

PRISON AUDIT MALAWI

A DATA DRIVEN APPROACH TO
MEETING SDG 16.3.2

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

- Section I.** Introduction
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Preamble
- Section II.** 10 Actionable Takeaways
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SECTION I

- Introduction
- Methodology Highlights
- Preamble

Introduction

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

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

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

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

Malawi Prison Audit: Maula, Kachere and Mzuzu Prisons

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

Methodology Highlights

Consent and Preparation

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

Survey Administration, Content, and Protocol

- Maula + Kachere: 6 PASI paralegals and MPS officers interviewed **2409 prisoners** | 90% of the prison population: 2675
- Mzuzu: 4 PASI paralegals and MPS officers interviewed **850 prisoners** | 94% of prison population: 903
Questionnaire content: i) **cross-checked** with prison file; and, ii) no cross-check available
 - i) name, offence, time in custody, status of bail, length of sentence, whether confirmed by High Court
 - ii) education, income, time spent in community, previous convictions, time spent in police custody
- Interviews commenced with questions to elicit **informed consent** and ended with response review for interviewee confirmation

Analytical Categorization

- **Population groupings** applied regarding: Status (remand/sentenced), Gender (men/women), and Age (under 21/21 and over)
- In absence of existing definitions, ‘serious’ vs. ‘minor’ **offence classifications** were formulated; examples include:
Dishonesty (>MK50,000 =serious) | Property (burglary=serious; vandalism=minor) | Violence (robbery=serious; fighting=minor)
- **Eligible release categories** in line with **Laws of Malawi** formulated: Seven (7) for remand; and, eight (8) for sentenced prisoners

Preamble

Data Quality and Analytical Reliability

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

High Ranking Against SDG 16.3.2

- Malawi's remand rate (17.6%) consistently under 20%—among the lowest in Africa (**4th lowest** of 53 African countries)

Institutional Openness and Transparency

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

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

SECTION II

- 10 Actionable Takeaways

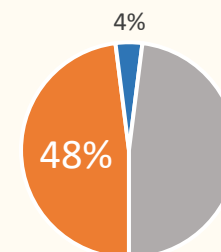
10 Actionable Takeaways

1. **Poverty** is the **key determinant** of whether a person is **held in prison**
2. Socio/economic **impact** of **incarceration** directly affects **women and children**
3. **'Equality of arms'** in theory; **not working** in practice
4. **Prison space** is more **congested** than previously believed
5. **Majority of remand prisoners eligible for release:**
 - **Sixty-six percent (66%)** Maula + Kachere
 - **Sixty-seven percent (67%)** Mzuzu
6. **Majority of sentenced prisoners eligible for release:**
 - **Eighty percent (80%)** Maula + Kachere
 - **Sixty-six percent (66%)** Mzuzu
7. **Prison is not used** primarily as a measure of **'last resort'**
8. **High proportion** of remand **'overstayers'** and sentenced prisoners **not confirmed** by High Court
9. Nearly all **people arrested**, are **held too long** in police stations with **no legal assistance**
10. Prisoners are **inhibited** from exercising their right to **appeal**

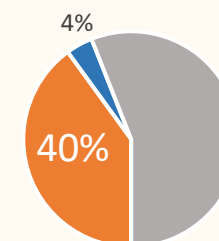
1. Poverty is the key determinant of whether a person is held in prison

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

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



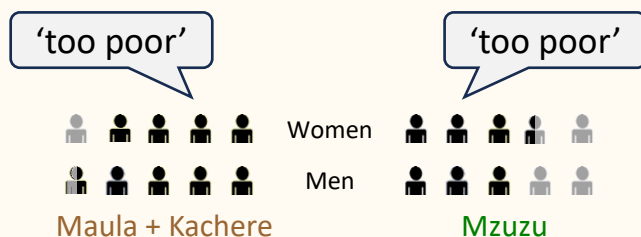
Maula + Kachere



Mzuzu

Remand Prisoners

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



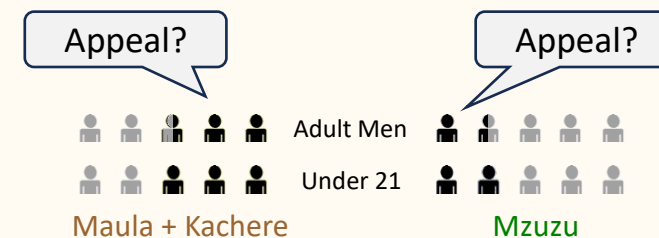
1 icon = 20%

Sentenced Prisoners



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

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



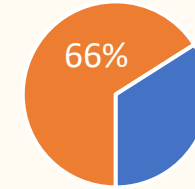
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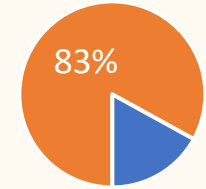
Of remand prisoners granted bail by the court, 16% | 11% (146 | 19 individuals) were unable to meet the condition of paying cash surety

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

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



Maula + Kachere



Mzuzu

Parents and Children

Over **80%** of prisoners in each prison have children



Breadwinners

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



55% (Maula + Kachere) / **47%** (Mzuzu) of sentenced adult men say they have at least one **child under 5-years old**



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

Young Men Under 21



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

Women



Remand, charged with homicide, who say they have a lawyer

Kachere: 2 of 18



Mzuzu: 4 of 5



Sentenced who said they were represented by a lawyer in court at plea or trial

Kachere: 5 of 26



Mzuzu: 8 of 24



Adult Men

1 person icon = 10%



Remand, charged with homicide, who say they have no legal representation

Maula: 66%



Mzuzu: 39%



General Remand, who say they have no legal representation

Maula: 91%



Mzuzu: 74%



Sentenced, who say they had no legal representation


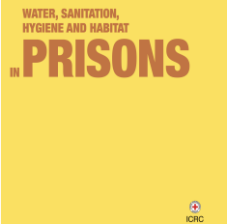
Maula: 96%



Mzuzu: 86%



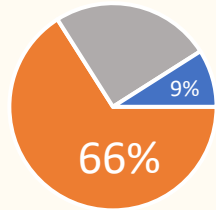
4. Prison space is more congested than previously believed

International Prison Standards	Prison Conditions												
 <p>Mandela Rules (R 11): Untried prisoners shall be kept separate from convicted prisoners.</p>	<p>Remand and sentenced prisoners (young old) + Foreign nationals (immigration charged non-criminal) All share the same cells.</p>												
 <p>International Committee of the Red Cross (ICRC) Recommended Minimum Standards:</p> <ul style="list-style-type: none"> ▪ Space in cell: Minimum 3.4m² per prisoner ▪ Sanitation: Minimum 1 toilet per 50 prisoners ▪ Accommodation: Dormitories with bunk beds, the following should be taken into account: <ul style="list-style-type: none"> ❖ Total floor space ❖ Space available for beds ❖ Space available for moving around 	<table border="1" data-bbox="1332 625 2369 743"> <thead> <tr> <th><u>Prison</u></th> <th><u>Official Capacity</u></th> <th><u>At Lock Up</u></th> <th><u>Percent of Capacity</u></th> </tr> </thead> <tbody> <tr> <td>Maula</td> <td>1200</td> <td>2675 (14 Aug.)</td> <td>222%</td> </tr> <tr> <td>Mzuzu</td> <td>600-700</td> <td>903 (11 Sept.)</td> <td>150%</td> </tr> </tbody> </table> <ul style="list-style-type: none"> ▪ Space in cell: Official measure of prison capacity, unclear ▪ Sanitation: 1 toilet per 100+ prisoners (Maula and Mzuzu) ▪ Accommodation: Cell area paced out in Mzuzu <ul style="list-style-type: none"> ❖ Applying 3.4m² per prisoner, 12 cells averaged 300%-700% occupancy over [ICRC recommended minimum] capacity ❖ Foreign nationals in Mzuzu (216) boost population by 24% <ul style="list-style-type: none"> • 92% aged 30 years or under • 98% in prison more than 3 months • 34% (74) in prison 11-15 months 	<u>Prison</u>	<u>Official Capacity</u>	<u>At Lock Up</u>	<u>Percent of Capacity</u>	Maula	1200	2675 (14 Aug.)	222%	Mzuzu	600-700	903 (11 Sept.)	150%
<u>Prison</u>	<u>Official Capacity</u>	<u>At Lock Up</u>	<u>Percent of Capacity</u>										
Maula	1200	2675 (14 Aug.)	222%										
Mzuzu	600-700	903 (11 Sept.)	150%										

5. Majority of remand prisoners eligible for release

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

MAULA | KACHERE



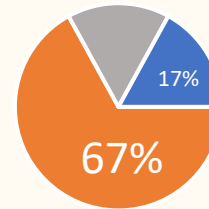
9% indicated guilty pleas

66% eligible for release

(Lists of named prisoners submitted to courts)

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

MZUZU



17% indicated guilty pleas

67% eligible for release

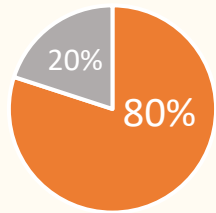
(Lists of named prisoners submitted to courts)

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

Bail as of Right (22)	Bail Granted by Lower Court (154)	Overstayed Minor Offence (48)	Overstayed Serious Offence (471)
<p>Maula Kachere</p> <ul style="list-style-type: none"> = Youth Under 21 (4) = Adult General Population (13) 	<p>Maula Kachere</p> <ul style="list-style-type: none"> = Youth Under 21 (12) = Adult General Population (75) - 2 women = Adult Homicide-Charged Population (48) 	<p>Maula Kachere</p> <ul style="list-style-type: none"> = Youth Under 21 (6) = Adult General Population (28) 	<p>Maula Kachere</p> <ul style="list-style-type: none"> = Youth Under 21 (17) = Adult General Population (174) – 6 women = Adult Homicide-Charged Population (215)
<p>Mzuzu</p> <ul style="list-style-type: none"> = Adult General Population (5) 	<p>Mzuzu</p> <ul style="list-style-type: none"> = Youth Under 21 (1) = Adult General Population (18) - 2 women 	<p>Mzuzu</p> <ul style="list-style-type: none"> = Youth Under 21 (1) = Adult General Population (13) 	<p>Mzuzu</p> <ul style="list-style-type: none"> = Youth Under 21 (6) = Adult General Population (59)

6. Majority of sentenced prisoners eligible for release

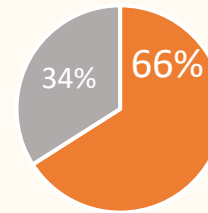
Total Sentenced Prisoners: Maula/Kachere (1512) + Mzuzu (462)



80% eligible for release (1216)

(Lists of named prisoners submitted to the courts)

Maula | Kachere



66% eligible for release (308)

(Lists of named prisoners submitted to the courts)

Mzuzu

	Men		Youth Under 21		Women	
	Interviewed	Eligible for Release	Interviewed	Eligible for Release	Interviewed	Eligible for Release
Maula Kachere:	1385	1094 (79%)	101	98 (97%)	26	24 (92%)
Mzuzu:	413	270 (65%)	25	23 (92%)	24	15 (63%)

Men by Eligibility Categories Maula/Kachere + Mzuzu

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

Youth Under 21 by Eligibility Categories Maula/Kachere + Mzuzu

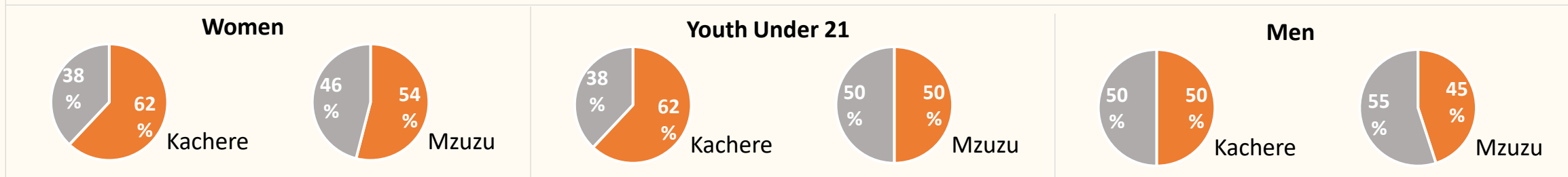
- = Non-violent offence < 3 years (0 + 0)
- = Offence against person or property < 3 years (21 + 11)
- = Offender already served 2/3 of sentence (0 + 0)
- = Sentence pending confirmation by High Court (77 + 12)

Women by Eligibility Categories Maula/Kachere + Mzuzu

- = Non-violent offence < 3 years (3 + 4)
- = Offence against person or property < 3 years (4 + 1)
- = Offender already served 2/3 of sentence (1 + 0)
- = Sentence pending confirmation by High Court (16 + 10)

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

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



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

1/3

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

CRIMES OF DISHONESTY
(theft, handling, personation)

Approximately 700 Prisoners

Bailable Remand

[Maula/Kachere | Mzuzu]

- [16% | 11%] could not meet bail conditions, mostly cash surety [146 | 19] people
- Most bail eligible prisoners have fixed places of residence and are first offenders

❖ Increase application of bail by 10%

✓ Release 100 prison places

Sentenced to 3 Years or Less

[Maula/Kachere | Mzuzu]

- Women: [11 (42%) | 7 (29%)]
- Under 21: [40 (40%) | 13 (48%)]
- Adult Men: [205 (15%) | 49 (12%)]

❖ Substitute community-based sanctions

✓ Release 200 prison places

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

Remand



49%

Maula/Kachere

41%

Mzuzu

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



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

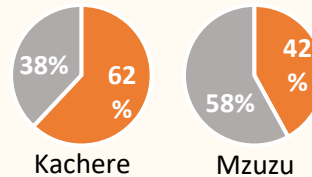
On expiry of time limit: Court may grant bail (s161I, CrPEC)

Sentenced

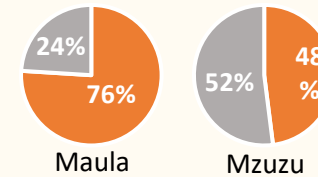
People whose sentences are **pending confirmation by High Court**

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

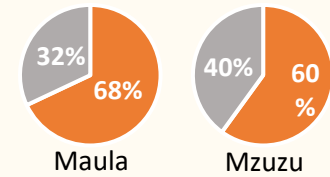
Women



Youth Under 21



Men



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



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

...held **longer than** the 48 hours **permitted**



...**without access** to legal aid or assistance



...formally interviewed **without a lawyer** or paralegal



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

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

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

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

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

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

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

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

Claimed they...



did not know how
or
had no assistance



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

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

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

Claimed they...

feared
a longer sentence



SECTION III

- Policies and Guidelines

Policy Recommendations



Policy Makers



Detainees not to exceed 48 hours in a police station without being produced at court. As a rule, detainees shall then be remanded to a prison to await trial.

Require police to allow all detainees access to legal assistance from an accredited legal aid provider.



Require investigating police to ensure an accredited legal aid provider is present at interview.



Equip police stations with audio visual equipment to record interviews.



Custody time limits in minor cases (60 days) and serious cases (120 days) are not applied, and should be reviewed.



Sentencing powers of the lower courts should be reviewed in line with regional trends. Where a higher sentence is deemed appropriate, the Magistrate can refer the case to the High Court.



Alternatives to incarceration should be available to sentencers—especially as concerns adult diversion and community service orders. As a rule foreign nationals infringing immigration controls should not be held in prison.

Policy Recommendations

Practice Directions



No accused should have to await judgment. Rulings on bail shall be prompt. The court shall announce verdict at the conclusion of the trial.



The CRM shall keep him/herself informed as to the capacity of prisons within his/her jurisdiction and take the necessary measures to ensure overcrowding does not reoccur.



Prisoners shall be informed of their right to appeal and be assisted by Legal Aid.



The High Court shall confirm sentences promptly and where enhancement is foreseen, invite counsel to address the court.

Police Directives



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

Bail Guidelines



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

Sentencing Guidelines



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

