisoners needs to be formalised and records accurately maintained.

15. Prisoners should be actively supervised by officials, especially at night, while the role of the nyapalas in daily prison management requires further investigation.

16. All incidents involving the use of force need to be recorded in a designated register at all prisons and these should be reported to the Prisons Inspectorate.

17. All inmates subjected to the use of force must immediately undergo a medical examination.

Contact with outside world

18. Infrastructure improvements should incorporate adequate facilities for visitors and prisoners.

19. New admissions should be permitted to make at least one phone call or send one SMS at the State’s expense to inform relatives or legal representative of their detention. Where it is not a practice, prisoners should be provided with paper and envelopes to correspond with relatives.

20. Paralegal services should be available to all pre-trial detainees on a regular basis.

Complaints, requests and inspections

21. The Prisons Inspectorate should be provided with the necessary resources and training so that it can fulfill its broad mandate by playing a greater role in promoting awareness about, and actively monitoring, prison conditions.

22. Whether inspections are conducted by internal or external inspection there needs to be a specific schedule to ensure consistency and continuity and to provide the officer-in-charge with appropriate feedback – since the overall purpose of inspections is to provide a basis for dialogue aimed at resolving problems.

23. A lay visitor’s scheme should be established for every prison so that visitors can inspect, report on, the conditions of detention and the treatment of prisoners. 40 A training programme should be developed and selected individuals trained to be independent prison visitors.

24. All prisoners should have the opportunity on a daily basis to lodge complaints or make requests. A register for this purpose should be maintained and reviewed by the officer-in-charge on a weekly basis.
25. Complaints to external bodies should not be subject to censorship.

Women

26. All pregnant women, breastfeeding mothers and infants must receive nutritional supplements, especially if the diet is not sufficiently varied.

27. All female prisoners in need of sanitary towels must be supplied with them at no cost to them.

Management

29. A comprehensive cost analysis of improvements in the prison system should be undertaken in order to accurately inform the budget of the prison service. The analysis should make provision for recurring operational expenditures (i.e. daily care of prisoners), large infrastructure projects, and the costs of staff capacity development. The costing should also be informed by the 2003 Prisons Bill and the Gable Masangano decision.

30. While it may be one solution to fill vacant positions, such a decision should be carefully considered in the light of efforts to reduce the size of the prison population and in particular the pre-trial detainee population.

31. The prison service and its partners in the criminal justice sector should consider the establishment of a police-court-prison liaison function supported by a clear set of performance monitoring indicators to be used on a continuous basis to measure the impact of the function. Monitoring should focus on the (a) number and profile (i.e. locality, age, charge, gender) of children in detention; (b) duration of pre-trial detention; (c) granting of bail; and, (d) expiration of warrants.

32. The prison service should consider the development of a legislative compliance toolkit in view of the Gable Masangano decision and the 2003 Prisons Bill.

CASE FLOW MANAGEMENT RESEARCH

By Joan Redpath

1. Introduction

The estimation of time periods spent in custody by accused people in the criminal justice system in Malawi was the primary objective of the case flow management section of this report. In addition, it was hoped that analysis might reveal the characteristics of the remand population, as well as the characteristics of people being arrested and being brought before the courts.

Methodology and limitations

The estimations of time periods and analysis of the characteristics of the remand population are reliant on sources of data that are usually kept in the institutions of the criminal justice system. The four institutions targeted in this research were the police, the courts (subordinate and High Court) and the prisons – all of which keep registers. In general, a sample of 40 from each register was chosen for each year back to 2006 to allow for some entries to have missing data and for the sample still to be sufficiently large.

A smaller sample of 40 for the entire period 2006-2011 was drawn from the High Court, these courts process fewer cases each year. Although eight sites were targeted, data was only available for institutions in six of the targeted sites at the time of analysis.

Fieldworkers were instructed to record a random sample for each available year of the relevant register (custody diary in the police, court register in the courts, and remand prison register in the prisons) dating back to 2006. The random samples were chosen by establishing how many entries there were in the relevant register in a year and then dividing by 40 to determine the selection interval. Details from each randomly selected entry were recorded from the relevant register and also from any associated documentation.

In particular, in the courts it was necessary to locate the relevant case files for each randomly selected entry to establish much of the information required in the dataset, while in the prisons the relevant warrants associated with the remand record selected had to be perused.
Unfortunately, the dates necessary to measure time periods were missing in a great deal of the data. In many of the sites, the prison dataset yielded very few records in the large sample for which time periods could be calculated, as the date of release was not systematically recorded in the remand prison register and expired warrants were not available. Therefore, the calculated prison time periods should be treated with caution and checked against estimates of time periods calculated from the court data. However, in the courts, case files were frequently missing or not available, which also vastly reduced the number of observations for which time periods could be calculated. Relevant information that may have provided rich detail on the criminal justice system, such as bail, surnames, plea and the like was missing from the majority of the court data collected.

At the outset it was intended that there would be a large enough representative sample of sites to make a reliable estimate of average time periods in the various stages of the criminal justice process for the whole of Malawi, as well as an accurate description of the characteristics of the people before these observations. However, given the limited number of observations with the necessary dates and the starkly different results emerging from the various sites, the decision was taken to present the data starkly different results emerging from the various sites, the decision was taken to present the data on each site separately. Therefore, results are presented by site in alphabetical order.

The table describes the time periods measured (e.g. at a police station – the time from detention to admission and presents the calculations for each time period – the number of days, the mean (for the average), the minimum in the sample (the shortest number of days), the first quartile (the number of days that a quarter of the sample was less than), the median (the middle number of days), the last quartile (the number of days that a quarter of the sample was more than) and the maximum (the longest number of days).

For each site, data is also presented on the characteristics of the population in the relevant region, tribe amongst remand admissions are reported on, these are compared to the relevant regional or national population figures as obtained from the website of the National Statistical Office of Malawi (http://www.nso.malawi.net/).

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### Blantyre

**Population**
- Site: Police
- Population: 1322
- Years: 5
- Average turnover: 1322

**Time Period**
- Observation to release: 33
- Filing to first appearance: 15

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### Chichiri Prison

**Population**
- Site: Police
- Population: 1322
- Years: 5
- Average turnover: 1322

**Time Period**
- Observation to release: 33
- Filing to first appearance: 15

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### Results

**Malawi**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 1**

**Table 1**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Table 2**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 2**

**Table 3**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 3**

**Table 4**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 4**

**Table 5**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 5**

**Table 6**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 6**

**Table 7**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 7**

**Table 8**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.

**Figure 8**

**Table 9**

- The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days. The average time spent by remandees in police detention in Blantyre was 2 days and the maximum was 36 days.
Around 91 percent of the sample was male and 1 percent female. The sex of the rest was not recorded. Neither age nor tribe was recorded in the Blantyre prison dataset.

**Blantyre Courts**

Data was available from both the Blantyre subordinate court and the High Court. However, information was missing. There was insufficient information on bail, outcomes and sentence at the Blantyre subordinate court (90% of data missing) to report on these issues.

However, it was possible to report on the available data in the High Court, where at least 15 percent of charges in the sample were ultimately withdrawn (even though 50% of the data was missing). Given the exceptionally long time periods suggested by the data for the Blantyre High Court, it is of great concern if remand prisoners spend long time periods in prison only to have their matters withdrawn. Information was also available on sentencing, which ranged from a suspended sentence to life in prison.

**Blantyre Police**

Regarding the reasons for release from the Blantyre police, it seems that the police do make good use of bail, with 47 percent of detainees being released on bail.

**Kasungu**

Data was available from the relevant entities in Kasungu (there is no High Court in Kasungu).

The median time period for release from police detention is two days, suggesting that half of the detainees spend more than two days in custody at Kasungu police station. The fourth quartile indicates that a quarter spend more than five days in police detention. The subordinate court time period estimates are longer than the estimates from the prison data.
longer in police custody before being transferred to Kasungu prison.

Among the remandees in the sample of 160, it was not known whether the majority had been released or not (88%) or whether they had not yet been released at the time the data was collected in May 2011. The earliest admission date among these remandees was 2007 (more than 1,000 days on remand), which suggests that the court time period data is a better indication of time periods spent in Kasungu prisons by people admitted on remand than the prison time periods, especially as the court data indicates that most accused were not granted bail.

Kasungu Court

The Kasungu court data suggests that most of the accused (82%) whose cases are brought before the Kasungu court do not have bail granted to them. This is particularly important considering that the outcomes in this court show that only 41 percent were convicted, while 30 percent of cases were withdrawn and 13 percent ended in an acquittal or with a discharge.

Kasungu Court Bail

Kasungu Police

Kasungu Police reasons for release

Kasungu Police

Kasungu Police Sentence

Kasungu Police

Maula Prison

Maula prison serves the central region and has an average yearly turnover of 2,979 remandees. While there were 240 observations from Maula prison, only 46 had both an admission and a release date in the dataset (or 19%). If it is assumed that these 46 are representative then it is possible to estimate time periods spent in Maula prison by remandees over the last six years. The average time period spent by remandees in the sample whose admission and release records were recorded was 61 days. However, this average masks a great deal of variation. The minimum time period is less than a day, while the maximum
The following table suggests that the 20-29 year age-group is over-represented amongst the Maula prison population.

## Maula admissions on remand: age

<table>
<thead>
<tr>
<th>Age</th>
<th>Male prison admissions (%)</th>
<th>Malawian population (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>24</td>
<td>15</td>
</tr>
<tr>
<td>18-29</td>
<td>44</td>
<td>44</td>
</tr>
<tr>
<td>30-39</td>
<td>20</td>
<td>25</td>
</tr>
<tr>
<td>40 or older</td>
<td>10</td>
<td>12</td>
</tr>
</tbody>
</table>

Almost every remand in the Maula sample was charged with one offence (99%). Theft accounted for more than a third of offences, while 13 percent were charged with being prohibited immigrants, 2 percent with defilement and another 2 percent with 'rogue and vagabond'. The Yao and the Lomwe from the south were over-represented in Maula, as were foreign nationals.

## Maula admissions on remand: tribe

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Male prison admissions (%)</th>
<th>Central region population (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chewa</td>
<td>45</td>
<td>70</td>
</tr>
<tr>
<td>Ngoni</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Lomwe</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Foreign</td>
<td>9</td>
<td>&lt;1</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>5</td>
</tr>
</tbody>
</table>

## Lilongwe Court

Data was only available from the Lilongwe subordinate court and only then from a single year (2011). Data on bail, outcomes and sentencing was available and the results indicate that a third of accused people appearing at the Lilongwe subordinate court were denied bail, while in the remainder of the cases it was unclear whether bail was granted or not.

### Lilongwe subordinate court bail

<table>
<thead>
<tr>
<th>Freq.</th>
<th>Percent</th>
<th>Cum.</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>15</td>
<td>25.00</td>
</tr>
<tr>
<td>Yes</td>
<td>10</td>
<td>50.00</td>
</tr>
</tbody>
</table>

The data suggests that 58 percent of concluded cases resulted in a conviction, while 28 percent were discharged. The sentences handed down ranged from community service to fines to over four years in prison with hard labour.

### Lilongwe sub-ordinate court sentences

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 hrs community service</td>
<td>1</td>
</tr>
<tr>
<td>2 months suspended</td>
<td>1</td>
</tr>
<tr>
<td>5 months imprisonment</td>
<td>2</td>
</tr>
<tr>
<td>1 year</td>
<td>1</td>
</tr>
<tr>
<td>10 years suspended</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
</tr>
</tbody>
</table>

## Kachere Prison

Kachere prison houses juveniles and serves the central region. On average, 6,333 juvenile remandees enter Kachere prison each year. There were 240 observations from Kachere prison covering the past six years but just 24 (or only 10%) had both a release and admission date.

### Kachere Remand admissions: offences

<table>
<thead>
<tr>
<th>Offence</th>
<th>Frequency</th>
<th>Remandees admissions (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theft</td>
<td>38</td>
<td>54</td>
</tr>
<tr>
<td>Robbery</td>
<td>13</td>
<td>32</td>
</tr>
<tr>
<td>Rape</td>
<td>9</td>
<td>23</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>8</td>
</tr>
</tbody>
</table>

### Kachere Remand Admissions: Ages

<table>
<thead>
<tr>
<th>Age</th>
<th>Freq.</th>
<th>Percent</th>
<th>Cum.</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>1</td>
<td>1.54</td>
<td>1.54</td>
</tr>
<tr>
<td>14</td>
<td>5</td>
<td>13.85</td>
<td>15.38</td>
</tr>
<tr>
<td>15</td>
<td>9</td>
<td>25.23</td>
<td>40.61</td>
</tr>
<tr>
<td>16</td>
<td>16</td>
<td>44.62</td>
<td>95.23</td>
</tr>
<tr>
<td>17</td>
<td>7</td>
<td>17.15</td>
<td>112.38</td>
</tr>
<tr>
<td>18</td>
<td>1</td>
<td>2.63</td>
<td>114.01</td>
</tr>
<tr>
<td>19</td>
<td>2</td>
<td>9.14</td>
<td>113.15</td>
</tr>
<tr>
<td>20</td>
<td>1</td>
<td>4.16</td>
<td>117.31</td>
</tr>
<tr>
<td>21</td>
<td>1</td>
<td>1.54</td>
<td>118.85</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
<td></td>
</tr>
</tbody>
</table>

Offence with being 'rogue and vagabond', 2 percent with murder and another 2 percent with defilement.

### Kachere Remand Admissions: offences

44 percent were recorded as male, while the remaining were not recorded. For those whose ages were recorded, the age distribution is reflected in the table below.

<table>
<thead>
<tr>
<th>Age</th>
<th>Freq.</th>
<th>Percent</th>
<th>Cum.</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>1</td>
<td>1.54</td>
<td>1.54</td>
</tr>
<tr>
<td>14</td>
<td>5</td>
<td>13.85</td>
<td>15.38</td>
</tr>
<tr>
<td>15</td>
<td>9</td>
<td>25.23</td>
<td>40.61</td>
</tr>
<tr>
<td>16</td>
<td>16</td>
<td>44.62</td>
<td>95.23</td>
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<td>17</td>
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<tr>
<td>18</td>
<td>1</td>
<td>2.63</td>
<td>114.01</td>
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<tr>
<td>19</td>
<td>2</td>
<td>9.14</td>
<td>113.15</td>
</tr>
<tr>
<td>20</td>
<td>1</td>
<td>4.16</td>
<td>117.31</td>
</tr>
<tr>
<td>21</td>
<td>1</td>
<td>1.54</td>
<td>118.85</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
<td></td>
</tr>
</tbody>
</table>
Mzimba

Mzimba Prison

Mzimba prison serves the northern region. On average, 343 remandees enter Mzimba prison each year.

There were 240 observations from Mzimba prison – 87 of which had both a release and admission date (or 36%). If it is assumed that these are representative then it is possible to estimate time periods spent in Mzimba prison.

The average time period spent by remandees in the sample whose admission and release dates were recorded was 73 days. However, this average masks a great deal of variation. The minimum time period was less than a day, while the maximum in this dataset was 639 days – or one year and nine months.

Various other values provide a better picture of the situation. The lower quartile is 11 days, the median is 31 days and the upper quartile is 63 days.

Most of the Mzuzu prison sample was male (90%), while the rest was female (10%). In terms of age, once again the 20-29 age group was over-represented.

As for tribal composition, the Tumbuka tribe was slightly under-represented in Mzimba prison, while the Chewa were in line with their share of the population in the region. However, there was a large proportion of missing values (35%) in this dataset.

Mzimba Police

Both was the reason for the release for 35 percent of people detained at the Mzimba police station.

Mzimba Police Reasons for release

--- | --- | --- | ---
Missing | 7 | 5.83 | 5.83
Bail | 42 | 35.00 | 40.83
Freed | 8 | 6.67 | 47.50
Taken to court | 58 | 48.33 | 95.83
Taken to police | 3 | 2.50 | 98.33

Mzimba Court

Only 26 percent of cases before the Mzimba court ended in a guilty verdict.

Mzimba Court Outcomes

--- | --- | --- | ---
Missing | 80 | 29.91 | 29.91
Acquitted | 19 | 10.11 | 40.02
Continuing | 5 | 2.66 | 44.68
Committed to High Court | 3 | 1.06 | 45.74
Mzuzu

Data was available from all the relevant institutions in Mzuzu. The most pertinent information appearing from the Mzuzu data is the apparently long periods spent in police detention.

Mzuzu Prison

Mzuzu prison serves the northern region and, on average, 1,010 remandees entered the prison per year over the last two years. There were 80 observations from Mzuzu prison covering the past two years (2010 and 2011). The number of observations which had both a release and admission date in the dataset was 20 (25%). If it is assumed that these 20 are representative then it is possible to estimate time periods spent in Mzuzu prison by remandees.

The average time period spent by remandees in the Mzuzu sample whose admission and release were recorded was 26 days. However, this average masks a great deal of variation. The minimum time period was less than a day, while the maximum in this dataset was 323 days (almost 11 months). Various other values provide a better picture of the situation. The lower quartile is 4 days, the median is 7 days and the upper quartile is 14 days. On the face of it, these figures suggest a much better situation than at other prisons, such as Maula.

However, for 41 of observations in the sample (or 52%) it could not be determined whether the person had been discharged or not at the time the data was collected in May 2011. It was determined that a further 7 remandees had not yet been discharged (or another 9%). The earliest admission date among the remandees who had not discharged was January 2010 (more than 500 days on remand). This number is far higher than the maximum for Mzuzu in the earlier data and strongly suggests that the time periods presented above are an under-estimate as they reflect the time periods spent in custody by remandees both admitted and already released at Mzuzu since January 2010.

The majority of all remandees in the sample (94%) were charged with one offence, while the rest were charged with two offences. The most common offence was theft or burglary, followed by assault, being prohibited immigrants, being ‘rogue and vagabond’ and contempt of court.

Mzuzu remand admissions: Offences

Mzuzu remand admissions: Age

In terms of tribal composition, the Tumbuka tribe was slightly under-represented among admissions to Mzuzu prison, while the Chewa were slightly over-represented. The proportion of foreign nationals was twice as large as predicted by the population of the northern region.

Mzuzu remand admissions: Tribe

90 percent of the Mzuzu prison sample was male, while the remaining 10 percent was female. In terms of age, once again the 20-29 year age group was over-represented in the sample.

Mzuzu Courts

Mzuzu subordinate court data related to the last three years. Outcomes indicated that just under a third of cases ended in a conviction, while less than 4 percent ended in an acquittal or were withdrawn.

Mzuzu Subordinate Court Outcomes

The offences profile in the Mzuzu subordinate court showed some local differences. As many as 13 percent of cases related to copyright infringement (found in possession of infringed materials), while only 10 percent of offences related to theft - yet this offence comprises three times the prison population at Mzuzu.
In the Mzuzu High Court, just under 30 percent of cases ended in a conviction, while 16 percent resulted in an acquittal.

Mzuzu Police
At the Mzuzu police station, around 43 percent of people were released on bail, while 21 percent were transferred to prison.

Mzuzu Police Reason for release

<table>
<thead>
<tr>
<th>Age</th>
<th>Freq.</th>
<th>Percent</th>
<th>Cum.</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>1</td>
<td>0.88</td>
<td>0.88</td>
</tr>
<tr>
<td>13</td>
<td>3</td>
<td>2.63</td>
<td>3.51</td>
</tr>
<tr>
<td>14</td>
<td>2</td>
<td>1.75</td>
<td>5.26</td>
</tr>
<tr>
<td>16</td>
<td>2</td>
<td>1.75</td>
<td>6.14</td>
</tr>
<tr>
<td>17</td>
<td>2</td>
<td>1.75</td>
<td>7.89</td>
</tr>
<tr>
<td>18</td>
<td>8</td>
<td>7.02</td>
<td>14.91</td>
</tr>
<tr>
<td>19</td>
<td>4</td>
<td>3.51</td>
<td>18.42</td>
</tr>
<tr>
<td>20</td>
<td>7</td>
<td>6.14</td>
<td>24.56</td>
</tr>
<tr>
<td>21</td>
<td>5</td>
<td>4.39</td>
<td>29.89</td>
</tr>
<tr>
<td>22</td>
<td>7</td>
<td>6.14</td>
<td>35.09</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>4.39</td>
<td>39.47</td>
</tr>
<tr>
<td>24</td>
<td>8</td>
<td>7.02</td>
<td>46.49</td>
</tr>
<tr>
<td>25</td>
<td>9</td>
<td>7.61</td>
<td>54.10</td>
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<td>26</td>
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<td>4.39</td>
<td>58.73</td>
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<td>27</td>
<td>8</td>
<td>7.02</td>
<td>65.75</td>
</tr>
<tr>
<td>28</td>
<td>3</td>
<td>2.63</td>
<td>68.42</td>
</tr>
</tbody>
</table>

There were 200 observations from Thyolo prison but only 29 (or 15%) had both a release and admission date. If it is assumed that these 29 are representative then it is possible to estimate time periods spent in Thyolo prison by remandees.

The average time period spent by remandees in the sample whose admission and release were recorded was 21 days. The minimum time period was one day, while the maximum in this dataset was 142 days.

Various other values provide a better picture of the situation. The lower quartile is 4 days, the median is 8 days and the upper quartile is 22 days.

Among all remandees in the sample of 200, it was not clear whether or not 34 of them (17%) had been released at the time the data was collected in May 2011.

Most of the remandees in the sample (93%) were charged with one offence, while the rest were charged with one offence.
charged with two offences. The most common offence was theft or burglary followed by assault.

## Thyolo Police

### Reasons for release

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Discharged</td>
<td>14</td>
<td>7.00</td>
<td>92.00</td>
</tr>
<tr>
<td>Convicted</td>
<td>1</td>
<td>0.50</td>
<td>92.50</td>
</tr>
<tr>
<td>Acquitted</td>
<td>1</td>
<td>0.50</td>
<td>93.00</td>
</tr>
<tr>
<td>Cautioned</td>
<td>1</td>
<td>0.50</td>
<td>93.50</td>
</tr>
<tr>
<td>Discharged</td>
<td>1</td>
<td>0.50</td>
<td>94.00</td>
</tr>
<tr>
<td>Bail</td>
<td>1</td>
<td>0.50</td>
<td>94.50</td>
</tr>
<tr>
<td>Acquitted</td>
<td>1</td>
<td>0.50</td>
<td>95.00</td>
</tr>
<tr>
<td>Released</td>
<td>1</td>
<td>0.50</td>
<td>95.50</td>
</tr>
<tr>
<td>Taken to Bumbwe for investigation</td>
<td>1</td>
<td>0.50</td>
<td>96.00</td>
</tr>
<tr>
<td>Taken to court</td>
<td>1</td>
<td>0.50</td>
<td>96.50</td>
</tr>
<tr>
<td>Total</td>
<td>200</td>
<td>100.00</td>
<td></td>
</tr>
</tbody>
</table>

### Race and gender

#### Reasons for release

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Discharged</td>
<td>14</td>
<td>7.00</td>
<td>92.00</td>
</tr>
<tr>
<td>Convicted</td>
<td>1</td>
<td>0.50</td>
<td>92.50</td>
</tr>
<tr>
<td>Acquitted</td>
<td>1</td>
<td>0.50</td>
<td>93.00</td>
</tr>
<tr>
<td>Cautioned</td>
<td>1</td>
<td>0.50</td>
<td>93.50</td>
</tr>
<tr>
<td>Discharged</td>
<td>1</td>
<td>0.50</td>
<td>94.00</td>
</tr>
<tr>
<td>Bail</td>
<td>1</td>
<td>0.50</td>
<td>94.50</td>
</tr>
<tr>
<td>Acquitted</td>
<td>1</td>
<td>0.50</td>
<td>95.00</td>
</tr>
<tr>
<td>Released</td>
<td>1</td>
<td>0.50</td>
<td>95.50</td>
</tr>
<tr>
<td>Taken to Bumbwe for investigation</td>
<td>1</td>
<td>0.50</td>
<td>96.00</td>
</tr>
<tr>
<td>Taken to court</td>
<td>1</td>
<td>0.50</td>
<td>96.50</td>
</tr>
<tr>
<td>Total</td>
<td>200</td>
<td>100.00</td>
<td></td>
</tr>
</tbody>
</table>

### Summary

- **Reasons for release**
  - Discharged: 14 (7.00%)
  - Convicted: 1 (0.50%)
  - Acquitted: 1 (0.50%)
  - Cautioned: 1 (0.50%)
  - Bail: 1 (0.50%)
  - Acquitted: 1 (0.50%)
  - Released: 1 (0.50%)
  - Taken to Bumbwe for investigation: 1 (0.50%)
  - Taken to court: 1 (0.50%)
  - Total: 200

**Note:** The high number of discharges (7.00%) indicates a possible issue with the police's handling of cases or a backlog in the court system.
By far the most common offences are theft and Outdated offences at a societal level becomes significant. The data suggests that 8,000 people – mainly young men – are admitted on remand to these six detention, the DPP registry enquires at the police hospitals and which is needed before the files are available. The data collected in this project confirms that the delay is usually linked to the post mortem report, for which the police have to pay the Missing information and files can be found guilty in a court of law, after spending long periods of time on remand. 8. Such guidance is sought in cases involving high profile suspects, or when the case is complicated. This provides a strong indication that a person charged with a serious offence may ultimately be acquitted in a court of law, after spending long periods of time on remand. Remand, whose records or files have been lost, with the view to decriminalising certain acts. Furthermore, the report identifies that the delay is usually linked to the post mortem report, for which the police have to pay the

Recommender

Further research and reform recommendations:


Chapter 1

1. Article 5(2) of the European Convention on Human Rights: “Everyone arrested or detained in accordance with the provisions of paragraph 1 of this article shall be entitled to have access, at a reasonable time, to a competent person with a view to obtaining, if he so wishes, his release pending determination of his case in accordance with paragraph 1 of this article.”

Publications

5. Schoenteich M. The scale and consequences of Pre-trial detention in South Africa: an overview of the current law and proposals for reform, Community Law Centre, p.100. 2011.


3. Ibrahim P et al. (2008) “Missing information and files can be found guilty in a court of law, after spending long periods of time on remand.”


5. Article 5(2) of the European Convention on Human Rights: “Everyone arrested or detained in accordance with the provisions of paragraph 1 of this article shall be entitled to have access, at a reasonable time, to a competent person with a view to obtaining, if he so wishes, his release pending determination of his case in accordance with paragraph 1 of this article.”

6. Ibid, p.111

7. See 101 (2) of the 1995 Constitution which states: “Every person who has been the victim of unlawful arrest or detention shall be entitled to trial within a reasonable time or to release pending trial. The right of every person charged with a serious offence may ultimately be acquitted in a court of law, after spending long periods of time on remand.”


9. Ibid, p.296

10. Ibid, p.107

11. Ibid, p.111

12. Ibid, p.107


15. Ibid, p.107

16. See 101 (2) of the 1995 Constitution which states: “Every person who has been the victim of unlawful arrest or detention shall be entitled to trial within a reasonable time or to release pending trial. The right of every person charged with a serious offence may ultimately be acquitted in a court of law, after spending long periods of time on remand.”


18. Case of Bakhmutskiy v. Russia, (Application no. 36932/02)

19. See 101 (2) of the 1995 Constitution which states: “Every person who has been the victim of unlawful arrest or detention shall be entitled to trial within a reasonable time or to release pending trial. The right of every person charged with a serious offence may ultimately be acquitted in a court of law, after spending long periods of time on remand.”

Chapter 4

4(1) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a person, have the right--

(a) to be informed of the reason for his or her detention promptly, when it is required in the interests of justice, to be provided with the services of a legal practitioner of his or her choice or, if he or she cannot afford to pay for such services, have the right--

(b) to be informed, in a language which he or she understands, of his or her rights, of the nature of the charges, of his or her right to have the services of a legal practitioner of his or her choice or, if he or she cannot afford to pay for such services, have the right--

(c) to consult confidentially with a legal practitioner of his or her choice; or

(d) to be given the means and opportunity to communicate with, and to receive visits from, a relative, friend, or any other person whom the detained person, have the right--

(e) to be released if such detention is unlawful.

4(2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a person, have the right--

(a) to be informed of the reason for his or her detention promptly; and

(b) to be released if such detention is unlawful.
6. See the House of Lords decision in A (FC) and others (FC) v Sec -

5. Article 5

3.

and degradation of man particularly slavery, slave trade, and tor -

10. to the right to the above, the Court finds the applicant's conditions of detention, in particular the severely overcrowded and insanitary environment and its detrimental effects on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in such conditions, constitutes to him inhuman and degrading treatment.

Accordingly, when has been a violation of Article 2 of the [Euro-

103. Accordingly, there has been a violation of Article 3 of the [Eu-

11. as established in Kalashnikov v Russia, Application 47095/99,

15. See the Committee's recommendations to Namibia, UN doc.

4. Article 10(2)(b) of the International Covenant on Civil

36. See also Article 10(2)(a) of the International Covenant and

28. See generally Article 10(2)(a) of the International Covenant on

39. Section 64 of the Prisons Act (Cap 9:02) Laws of Malawi

40. 39. See the Committee for the Prevention or Torture and Inhuman or Degrad-
Concluding Observations on Turkey, UN Doc. CAT/C/CR/30/5, 12 January 1995 para 926(i) See also CAT, at liberty which tend to lessen the responsibility of the prisoners or to prevent their reformation and social rehabilitation. 2. (a) Accused persons shall, save in exceptional circumstances, be subjected to trial within a reasonable time. All prisoners shall be presumed innocent until conviction and have the right to a public hearing on placement reasonably near to place of residence. Principle 19, Body of Principles: “A detained person shall have the right to change diet based on medical reasons. See also the Inter-American Court of Human Rights, para. 161-162.

10. Chapter 7


9. Inter-American Court of Human Rights, Case of the “M. V. consistency in regional instruments and national legislation that use the word ‘restricted’ and as a consequence are often not empathetic. [Adopted on 9 December 2007 at the 107th Session of the Committee of Ministers].

10. In this context, the need of national and international co-operation in the field of penology to develop and adapt effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment.

11. Article 6 of the CCRD. This should be read together with Rule 30(1) of the UNCHR that work performed by prisoners must not be of an "afflictive nature".

12. At the request of the parties, the Committee considered the general comments by the Government and the views of the Council of Europe:

13. However, in most cases, the Committee is of the opinion that the parties should ensure that the restrictions on diet are not imposed as a means of punishment. See also the European Court of Human Rights, para. 161-162.


15. For a list of the major bodies and initiatives which aim to prevent and combat these abuses, see the Inter-American Centre for Human Rights, para. 161-162.
The Centre for Human Rights and Rehabilitation’s mission statement is to contribute towards the protection, promotion and consolidation of good governance by empowering rural and urban communities in Malawi to become aware of and exercise their rights through research, advocacy and networking in order to realize human development.

The Civil Society Prison Reform Initiative is a project of the Community Law Centre (CLC) at the University of the Western Cape and focuses on prisons and corrections, with the aim of improving the human rights situation in South African prisons through research-based lobbying and advocacy, and collaboration with civil society structures. By stimulating public debate and participation in government structures, the aim is to influence the development of appropriate human rights oriented prison reform.

CHREAA’s vision is a Malawian society that upholds human rights, justice and the rule of law. Its mission is to promote and protect human rights by assisting the vulnerable and marginalised people in Malawi to access justice through civic education, advocacy and assistance.

The Paralegal Advisory Service Institute’s vision is ‘to make justice accessible to all people in Malawi through improving the efficiency and effectiveness of the justice system and making it responsive to the needs of all users, particularly the poor and vulnerable’.

The Catholic Commission for Justice and Peace works to contribute to the creation of a god-fearing, just, loving and peaceful Malawian society.

On any given day around the world, about three million people are held in custody awaiting trial. During the course of an average year, 10 million people are held in pre-trial detention. Some of them are detained for a few days or weeks, but many will spend months or years in custody. It is common cause that conditions for pre-trial detainees are in most instances far worse than for their sentenced counterparts. Unsentenced inmates often have limited access to legal aid/legal defence, they receive little or no training or schooling and have little access to recreational activities. They also struggle to get access to medical treatment, reading material, bedding and exercise. The irony is that after spending lengthy periods of time in prison a significant number of detainees are acquitted on, once convicted, given a noncustodial sentence. Compounding this situation in southern Africa are broader problems of poverty, underdevelopment, the HIV/AIDS epidemic, food shortages, social inequities, vast economic inequalities and, in some countries, political instability and conflicts, which place criminal justice and penal reform relatively low down on a list of pressing priorities for government, donors and civil society organisations.

Recognising these challenges, and in an effort to more fully understand the situation in respect of the use of pre-trial detention in Southern Africa, the Open Society Initiative for Southern Africa (OSISA), in partnership with the Open Society Foundation for South Africa (OSIF-SA) and the Open Society Foundations Global Criminal Justice Fund (GCJF) commissioned an audit of eight police station/court/prison precincts in Malawi to gather information on both the legal status of awaiting trial detainees and issues pertaining to conditions of incarceration in that country. A similar process is currently underway in Zambia and OSISA is exploring the possibility of conducting this research in both Zimbabwe and Mozambique.

The information contained in this report provides rigorously researched, empirical evidence which can be used to influence future efforts by both government and civil society to influence legislation, policy and practice with a view to ensuring the appropriate use of pre-trial detention, promoting the speedy resolution of trials and improving prison conditions in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. OSISA also plans to explore how this information and the tools that were designed during the audit process might contribute to regional efforts in respect of criminal justice reform e.g. how might this research be used in the development of regional standards for the management of pre-trial detainees.