

Protecting constitutional and procedural rights of pre-trial detainees through access to justice in Uganda

Baseline survey

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Baseline Report

December 2022

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Foreword

It is with great pleasure that I write this foreword. The Avocats Sans Frontières (ASF) project on pre-trial detention was conceptualised on a basis that the administration of justice continues to grapple with challenges that limit the realization of the rights for people in conflict with the Law. In spite of a protective and robust legal framework, deviations from the legal standards of arrest and pre-trial detention are common practices in Uganda's criminal justice system. The ASF baseline report is aimed at highlighting the socio-economic profile of detainees and also providing an overview of the grounds for detention in Uganda. The survey seeks to understand the correlation between the social-economic status of persons in detention and the trends and patterns of detention including the reasons for arrest.

Notably, over stay on pre-trial detention undermines the chance of a fair trial and the presumption of innocence as some pre-trial detainees make false confessions especially through plea bargaining so as to get the much needed relief. High rates of pre-trial detention also contribute to prison overcrowding thereby exacerbating challenges associated with overcrowding in prisons.

This baseline study therefore is a welcome addition to the available literature on pre-trial detention in Uganda. It will be a useful guide to criminal justice actors in addressing the challenges associated with pre-trial detention in a bid to enhance efficiency in accessing justice and promoting the right to a speedy and fair hearing. The report identified the trends and patterns of pre-trial detention, the reasons for arrest and detention of marginalised and vulnerable groups, best practices in handling pre-trial detention and makes recommendations on how to enhance protection of constitutional and procedural rights of pre-trial detainees through access to justice. In addition, the study delved deeper to assess the period spent in custody at both police and in prison as well as the capacity of the key actors in protecting both constitutional and procedural rights of persons in pre-trial detention.

Uganda Human Rights Commission expresses gratitude to ASF, LASPNET and other partners in the criminal justice system who worked with Kirome Consult in producing this Baseline report. In addition, we extend our gratitude to Austrian Development Cooperation (ADC) for their financial support to ASF and other actors in the criminal justice system.

I hope this baseline report will accomplish its intended purpose of informing ASF and other stakeholders to rethink their strategy of dealing with pre-trial detainees.



MARIAM MUTONYI WANGADYA
CHAIRPERSON
UGANDA HUMAN RIGHTS COMMISSION
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LIST OF ACRONYMS

A2J	Access to Justice
ADC	Austrian Development Cooperation
ASF	Avocats Sans Frontières
CSOs	Civil Society Organizations
DGF	Democratic Governance Facility
ECCMIS	Electronic Court Case Management Information System
ECO	Execution of Court Orders
ESR	Economic and Social Rights
FGD	Focus Group Discussion
CBM	Community-Based Monitoring
FHRI	Foundation for Human Rights Initiative
ICCPR	International Covenant and Civil and Political Rights
IIMS	Integrated Information Management System
INGO	International Non-Governmental Organisation
IRC	International Rescue Committee
JCU	Justice Centres Uganda
JLOS	Justice Law and Order Sector
KIIs	Key Informant Interviews
LASPNET	Legal Aid Service Providers Network
LASPs	Legal Aid Service Providers
LDC	Law Development Centre
MEO	Monitoring and Evaluation Officer
MIA	Ministry of Internal Affairs
MoLG	Ministry of Local Government
MoJA	Ministry of Justice and Constitutional Affairs
MGLSD	Ministry of Gender, Labour and Social Development
NCPO	Networking Coordination and Partnership Officer
NGO	Non-Governmental Organization
NLAB	National Legal Aid Bill
NSA	Non-State Actors
PATs	Participatory Analytical Techniques
PEST	Political, Economic, Social and Technological
PHD	Doctor of Philosophy
ROL	Rule of Law
ODPP	Office of Director of Public Prosecution
SDG	Sustainable Development Goals
SGBV	Sexual Gender Based Violence
SOP	Standard Operating Procedures
SWOT	Strength, Weakness, Opportunities and Threats
TOC	Theory of Change
TORs	Terms of Reference
UACE	Uganda Advanced Certificate of Education
UCE	Uganda Certificate of Education
UHRC	Uganda Human Rights Commission
UN	United Nations
UPE	Uganda Primary Education

KEY DEFINITIONS

Certificate	An education or training award other than UPE, UACE, Degree, Master's degree or Doctor of Philosophy (PHD)
Inmate	A remand prisoner in detention in Prison
Juvenile	A child offender
'Katikiro'	A prisoner selected by prison authorities to work as a leader in prison
Peasant work or employment	Work or employment that does not require any formal qualification
Suspect	A person thought to be guilty of commission of an offense

The words are defined for purposes of this report to enable the reader to appreciate it better.

EXECUTIVE SUMMARY

The aim of the baseline survey was to highlight the socio-economic profile of detainees and also provide an overview of the grounds for detention in Uganda. The survey sought to understand the correlation between the social-economic status of persons in detention and the trends and patterns of detention including the reasons for arrest.

In relation to the social economic status of detainees, three variables, were explored; level of education, occupation and marital status.

Under **level of education**, the biggest majority of suspects (35%) at police, out of the 55 male suspects interviewed had attained primary leaving education (PLE), 29.1% had no qualification while only 22% had the equivalent of Uganda Advanced Certificate (UCE) with only 5.5% having a certificate and 1.8% having a degree. Equally, within prisons, of the 477 male respondents interviewed, the majority, 40% had UPE, 37% had no qualification, 16% had UCE, 3% had UACE, 1% had a certificate, 3% had a diploma, 1% had a bachelor's degree and only 0.2% had a master's degree. Among the women inmates, of the 136 interviewed, the biggest majority, 41% had no qualification, followed by 38% that had PLE qualification, 14% had UCE and 2% had either a certificate or diploma. It therefore appears that the less educated one is, the more likely they are to end up in conflict with the law. The same applies to juveniles in conflict with the law, where the biggest majority, 77%, had only attained primary education.

Similarly, of all detainees at both police and within prisons, the biggest majority, 76%, were engaged in household or peasant work. Only 8%, were engaged in formal employment (3% for the women and 5% for the men). Generally, women in Uganda are less likely to finish school, own factors of production such as land, and are most likely to suffer stereotypes that keep them out of school and employment compared to their male counterparts. Lack of or limited education and unemployment seem to be mutually reinforcing factors predisposing one to unemployment.

About their **marital status**, 277 of the male respondents were married, 184 single, 12 divorced and 4 widowed. For the women, 50 of the female respondents were married, 64 single, 11 divorced and 11 others widowed. A majority of inmates on remand being married, widowed, or divorced translates into a high likelihood of their families being deserted following detention.

The study also established the **grounds for arrest and detention**. For both suspects and inmates interviewed, theft, 34% and 23.7% respectively, was the most common ground for arrest, followed by defilement.

The study also contextualised the **period spent in police custody and in prison**. Findings indicate that the 48-hour rule is not complied with. The majority of suspects, 58% had been in custody for between 3-9 days, 31% had spent between 10 days and 1 month in a police cell and 5% had spent between one month and 3 months in police cell. On whether the suspects were aware of their right to police bond, majority, 63%, were not aware of their right to apply for police bond.

Similarly, in prisons, the findings indicate that only 253 of the 613 inmates interviewed (42%) had spent less than 6 months on remand. The rest had spent over 6 months with the biggest majority, (22%) having spent between 6 months to one year on remand. Unlike at police, majority of inmates, 64%, knew about their right to apply for bail. However, owing to their limited level of education, and for most, their level of income, many were unable to hire the services of a private lawyer. The situation is even more complex for refugees in prison with no known relatives in the country to visit them or aware that they are in detention.

It is thus not surprising that legal representation was ranked the most prioritized need among the inmates, 61%, followed by counselling at 12% and food and water at 11%. Only 33 of the 613 inmates interviewed were able to hire the services of a private lawyer, with the biggest majority not having access. Further still, among the 613 inmates interviewed, the three greatest legal needs highlighted were having their cases cause listed (145), followed by legal aid (129) and a speedy trial (93).

Torture in detention, both at police and in prisons, was highlighted as the major challenge encountered in detention. At police, majority of suspects, 59, said they had either witnessed or experienced at least one incident of torture during their detention. The percentage of those who had experienced or witnessed acts of torture within prisons was even higher at 71%. The main

perpetrators were said to be fellow inmates 'katikiros' who accounted for 77% of the incidences and prison warders at 33%. Other challenges encountered in prisons was over congestion, and limited communication with family and friends.

In light of the above, it is recommended that:

To the Uganda Police Force:

1. Appoint more human rights officers countrywide and strengthen their capacity to monitor and promote adherence to the 48-hour rule and other human rights standards.
2. Ensure continued capacity building of both Human Rights Officers and other police officers to keep up with the current procedural and human rights standards relating to investigation and crime prevention.
3. Adopt zero tolerance towards torture within the police Force by investigating and charging implicated police officers in torture perpetration to curb impunity within the Force. Establishment of an independent police oversight body that is independent of police to ensure that errant police officers are held accountable.
4. Enforce sanctions for police officers who violate standard of arrest and detention as provided for in the Luanda Guidelines¹. In particular, Uganda police force should emphasise investigation before arrest.

To the Uganda Prisons Service:

1. Ensure the effective functioning of human rights committees within prison facilities by identifying and facilitating capacity building opportunities.
2. Initiate investigations into alleged torture occurrences within prisons to curb impunity and ensure implementation of the Prevention and Prohibition of Torture Act, (PPTA) 2012.
3. Provide guidelines on S.15 of the Human Rights Enforcement Act on un-conditional release of prisoners who are unreasonably being detained in prison.

To Government:

1. Ratify the Optional Protocol to the Convention Against Torture in line with international standards to ensure effective implementation of the Prevention and Prohibition of Torture Act, 2012.
2. Implement the alternative to imprisonment for petty offenders like police bond, bail, community service in order to reduce on the number of pre-trial detainees.

To the Judiciary Rules Committee:

1. Review and explore amending the Judicature Act, Cap.13, to expand the jurisdiction of Registrars to take plea for capital offences so as to reduce backlog and long periods of pre-trial detention.
2. Consider widening the jurisdiction of the Magistrates to determine a prima facie case before committal to the High Court to avoid frivolous prosecutions.
3. Consider developing special guidelines to address situations of refugees who lack sureties.

To the Judiciary:

1. Strike with nullity each and every trial marked by violations of the accused's non derogable rights;

To Parliament:

1. Expedite the tabling and enactment of the National Legal Aid Bill to extend legal representation to both capital and non-capital offenders and ensure representation starts from time of arrest to disposal of case to counter abuse.

¹ Guidelines on the conditions of arrest, police custody and pre-trial detention in Africa.

To Ministry of Finance, Planning and Economic Development:

1. Allocate more budgetary resources to the Uganda Police Force, Uganda Prisons service, Office of the directorate of public prosecution and Judiciary to strengthen their capacity to execute their mandates effectively.
2. Allocate more budgetary resources to the Office of the Director of Public Prosecution (ODPP) to recruit more prosecutors to match the recent efforts that have widened the pool of judicial officers.

To Development Partners:

1. Revive the Paralegal Advisory Services to scale up legal aid provision across the country
2. Lobby Government to appoint more judicial officers and prosecutors.

To Uganda Human Rights Commission:

1. To intensify visits to places of detention to assess conditions of persons in detention and make necessary recommendations.
2. To train members of the human rights committees in prisons to boost their capacity to respond to human rights abuses especially empower them to submit names of inmates that have overstayed on remand and/or due for release on mandatory bail.

To Civil Society:

1. Lobby Government to ratify the Optional Protocol to the Convention Against Torture to allow for independent inspections in places of detention.
2. Incorporate training of security officers within organization work plans and facilitate distribution of relevant materials such as legislations to these agencies.
3. Need to advocate for strengthening of community service as an alternative to imprisonment for petty offences.
4. Advocate for the implementation, and train security agencies to adhere to the Human Rights Enforcement Act, 2019.
5. Lobby for the revision of use of criminal sessions at the High Court to ensure that High Court judges hear cases more regularly.

1. CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.0. Introduction

In May 2021 Avocats Sans Frontières (ASF) commissioned a study to conduct a baseline for the Pre-Trial Detention (PTD) population in selected prisons, so as to highlight the socio-economic profile of detainees and also provide an overview of the grounds for detention in Uganda. The rationale of the research study was to inform the design of legal aid services that would be provided under the scope of a project aimed at protecting procedural and constitutional rights through access to justice, as an entry point for a greater adherence to human rights and the Rule of Law in Uganda.

The specific objectives of the study were to:

- a) Identify Trends and patterns of detention
- b) Provide evidence on uninformed aspects of detention, including the reasons for arrest and detention of marginalised and vulnerable groups
- c) Evaluate the capacity of targeted actors and
- d) Report on project indicators

The study was intended to be carried out in the period of May 2021 to June 2021. However, shortly after the signing of the consultancy contract, the country went into an extended lockdown due to the COVID-19 pandemic. Even after the restrictions on movement were lifted, access to prisons and police stations was limited. The findings presented herein are therefore based on field work and interviews conducted between the period of September – December 2021.

1.1. Background

Pre-trial detention refers to the locking up of a suspect or an accused person on criminal charges in police and prison before the completion of their trial. Although detention pending trial should be the exception rather than the general rule, the use of pre-trial detention is prevalent in Uganda. Indeed, pre-trial detainees constitute a large proportion of the inmates causing overcrowding at police stations and prisons.²

Pre-trial detention undermines the chance of a fair trial and the presumption of innocence. It increases the risk of a confession or statement being coerced by torture or ill-treatment and 'lessens a suspect's possibilities of defence, particularly when the person is poor and cannot rely on a defence counsel or support to obtain evidence in his favour'.³ High rates of pre-trial detention also contribute to widespread prison overcrowding, exacerbating poor prison conditions and heightening the risk of torture and ill-treatment.⁴ As at September 2021, Uganda had 65,326 prisoners against a holding capacity of 19,986, marking a 326.8% occupancy rate.⁵ The high number of pre-trial detainees is caused, among others, by slow investigations, corruption, case backlog, ignorance of the law and lack of and/or poor legal representation. All these factors continue to inhibit effective access to justice in Uganda.

This chapter reviews the specific regional, international and national framework and standards on pre-trial detention.

Legal framework

Pre-trial detention is provided for by various international and regional legal instruments that Uganda is a party to. At the international level, Articles 3 and 9 of the Universal Declaration of Human Rights (UDHR), provides for the right to liberty and security of persons and that no person shall be subjected to arbitrary arrest, detention or exile. This is reiterated under the International Covenant on Civil and Political Rights (ICCPR).⁶ At the regional level, the African Charter on Human and Peoples' Rights (ACPHR) provides that every individual shall have the right to have his cause heard which comprises the right to an appeal, the right to be presumed innocent until proven guilty, the right to defence and the right to be tried within a reasonable time by an impartial court or tribunal.⁷

² Pre-Trial Detention in Uganda by Roselyn Karugonjo, Segawa, 2016.

³ UN Subcommittee on Prevention of Torture (SPT), Report on Paraguay, 7 June 2010, CAT/OP/PRY/1, para.64.

⁴ Report of the United Nations High Commissioner for Human Rights, Human rights implications of over incarceration and over crowding, 10 August 2015, A/HRC/30/19.

⁵ Statistics obtained from Uganda Prisons Service as at September 2021.

⁶ Article 9 of the International Covenant on Civil and Political Rights, 1966.

⁷ Article 7 of the African Charter on Human and Peoples Rights, 1981.

Rule 111 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) provides for a right to a fair and public hearing for suspects, while Rule 10.2 of the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985 provides for a fair and speedy trial for juveniles. Rule 6 of the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), for instance, stipulates that governments should make every reasonable effort to avoid pre-trial detention. In particular, these rules provide the following:

- a) Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offense and for the protection of society and the victim.
- b) Alternatives to pre-trial detention shall be employed at an early stage as possible. Pre-trial detention shall last no longer than necessary and shall be administered humanely and with respect for the inherent dignity of human beings.
- c) The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

In addition, The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) offer specific detail on measures that State Parties to the African Charter should take to uphold, promote and protect the rights of people in an arrest, police custody and pre-trial detention environment. In doing so, the Guidelines reinforce the importance of a criminal justice system built on core human rights principles. They aim to ensure fewer arbitrary arrests and a more rational and proportionate use of pre-trial detention.⁸

At the national level, Article 23 of the Constitution of the Republic of Uganda 1995, provides for the right to personal liberty. Article 23 (6) specifically provides for the pre-trial detention period; that is, 60 days for cases triable by the High Court and its subordinate courts and 180 days for cases triable only by the High Court. In the case of juveniles in conflict with the law, the Children's Act provides for a detention period in custody of 24 hours where release on bond is not granted. The Act further sets out that remand in custody should not exceed three months in the case of an offence punishable by death and should not exceed 45 days in the case of any other offence.⁹

1.2. Situation analysis on pre-trial detention and its implications on access to justice

Globally, pre-trial detention is a very contentious issue. In many countries, Uganda inclusive, the number of people in detention awaiting legal proceedings is higher than those who have actually been convicted and sentenced to imprisonment.¹⁰ Pre-trial detention contributes significantly to prison overcrowding since people can wait for years for legal proceedings to begin. Some governments, Uganda's inclusive, have been accused of using pre-trial detention to effectively imprison people indefinitely without trial.¹¹

The law requires that pre-trial detention is used as an exceptional measure, in accordance with international law. The United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), 16 for instance, stipulate that governments should make every reasonable effort to avoid pre-trial detention. In particular, these rules provide that, in recognition of the specific needs of pregnant women and women incarcerated with children, Principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations, 1988) states the following: Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles... shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

1.2.1 Legal assistance

The International Covenant on Civil and Political Rights stresses the need for State Parties to have legal assistance assigned to accused persons, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it.

The African Commission on Human and Peoples' Rights has also pronounced itself on the need for States Parties to ensure that all persons are entitled to legal representation at all stages of the proceedings.¹²

Access to legal assistance in Uganda remains a challenge primarily due to lack of adequate resources. For instance, the lack of legal representation can lead to immense delays in the criminal process. While it is the duty of government to ensure that every legally challenged person receives adequate legal representation, it lacks the resources to engage an attorney for every suspect.

⁸ The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 2014, pg.8.

⁹ Section 91 (5) (a) of the Children Act, Cap.59, as amended by Act 9 of 2016.

¹⁰ <http://laspnet.org/blog/287-combating-prolonged-pre-trial-detention-in-uganda>. (Accessed on 7th November 2021).

¹¹ Ibid.

¹² Article 7 of the African Charter on Human and Peoples' Rights, 1986 and; The Lilongwe declaration on accessing legal aid in the criminal justice system in Africa.

1.2.2. Non-custodial measures

Both the UN Standard Minimum Rules for Non-Custodial Measures (the 'Tokyo Rules') and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok Rules') encourage criminal justice systems to provide a wide range of non-custodial measures to avoid the unnecessary use of imprisonment. However, the absence of alternatives and shortcomings in their implementation have been reported as major challenges.

A community service programme was introduced in Uganda in 2001 following a commitment to undertake reforms that were intended to address issues of rehabilitation and prison overcrowding.¹³ A community service order may be issued where a person is convicted of a minor offence.¹⁴ While the law allows courts to exercise their discretionary powers with regard to either using prison sentences or community service, courts remain reluctant to use community service as an alternative to imprisonment due to limited number of community service supervisors to enforce the community service order.

Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.¹⁵

1.3. Methodology

The study adopted both the qualitative and quantitative approach with a combination of methodologies, including desk review, key Informant Interviews (KIIs) and Focus Group Discussions (FGDs). To effectively utilize these methodologies, a team comprising of trained researchers, monitoring and evaluation specialist, data analyst and lead consultant were employed. The objectives of the study aimed at collecting baseline data to establish a baseline for the pre-trial detention population in selected prisons, by highlighting the socio-economic profile of detainees and to provide an overview of the grounds for detention in the country. A total of 697 key informant interviews were conducted in the four districts¹⁶ (inmates (613), suspects (59), Judiciary (1) and Legal Aid Service Providers (7). These were administered through the use of questionnaires.

Visits were made to 5 police stations, Kawempe Central Police Station, Old Kampala Central Police Station, Jinja Road Police Station, Kampala Central Police Station and Gulu Central Police Station. Interviews were also carried out in twelve (12) prisons, Arua Male, Arua Women, Gili Gili, Gulu Male, Gulu Women, Pece, Kigo Male, Kigo women, Kitanya Min Max, Kitanya Farm, Murchison Bay and Luzira Women. The study focused on suspects in police detention as well as inmates on remand in prisons.

The study also analysed data in relation to juveniles in detention in remand homes, police stations and prisons.¹⁷

1.3.1. Study areas

The study covered three regions of the country: West Nile, Northern and Central regions of Uganda. From these regions, a total of 12 prison stations, 5 police cells were visited and interviews conducted. The above were selected purposively based on;

- i) The high number of inmates on remand.
- ii) The then available knowledge on the coverage and experience in the prisons and police cells.
- iii) The possession of unique characteristics in some of the selected regions due to the available reports such as high number of refugees in detention.

1.3.2. Population

The primary respondents in this study were the suspects at police and inmates in prison. Other key stakeholders included JLOS actors such as officials from the Uganda Police Force, Uganda Prisons Service and Judiciary, and NGOs providing legal aid services.

1.3.3. Sampling criteria

The study adopted purposive sampling. In this case, key respondents, who were deemed to be familiar with the ongoing trends and patterns of pre-trial detention were selected.

¹³ <https://dcs.mia.go.ug/ncs/background-community-service>.

¹⁴ S.3 (1) of the Community Service Act, Cap.115.

¹⁵ Paragraph 4, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012.

¹⁶ These were Kampala, Wakiso, Arua and Gulu districts.

¹⁷ ASF Pre-Trial Detention Project Database as of 13th December 2021.

Thus, the selection of sampling units was based on the following criteria

- Geographical and administrative divisions
- Gender of participants
- Locality of the respondents
- Ownership and authenticity
 - NGOs
 - JLOS actors (Magistrates, police officers, prison officials, and Resident State Attorney)

1.3.4. Data collection

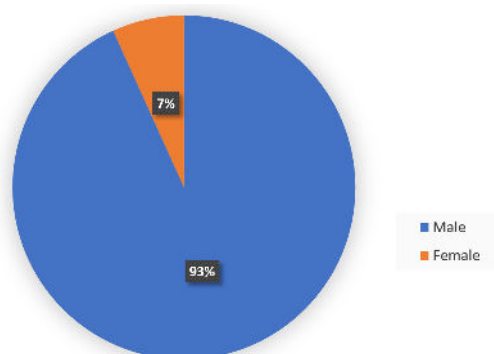
a) Police visits

The Research team visited 5 police stations in the districts of Gulu in northern Uganda and Kampala in the central region.

In Kampala, 4 police stations were visited; Kawempe Central Police Station, Old Kampala Police, Jinja Road Police Station and Kampala Central Police Station. In Gulu, interviews were carried out at Gulu Central Police Station.

A total of 59 suspects (93.2% male and 7%) were interviewed in the five police stations.

Figure 1: The Pie-chart below shows the number of suspects interviewed per gender in the 5 police stations.



b) Prison visits

Prison visits were carried out in 4 (four) districts of Arua, Gulu, Wakiso and Kampala. In Arua, interviews were conducted in Arua Male, Arua Women and Gili Gili prison. In Gulu, the prisons visited were Gulu Male, Gulu Women and Pece prison. In Wakiso, interviews were conducted at Kigo Male, Kigo Women, Kitanya Min Max and Kitanya Farm prison, while in Kampala interviews were conducted at Luzira Murchison Bay and Luzira Women's prison.

A total of 613 inmates (477 male and 136 female) were interviewed in the districts of Arua (171), Gulu (137), Kampala (149) and Wakiso (156) from the respective prison stations listed above.

Table 1: Number of interviews conducted in prisons (Source: ASF Baseline survey data)

Number of Interviews Conducted for the inmates (Prisons)							
Sn	Prison Station	Total Number of Inmates in Prison (2020)		Numbers of suspects interviewed		% of Inmates interviewed	
		Female	Male	Female	Male	Female	Male
1	Arua Male	0	483	18	62	0%	13%
2	Arua Women	19	0	16	0	0%	84%
3	Gili Gili	8	168	3	72	38%	43%
4	Gulu Male	0	739	0	61	0%	8%
5	Gulu Women	67	0	28	0	42%	0
6	Kigo Male	0	1032	0	41	0%	4%
7	Kigo Women	158	0	47	0	30%	0%
8	Kitanya Min Max	0	2394	0	44	0%	2%
9	Kitanya Farm	0	526	0	24	0%	5%
10	Murchison Bay Luzira	0	802	0	109	0%	14%
11	Luzira Women	81	0	40	0	49%	0%
12	Pece prison	0	110	0	48	0%	44%
	Grand Total	333	6254	136	477	41%	8%

1.3.5 Quality Assurance

The quality of the data was bolstered by the following measures:

- I. Protocol and tools were developed and refined as per review and feedback provided by the ASF team and the lead consultant to ensure validity.
- II. Informed consent was obtained and the permission of each research assistant was sought prior to the interview being undertaken in the respective location where they were allocated.
- III. A daily data quality check was undertaken by research team leaders during field work.
- IV. Triangulation of information. Information was obtained from different sources including secondary documents / academic material and quantitative and qualitative methods which enabled cross comparison of the information.

2. CHAPTER TWO: SOCIAL ECONOMIC STATUS OF DETAINEES

2.0. Introduction

The baseline survey sought to establish the social economic status of detainees at police stations and inmates in prisons. Variables explored included level of education attained, occupation and marital status.

2.1. Level of education

2.1.1. Suspects

Out of the 55 male suspects interviewed, 16 (29.1%) of the respondents had no qualifications, 19 (35%) had Primary Leaving Education (PLE),¹⁸ and 12 (22%) had Uganda Certificate of Education (UCE) as their highest academic qualification. These three categories alone accounted for up to 86.1% of all the male suspects interviewed in the five police stations. Only 13.9% of the suspects had a qualification higher than Uganda Certificate of Education, 4 (7.3 %) had Uganda Advanced Certificate of Education (UACE), 3 (5.5 %) had a certificate, only 1 (1.8%) attained a degree and none of them had a qualification equivalent to a master's degree or above. Similar patterns of education are revealed with the data from female suspects where UCE qualification is the highest level of education held by just one of the 4 four suspects, followed by one with PLE, and the other two with no qualifications.

2.1.2. Inmates

A total of 477 male inmates were interviewed in all prisons visited. Out of these, 177 (37%) inmates had no qualification, 189 (40%) had PLE as their maximum academic qualification, and 74 (16%) had UCE as their academic qualification. The three categories alone account for 93% of all the inmates interviewed. Only 12 (3%) had UACE, 6 (1%) had a certificate, 12 (3%) had a diploma, 6 (1%) had a bachelor's degree and 1 inmate (0.2%) had a master's degree among the male inmates interviewed.

Of the 136 women inmates interviewed, only 2 (1%) had a degree, 3 (2%) had either a certificate or diploma, and 4 (3%) had UACE. A total of 19 (14%) had UCE, 52 (38%) had PLE as their maximum qualification, while 56 (41%) had no qualification.

Table 2: Level of education (Source: ASF baseline survey data)

	Inmates		Suspects			
Level of Education	Female	Male	Female	Male	Grand Total	Percentage
Certificate	1	6	0	3	10	1.5%
Degree	2	6	0	1	9	1.3%
Diploma	2	12	0	0	14	2%
PLE	52	189	1	19	261	39%
UACE	4	12	0	4	20	3%
UCE	19	74	1	12	106	16%
Masters	0	1	0	0	1	0.1%
None	56	177	2	16	251	37%
Grand Total	136	477	4	55	672	100%

There is a noticeable pattern from these figures: the largest proportion of detainees (37%) have very low levels of education. It would therefore appear that the less educated one is, the more likely they are to end up as suspects in police custody and even more likely to end up as inmates in prisons. However, this is not unique to Uganda. As far back as the 17th Century, Victor Hugo, former member of the French national assembly remarked; 'he who opens a school door closes a prison.' Writing in 2014, scholars Kathryn Hanson and Deborah Stipek noted a clear link between level of education and probability of incarceration in the United States. They noted that school dropouts were 3.5 times more likely to be arrested than high school graduates.¹⁹

Several factors explain the limited level of education among the prisoners. Mercy, a 31-year-old inmate at Gulu Women's Prison said she was forced into marriage while studying in senior 3 and decided to run from home.

'I went home for holiday in my second term holiday in senior three and my father brought a man whose wife had died and told me that was supposed to marry him. I did not want to marry him and ran to my auntie's place, but she told me to go back. I went to Gulu town and joined some women who were prostitutes. One day a man said we stole his money and we were arrested and brought here.'

Another inmate, Ruth, a 20-year-old prisoner facing charges of assault at Arua Women's Prison has a similar story.

'My parents forced me to marry when I was in senior four vacation and 17 years old at the time. When results came back, I had passed but my husband said I could not go back to school since I was pregnant. I have been staying with him since then and not able to go back to school. Since then I have lived with my husband at his place. I went to the borehole recently and we had a fight with another woman who poured my water. I was arrested and brought here.'

Sankara, a 19-year-old inmate at Gili Gili prison remanded for drug abuse said he dropped out of school in Primary 6 because his parents could not afford school fees.

'I was a brilliant pupil but my parents could not afford the school fees. My father died when I was a young baby, my mother started caring for the family alone. She could not afford the school fees and I dropped out of school.'

The prisons visited in this study include two in each of the refugee hosting border districts of Arua and Gulu. There is compelling evidence suggesting that refugees in Uganda find it harder to access education, despite the country's welcoming nature.²⁰

Mabior, a 19-year-old refugee who fled the conflict in South Sudan said he has been in Uganda since 2016 and was not able to access school hence dropping out altogether.

'Before the war I was studying in South Sudan. When the war broke out, my father was killed and I fled to Uganda. I came with my mother and young sister who is disabled. I was not able to continue with school because there is no school around our camp.'

Emmanuella, a 25-year-old refugee from Democratic Republic of Congo (DRC) detained at Arua Women's Prison also said that she was unable to continue with school after fleeing a tribal clash in eastern Democratic Republic of Congo.

'I was studying in Congo but when we came to Uganda, I tried to study but their system was different from the one I was used to in Congo. I did not understand the subjects and when I told my mother she told me to leave and start helping her with work in the garden of my uncle at whose place we were staying in Uganda. It is from there that I was arrested for threatening violence and brought here.'

19 See, School v. Prisons: Education's the way to cut prison population. Accessible on <https://www.mercurynews.com/2014/05/15/schools-v-prisons-educations-the-way-to-cut-prison-population/> (Accessed on 19th October 2021).

20 See, Education still goal elusive for refugees even with Uganda's open door policy. Accessible on <https://reliefweb.int/report/uganda/education-still-elusive-goal-refugees-even-uganda-s-open-door-policy> (Accessed on 19th October 2021)

The overwhelming majority of refugees in conflict with the law that were interviewed did not reach UCE, or its equivalent.

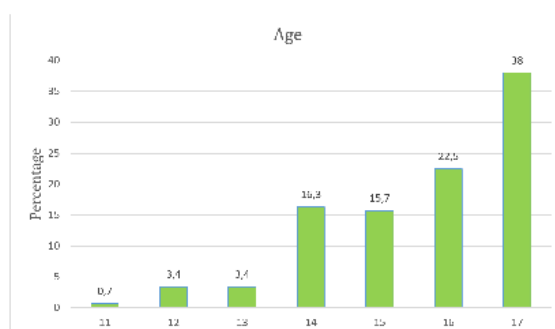
2.1.3. Juveniles in conflict with the law

As per the ASF pre-trial detention project database²¹, majority of juveniles were in the age category of 14-17 years of age. The majority, 38% were 17 years, 22.5% were 16 years, 16.3% were 14 years while 15.7% were 15 years.

Table 3: Age Categories of Juveniles (Source: Pre-trial detention project 13 December 2021)

Age	Number of Juveniles	Percentage
11	1	0.7
12	5	3.4
13	5	3.4
14	24	16.3
15	23	15.7
16	33	22.5
17	56	38.0
Grand Total	147	100

Figure 3: A graph showing the age categories of juveniles (Source: ASF pre-trial detention project 13 December 2021)



Of these a majority 90% were male while 10% were female.

Table 4: Gender of juveniles (Source: ASF pre-trial detention project 13 December 2021)

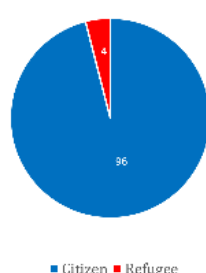
Gender	Number of Juveniles	Percentage
Female	14	10
Male	133	90
Grand Total	147	100

From the data analysis, 96% of the juveniles in conflict with the law were nationals (Ugandans) while 4% were refugees from the Democratic Republic of Congo. Below is a graphical representation of the same.

Table 5: Nationality of juveniles

Nationality	Number of Clients	% Scores
Citizen	141	96
Refugee	6	4
Grand Total	147	100

Figure 4: A graph showing the nationality of juveniles (ASF pre-trial detention project 13 December 2021)

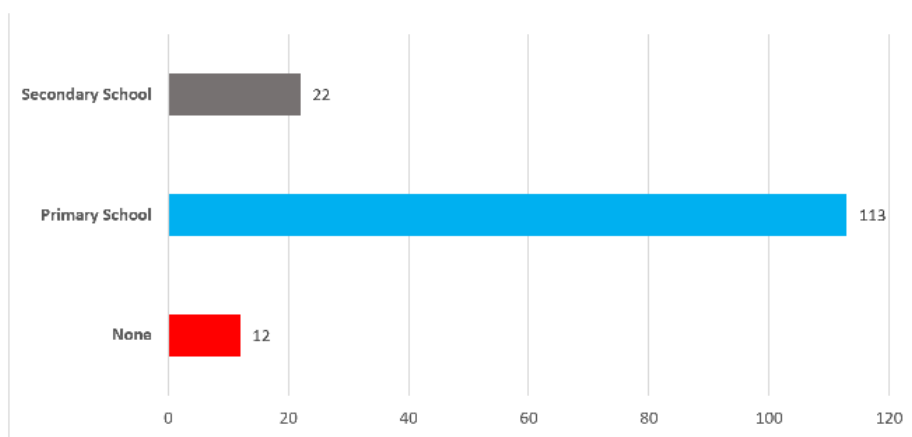


Out of the 147 juveniles in conflict with the law, 77% had attained primary education, 15% secondary education while 8% had attained no education. The education level for the juveniles were categorized in 3 aspects; primary education, secondary education and none. Below is a graphical representation of the same.

Table 6: Level of education of juveniles (Source: Pre-trial detention project 13 December 2021)

Level of Education	Number of Juveniles	Percentage
None	12	8
Primary Education	113	77
Secondary Education	22	15
Grand Total	147	100

Figure 5: A graph showing the education level of juveniles (Source: ASF Pre-Trial Detention Project 13 December 2021)



Most of the juveniles were detained in remand homes (79) and at police (59) and in prison (6).

Table 7: Detention facilities (Source: ASF pre-trial detention project 13 December 2021)

Place of Detention	Number of Clients
Court Cell	3
Police	59
Prison	6
Remand Home	79
Grand Total	147

The remand homes recorded the highest number of juveniles, followed by police cells, prison and then court cells.

Table 8: Number of juveniles detained by facility (Source: ASF pre-trial detention project)

Detention Facility	Number of Juveniles
Arua Police Station	10
Arua Remand Home	43
Arua Women Prison	1
Gulu Main Prison	2
Gulu Police Station	10
Gulu Remand Home	28
Hoima Prison	1
Ihundu Remand Home	11
Jinja Road Police Station	17
Kitalya Main Prison	1
Kitgum Police Station	4
Masindi Male Prison	1
Masindi Police Station	6
Naguru Remand Home	9
Old Kampala Police Station	3
Grand Total	147

This is in contravention of the Children Act, Cap 59 as amended that prohibits detention of juveniles in an adult prison.²² Several additional intersecting factors may explain why less educated people are more likely to end up as detainees. First, education increases one's chances of employment and earning a decent wage. This means that educated people are less likely to engage in crimes such as theft and robbery as a way to make ends meet. This exponentially reduces the probability of such a person ending up as a detainee in custody.

²² Section 91 (6) of the Children Act, Cap. 59.

The majority of inmates interviewed, 145 (23.7%) in prison were remanded for theft. On the other hand, crimes like computer misuse that require a level of literacy to execute did not feature prominently.

Secondly, with education comes exposure and as such it appears that educated people are less likely to commit certain crimes such as arson done in retaliation for a grudge, opting instead to have the issues addressed by the relevant authorities. Further still, education increases one's chances of earning a decent wage and this means that educated people are more likely to afford services of a lawyer to secure their release on police bond within 48 hours or on bail once remanded by court. They are also more likely to bribe their way to freedom or settle matters out of court.

Felix, a 30-year-old former boda-boda rider at Kitalya prison who had been on remand for 2 years, blamed his long stay on remand on lack of access to a lawyer since he could not afford one.

'I do not have money. Even when I know about bail, I cannot afford it. I am a bodaboda rider and make very little money. I know that I would be out if I had access to a lawyer.'

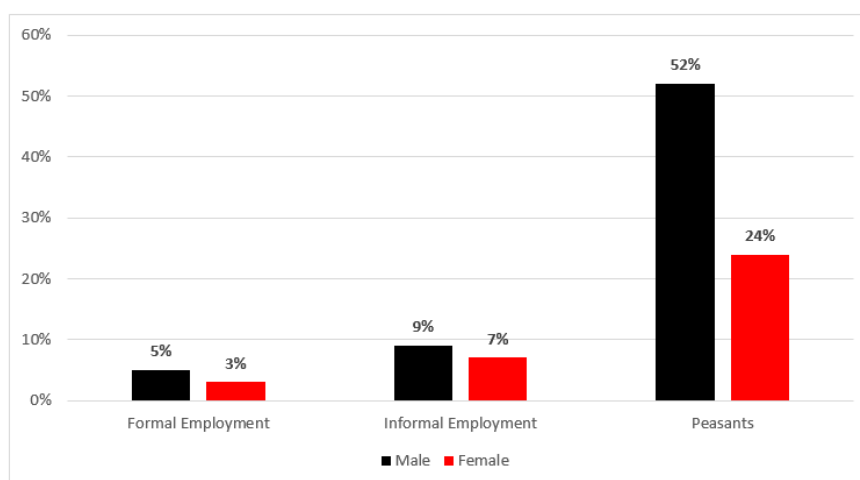
Morris, formerly a peasant farmer, now an inmate at Gulu Main prison on remand for 1 year and 3 months said all he could get was pro bono services.

'I pray that I get access to legal aid. I have seen them come here and help some people with their cases, I have not been able to get help from them, if I get help, I will be out.'

2.1.4. Occupation

Of all the detainees at police and in prisons interviewed across the four districts, only 11 (8%) were engaged in formal employment while 22 (16%) were engaged in informal employment. The majority identified themselves as market vendors while the remaining 107 (76%) were engaged in household or peasant work.

Figure 6: Bar graph showing categories of Employment according to Gender (Source: ASF Baseline survey data)



Under formal employment, the female gender was at 3% while the male gender was at 5% contributing to a total of 8%.

For the informal employment, the female was at 7% while the Male was at 9% contributing to a total of 16%. The peasants' category contributed to 76% of both gender with 52% for male and 24% for female.

A similar figure emerges for the male interviewees; a total of 533 male suspects and inmates were interviewed, 314 (59%) were peasants, 176 (33%) were engaged in informal employment and only 43 (8%) engaged in formal employment. For the purpose of this research, peasants are categorised as persons engaged in activities such as subsistence farming and informal employment that includes cobblers, 'boda-boda' cycling; while formal employment is categorised to include teachers, and nurses.

Generally, women in Uganda are less likely to finish school, own factors of production such as land, and are most likely to suffer stereotypes that keep them out of school and employment compared to their male counterparts.

Below are some of the specific forms of employment as per the 3 categories of those that were interviewed during the baseline study. The examples highlighted below have been extracted from the data as per the responses per gender.

Table 7: Categories of employment

Male	Female
Formal Employment <ul style="list-style-type: none"> • Teacher • Soldier • Journalist • Lecturer • Electrician • Bank teller 	Formal Employment. <ul style="list-style-type: none"> • Nurse • Journalist • Teacher
Informal Employment <ul style="list-style-type: none"> • Hawkers • Cobbler • Barber • Driver • Builders • Carpenter • Electrician • Boda Boda Riders • Scrap dealer • Mechanic • Chef • Carpenter • Cleaners • Factory worker • Garbage collector • Disco Jocker • Comedian 	Informal Employment <ul style="list-style-type: none"> • Hair Dresser • Receptionist • Mobile money agent • Hawker • House wife • Saloon Attendant • Waitress • Vendor • Maid • Shop attendant • Pastor • Bar attendant • Cleaner

Dorcus, a 21-year-old peasant at Gili Gili prison on remand for murder had this to say.

'I pray that I get access to legal aid. I have seen them come here and help some people with their cases, I have not been able to get help from them, if I get help, I will be out.'

Teopista, a woman at Kitalya Prison who has been on remand for 6 months said she used to work as a house maid in Wakiso district before her arrest after failing to find a job.

'I tried to find a job but failed, I ended up working as a housemaid. It's from there that I was arrested on a false charge of trespass.'

The situation is even more complicated for vulnerable groups such as refugees, and the disabled, a number of whom featured in the interviews.

Rebecca, a 20-year-old inmate at Gulu Women's prison said she was formerly a student in South Sudan before fleeing to Uganda.

'When we came to Uganda, my mother told me to stay with her at home since she was sick and needed care after running from the war. I could not continue with my education.'

Dominic, a physically handicapped 25-year-old inmate at Murchison Bay had a similar story.

'I was born in Mubende district. I could not go to school because the school was far from home and since I was disabled, so I dropped out in S.1 and started working at the market with my mother.'

Similar statistics were recorded among the male suspects and inmates with 92% of those interviewed either peasants or engaged in informal employment. For instance, Simon, a boda-boda rider from Omoro district, remanded for assault at Gulu Main Prison said he resorted to boda-boda riding after dropping out of school before sitting for his ordinary level exams.

'I decided to ride a boda-boda since I could not find any job. I asked my father for money and he sold his land and bought for me the boda-boda.'

This corroborates the earlier findings on education. People with less education are more likely to end up in informal employment without regular sources of income. Among the refugees interviewed, it would appear that they are in an even more vulnerable position as most of them are uneducated, unemployed and without land to engage in farming.

2.1.5. Marital status

All the 4 female suspects in police custody that were interviewed identified themselves as single or unmarried. On the other hand, 33 (60%) men were single, 21 (38%) were married and only 1 widow (2%). There was no divorcee among the female and male interviewees.

Among the inmates in prisons, 277 of the male respondents said they were married, 184 were single, 12 divorced and four widowed. On the other hand, 50 of the female inmates were married, 64 single, 11 divorced and 11 others widowed.

Table 8: Marital status of detainees (Source: ASF baseline survey data)

Marital Status	Suspects		Inmates		Grand Total
	Female	Male	Female	Male	
Divorced	0	1	11	12	17
Married	0	21	50	277	348
Single	4	33	64	184	285
Widowed	0	0	11	4	15
Grand Total	4	55	136	477	672

A majority of inmates on remand being married, widowed, or divorced translates into a high likelihood of their families being deserted following detention of the inmates. This, they noted, is cause for stress and mental anguish.

Grace, a 23-year-old single mother who worked at a nightclub in Kampala currently on remand for the offence of engaging in activities likely to spread a disease said she was most worried for her five-year-old son.

'I left my son at the neighbour's place as I was going to work. I did not know that I would be arrested. The police came and arrested everyone at the bar where I work and we were brought here. The neighbours brought him to see me recently, he was sick and crying a lot. I am always worried about what is happening to him now that I am here.'

Ivan, a 25-year-old carpenter at Kitalya prison charged with assault, is worried about his family as a whole.

'I was the sole breadwinner at home. My wife had just given birth to our third child before I was arrested. I don't know how the whole family survives without me. If school starts, the children will suffer even more as I will not be able to pay their school fees'

Maria, a 42-year-old single mother who was working as a house keeper and now on charges of human trafficking at Luzira women's prison said she is worried about her children having to live without her since they are too young.

'My oldest daughter is 16. I do not think she can adequately care for her siblings. She will not be able to buy food. Sometimes, I worry that she may join the many women in Fort Portal town where I come from who have gone into prostitution to earn a living.'

Conclusion

On the whole, the socio-economic factors, particularly lack of or limited education and unemployment seem to be mutually reinforcing factors predisposing one to unemployment. Lack of education means that one is less likely to be formally employed and therefore have no steady source of income. Which means that they are more likely to get involved in petty crimes. While the policy of arresting and detaining individuals on charges related to COVID-19 infractions are self-defeating. When vulnerable people suffer from the economic impact on their livelihoods due to COVID-19 are detained in places of detention which are congested and hotspots for the spread of COVID-19, this makes them more vulnerable.

3. CHAPTER THREE: GROUNDS FOR DETENTION OR IMPRISONMENT

3.0. Introduction

The study sought to establish the grounds for arrest and detention or imprisonment. The Uganda Police annual crime reports for the last two years (2019 and 2020) reported common assault as the most committed crime with 24,799 and 25,698 cases respectively. This was followed by domestic violence, defilement, threatening violence, obtaining money by false pretence, criminal trespass, malicious damage to property, cattle stealing/rustling, aggravated assaults (general) and burglaries.²³

3.1. Suspects at police stations

Of the 59 suspects interviewed, theft was the most common offense for detention with 20 cases (34%), followed by defilement and spreading infectious disease at 7 cases (12%). Drug abuse was fourth with 6 cases (10%). Murder and human trafficking followed, each with 5 cases (8%), while robbery had four cases (7%) followed by threatening violence with 3 cases (5%). Trespassing and illegal entry each had one case (2%).

Two suspects reported not knowing why they were in police custody. One of them, Gerald, a 27-year-old builder, did not know why he was arrested.

'I was walking home when a policeman came from behind and held my trouser. He said I was under arrest. When I asked him why, he said I had to come here to the police station first and then he would explain. Since then, he has never returned yet I have been here for a week now.'

Martine, a 22-year-old former student and now a suspect at Gulu Central Police Station arrested for 'violating curfew' says all he did was drink alcohol with friends at night.

'There was a wedding in our area, and we went there and took a lot of alcohol and I started feeling drowsy. The police came and arrested us all.'

3.2. Inmates in prisons

The 613 inmates that we interviewed were arrested and charged with a range of one of 28 common offences. On the high end, theft topped the list of offences with a total of 145 suspects (23.7%), followed by defilement with 128 cases (20.9%), and murder at 112 cases (18%). Assault cases were 41, robbery 35, rape 31, threatening violence 29, arson, and obtaining by false pretence each had 17 cases, while trespass had 10 cases.

On the other end, each of the less common offences such as computer misuse, destroying legal tender, forced marriage, jumping bail, poaching, and terrorism had one case (0.2%). These were followed by careless driving, child trafficking, disobedience of lawful orders, illegal fishing, and illegal possession of firearms each with 2 cases (0.3%). Cattle rustling, spreading an infectious disease, and being a public nuisance, each had 3 cases (0.5%). Domestic violence, drug abuse, and kidnapping each registered 5 cases (0.8%), while human trafficking had 6 cases (1%).

A new category of 'spreading infectious disease' with 10 cases in total 7 suspects in police custody and 3 on remand were registered. These charges seem to emanate from COVID-19 restriction related violations. Since the beginning of 2020, this offence has become more pronounced as the police invoke it to limit public gatherings, late night meetings, and social activities under the guise of controlling the spread of COVID-19.

23 See, Uganda Police Annual Crime Report, 2020. Pg 96 figure 32. Accessible on <https://www.upf.go.ug/wp-content/uploads/2021/04/ANNUAL-CRIME-REPORT-2020-1.pdf?x74136> (Accessed on 20th October 2021)

Sn.	Nature of Cases	Number of Cases		% of cases	
		Inmates	Suspects	Inmates	Suspects
1	Arson	17	0	3%	0%
2	Assault	41	0	7%	0%
3	Careless driving	2	0	0%	0%
4	Cattle Rustling	3	0	0%	0%
5	Child trafficking	2	0	0%	0%
6	Computer misuse	1	0	0%	0%
7	Defilement	128	7	21%	12%
8	Destroying legal tender	1	0	0%	0%
9	Disobedience of lawful orders	2	0	0%	0%
10	Doesn't Know	2	0	0%	0%
11	Domestic violence	5	0	1%	0%
12	Drug abuse	5	6	1%	10%
13	Forced marriage.	1	0	0%	0%
14	Human Trafficking	6	5	1%	8%
15	Illegal Entry in the country	0	1	0%	2%
16	Illegal Fishing	2	0	0%	0%
17	Jumping Bail	1	0	0%	0%
18	Kidnapping	5	0	1%	0%
19	Murder	112	5	18%	8%
20	Obtaining money by false pretence	17	0	3%	0%
21	Poaching	1	0	0%	0%
22	Possession of a firearm	2	0	0%	0%
23	Public nuisance	3	0	0%	0%
24	Rape	31	0	5%	0%
25	Robbery	35	4	6%	7%
26	Spreading infectious disease	3	7	0%	12%
27	Terrorism	1	0	0%	0%
28	Theft	145	20	24%	34%
29	Threatening violence	29	3	5%	5%
30	Trespass	10	1	2%	2%
Grand Total		613	59	100%	100%

At Kitalya Prison, Musa, a 25-year-old boda-boda rider remanded on a charge of spreading an infectious disease believes he was only arrested because he followed an opposition procession.

'I was following a crowd of people when our mayor was giving out food at Kalerwe. The police came and I had nowhere to run, so they arrested me and brought me here.'

However, the police have been accused of selectively making these arrests and using the offense as a tool to curtail activities of opposition groups as well as extort members of the public.²⁴ Using a very wide interpretation of the law, the police have arrested people found doing 'anything' that may be linked to spreading the virus.

According to Johnson, a 32-year-old boba-boda cyclist, all he did was transport someone on his boda-boda and he ended up at Kitalya Prison.

'I was transporting a man who said he wanted to go to the hospital. The police stopped us and he jumped of and ran. I could not run since I feared that they would shoot me. They asked for money which I did not have. I was arrested and later taken to court.'

Another respondent, Kevin (32-year-old) says all he did was attend church.

'I did not know that we were not supposed to attend church. While at church the police came and arrested us for spreading COVID-19, but we were wearing masks.'

3.3. Juveniles in detention

Juveniles in conflict with the law had been arrested for a range of offences, both capital and non-capital offences. A majority, 27.8% were arrested for theft followed by aggravated defilement at 23.8%. Below is a breakdown of the nature of offences allegedly committed by the juveniles.

Table 10: Category of Offences committed by Juveniles (Source: ASF pre-trial detention project 13 December 2021)

Sn	Nature of case	Number of Clients
1	Affray (Fight)	1
2	Aggravated robbery	1
3	Attempted murder	1
4	Burglary (shop breaking)	1
5	Child to child sex	1
6	Disobedience to lawful orders	1
8	Domestic violence	1
10	Assault	1
11	Rape	1
12	Reckless driving	1
13	Threatening violence	1
14	Trespass	1
15	Arson	2
16	Grievous Harm.	2
17	Common Nuisance	2
18	Criminal trespass and malicious damage	2
19	Curfew	2
20	Committing an act likely to spread an infectious disease	5
21	Entering a wildlife protected area without permission	5
22	Possession of narcotic drugs	7
23	Murder	8
24	Assault	12
25	Robbery	12
26	Aggravated defilement	35
27	Theft	41
	Grand Total	147

Conclusion

The findings from prison to a large extent align with previous statistics from police. Cases of defilement, assault, obtaining money by false pretence, and threatening violence featured prominently among the suspects and inmates interviewed in the four districts and are among the most committed offences. Likewise, theft and aggravated defilement were prominent among juveniles in conflict with the law.

4. CHAPTER FOUR: PERIOD SPENT ON REMAND

4.0. Introduction

The law provides time limits within which a person in conflict with the law should be detained.

The *Police Act*²⁵ stipulates that, 'a police officer on arresting a suspect without a warrant shall produce the suspect so arrested before a magistrate's court within forty-eight hours unless earlier released on bond.'²⁶ Any person arrested and taken to a police station for breaking the law may be released until the police completes its findings. The guarantee that he or she will turn up whenever required to do so by the police is known as police bond.²⁷ No money is paid on police bond.²⁸

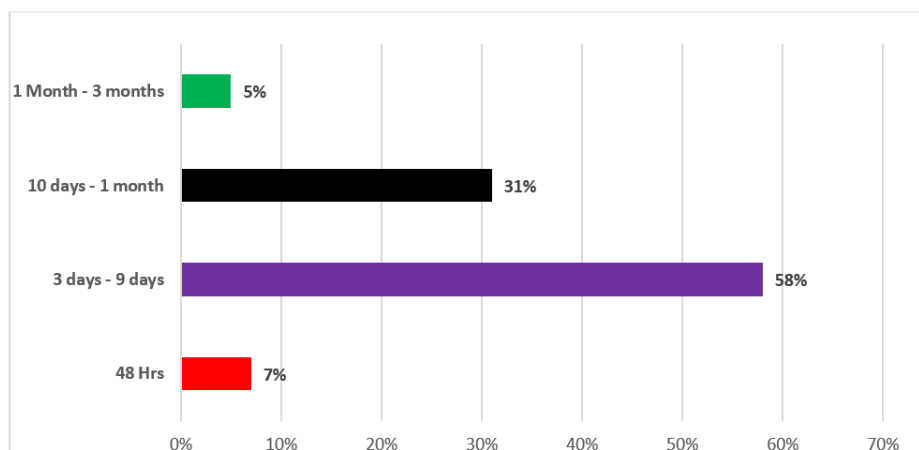
This is reiterated under Article 23(4)(b) of the *Constitution of the Republic of Uganda, 1995* as amended. That, 'persons arrested on reasonable suspicion of having committed or being about to commit a criminal offence under the laws of Uganda shall, if not earlier released, be brought to court as soon as possible but in any case, not later than forty-eight hours from the time of arrest.' Under Article 23 (6)(b) and (c) of the Constitution of the Republic of Uganda, 1995, 'where a person is arrested in case of an offence which is triable by the High court as well as a subordinate court, the person shall be released on bail on such conditions as the court considers reasonable if they have spent sixty days on remand. For offences triable by the High Court the person is to be released if they have been in custody for one hundred eighty days.' Bail is release of an accused person by court before completion of the case on the understanding that the released person will turn up for his or her trial or whenever required. The accused will be required to give security in form of cash or some other property.

The study sought to establish the duration spent on remand as well as awareness of both police bond and bail among the detainees.

4.1. Period of detention in police custody

The findings from the survey show that the 48-hour rule is not complied with. Of the 59 suspects interviewed in police custody, only 4 (7%) were within this constitutional limit on time in police custody. The majority, 34 (58%) had been in custody for between 3–9 days, 18 (31%) had spent between 10 days and 1 month in a police cell and 3 (5%) had spent between one month and 3 months in police cells.

Figure 8: Period of detention in police custody (Source: ASF baseline survey data)



Keith, a suspect at Jinja Road Police station said he had spent one month in police custody and knew about the 48-hour rule.

'I heard about the 48-hour rule from a relative but I have been here for a month now. I do not know how to benefit from the rule because I do not have a lawyer for now.'

At Gulu central Police Station, a 27-year-old businessman Hakim arrested for human trafficking said he was informed about the 48-hour rule by a police officer.

²⁵ The Police (Amendment) Act, 2006.

²⁶ S. 25 (1) of the Police Act, Cap.303.

²⁷ <http://www.jsc.go.ug/content/what-difference-between-bail-and-police-bond>. (Accessed on 16th November 2021).

²⁸ Ibid.

'I was told of that rule by a police officer, but I have been here for 2 weeks now and it has not helped me at all.'

At Old Kampala police station, 27-year-old Shafiq said he heard of the right from fellow boda-boda riders at their stage before arrest.

'Before my arrest, I heard of the right from fellow boda-boda riders at the stage, so I know about it. I have asked for it, but failed to get it and the policemen keep ignoring me.'

Many of the detainees were therefore theoretically aware of the 48-hour limit on police detention but were unable to realize or have it enforced in their case.

4.2. Awareness of police bond

Only 1 among the 4 female suspects in police custody was aware of her right to apply for police bond. Among the male suspects, only 21 of the 55 suspects knew of their right to apply for police bond while 63% (37) did not know about it.

Table 11: Awareness of police bond (Source: ASF baseline survey data)

Awareness of Police Bond	Female	Male	Grand Total	% Score
No	3	34	37	63%
Yes	1	21	22	37%
Grand Total	4	55	59	100%

Phyllis, a 20-year-old hairdresser, expressed shock that there is such a thing as a 48-hour-rule.

'I have been here for over two weeks. I did not know anything about police bond and I will be grateful if you help me benefit from it.'

At Kawempe, Julius, a 43-year-old male former security guard who had been in police custody for 3 weeks said he knew about the police bond.

'I heard about police bond from a TV program before my arrest but I have failed to get it. All I know is that I can use it to get out.'

Another suspect, Justus, a 21-year-old male who had been in police custody for 2 days on accusation of theft said he knew about the police bond from radio and was trying to get it.

'I heard about police bond on radio where lawyers were speaking about it. I am trying to get it but I do not know if I will succeed.'

The fact that most of the suspects had spent so long in police custody is not surprising. For a while now, authorities in Uganda have publicly rejected the 48-hour rule and called for its vacation to allow police to hold suspects longer. The former Inspector General of Police, General Kale Kayihura was particularly vocal against adherence to the 48-hour rule. Appearing on Capital Gang, a popular radio talk show on Capital FM in April 2015, he blamed a spate of murders, terror threats and mob justice that rocked the country around the time on this particular rule, saying that 48 hours was insufficient for police to effectively carry out investigations that could lead to convictions. *'The British are doing it (holding suspects beyond 48-hours) ... police can arrest someone for 90 days before charging him.'*²⁹ While appearing before a parliamentary committee in January 2018, he advised that the rule be revised to allow for longer detention of suspects in police custody to allow for more time for investigations.³⁰ The President has also called for revision of the 48-hour rule, and the issuance of police bond.³¹

Such statements, made by people in great positions of authority can have a direct impact on the local police's application of this rule and could explain why most of the suspects interviewed at police had spent beyond the 48 hours in police custody. This practice has not only affected the ordinary Ugandans who have difficulty affording legal services but opposition activists as well. Members

29 See, Kayihura rejects 48-hour suspect rule. Accessible on <https://www.observer.ug/news-headlines/37290-kayihura-rejects-48-hour-suspects-rule> (Accessed on 21st October 2021)

30 See video here <https://www.youtube.com/watch?v=pSbIR8mSgUk&t=40s> (Accessed on 21st October 2021)

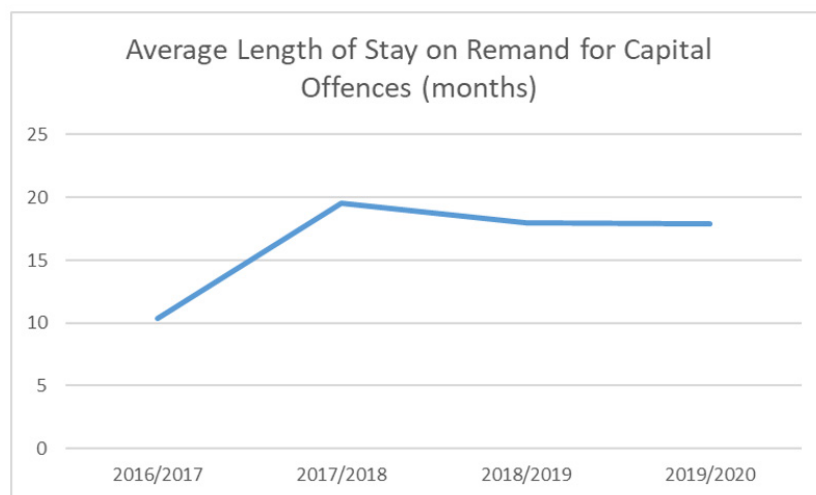
31 See, I'll not Accept Bail, Bond for Murder Suspects, says Museveni. Accessible <https://chimpanreports.com/ill-not-accept-bail-bond-for-murder-suspects-says-museveni/> (Accessed on 21st October 2021)

of Parliament, Allan Ssewanyana and Muhammad Ssegirinya were arrested in September 2021, both were re-arrested minutes later and held beyond the 48-hours before they were eventually produced in courts of law following prolonged advocacy by opposition politicians.

4.3. Period spent on remand in prisons

Currently, more than half of the prison population, 52.8%, is on remand awaiting trial against 47.1% that have been convicted.³² This shows the magnitude of pre-trial detention in Uganda. The average length of stay on remand is higher for persons charged with capital offences.

Figure 9: Average length of stay on remand for capital offences (Source: JLOS Annual Performance Reports 2016/17-2019/20)



The findings from the study show that only 253 of the 613 suspects interviewed (42%) had spent less than 6 months on remand. The rest had spent over 6 months. Of these, 137 (22%) had spent between 6 months and 1 year and 109 (18%) had spent 1 to 2 years on remand. A total of 36 suspects (6%) had been on remand between 2 to 3 years, 68 (11%) had been on remand between 3 to 6 years while 10 suspects (2%) had been in custody on remand for over 6 years. A study published in 2008, painted a similar picture to the data from the survey. It indicated that at the time, up to 56% of prisoners in Uganda were on remand awaiting trial.³³ This means that not much has changed since then.

Table 12: Period spent on remand in prisons (Source: ASF baseline survey data)

Sn	Time Period	Number of inmates	% of inmates
1	1 Week - 1 month	46	8%
2	2 Month - 3 Months	90	15%
3	4 Months - 6 Months	117	19%
4	6 months - 1 Year	137	22%
5	1 Year - 2 Years	109	18%
6	2 Years - 3 Years	36	6%
7	3 Years - 4 Years	1	0%
8	4 Years - 6 Years	67	11%
9	6 years and Above	10	2%
Grand Total		613	100%

Mathew, a 30-year-old male prisoner at Murchison Bay in Luzira is one of the people that have spent the longest time on remand having been detained for 7 years on charges of defilement.

'I hope that the court will take into account my sickness, and the period spent on remand and grant me bail or speed up my case because I have not received such help yet.'

At the same facility 26-year-old Michael remanded for defilement has also spent 7 years on remand.

'I was initially remanded at Kitalya prison and later brought here. I have been here for 7 years now though I have never been taken to court since. I have no access to a lawyer and believe that is why I have been here this long. I pray that I get a lawyer, go to court and get tried.'

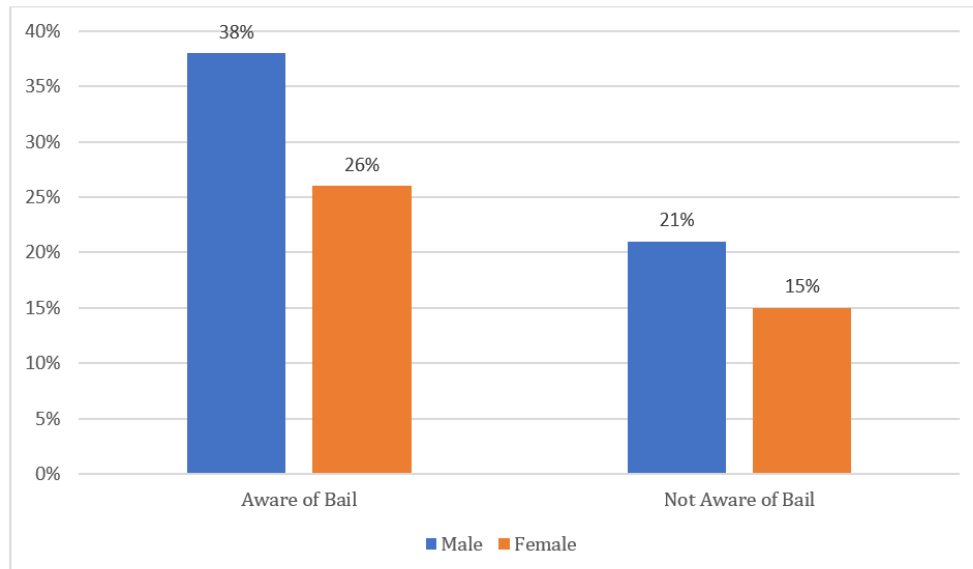
³² Uganda Prisons Service statistics, September 2021.

³³ Roy Walmsley, World Pre-trial/Remand Imprisonment List, 7th ed. (London, International Centre for Prison Studies, 2008).

4.4. Awareness on the right to bail

There was a greater level of awareness about the right to bail among the inmates than the right to apply for police bond among suspects. Out of the 613 prisoners interviewed, 393 prisoners (64%) knew about the right to bail, while 220 (36%) were unaware of the right. Asked how they knew about this right, majority said they were sensitised by prison warders (welfare officers), fellow inmates, human rights clubs, family members and the media respectively.

Table 13: Awareness of the right to bail (Source: ASF baseline survey data)



The plight of prisoners who did not know about their right to apply for bail was highlighted by Joyce, a prisoner at Gili Gili prison in Arua.

'I have been here for four years now. I did not even know that I could get out on bail. Before arrest, I used to sell brooms in Pakwach town to feed my three children. I was accused of arson and brought here after my neighbour's grass-thatched house was burnt. I did not do it and I worry about my children and cry every day because I do not know how they are surviving now. If I could access bail, I would go out and see them.'

David, a 28-year-old prisoner who has been on remand for 2 years at Kigo men's prison said he didn't know about bail despite being on remand for two years.

'I do not know about bail. I have heard fellow prisoners mention it, but beyond that I don't know about it and no one has educated me about it.'

For Winnie, a 45-year-old on remand for 2 years for threatening violence who learnt about bail from the human rights club at Gulu Women's Prison, all that is stopping her from securing bail is failure to access sureties from her home.

'My husband and I are here for the same offence. I have not got access to my family but I believe that they can help me get bail if I told them and they come here to stand surety for me.'

Owing to their limited level of education, and for most, their level of income, many of the detainees are unable to hire the services of a private lawyer. Many alleged to not having met with a lawyer in the course of their time on remand and expressed shock at the revelation that they were eligible for mandatory release on bail, owing to their overstay on remand.

The prisons visited in northern Uganda, Arua and Gulu, also happen to be main prisons in their respective sub-regions of West Nile and Acholi and as such, serve as regional facilities. This makes it hard for the families, relatives and friends – who live in districts where the offence was allegedly committed from to visit, help with the court process or stand surety for them; making it harder for the suspects to fulfil the minimum conditions for their release on bail.

This is the case for Jessica, a 25-year-old female inmate at Gili Gili prison who was arrested from Zeu in Zombo district for assault.

'The court does not like granting bail to refugees. They fear that we will run away and we do not have people to stand surety for us like the Ugandans.'

Just like police bond and adherence to the 48- hour rule, bail has also become a controversial issue in Uganda and has been for the last several years, with the President repeatedly calling for its regulation, especially for murder suspects and other suspected capital offenders.³⁴ On October 17, 2021, the Daily Monitor – a local daily newspaper – reported that cabinet had gone ahead and okayed reforms that will see the Constitution of the Republic of Uganda, 1995 and the Police Act Cap 303 amended, making it harder to access bail and police bond.³⁵ It remains to be seen to what extent the proposals will impact the grant of police bond and bail, the right to a fair trial and right to liberty.

Conclusion

The knowledge about the right to bail and police bond has not translated into access to justice for those in police detention and on remand. This is because without services of a lawyer or legal aid, suspects oftentimes are not aware of the process for application of police bond and neither are they able to negotiate with the police. While for those on remand, lack of legal representation means that they cannot fulfil the formalities and pursue having their cases cause listed even for a bail hearing. The possibility that inmates who have spent several years on remand without appearing before the courts have fallen through the cracks and have been forgotten by the criminal justice system cannot be discounted and point to the need for legal aid services in Uganda.

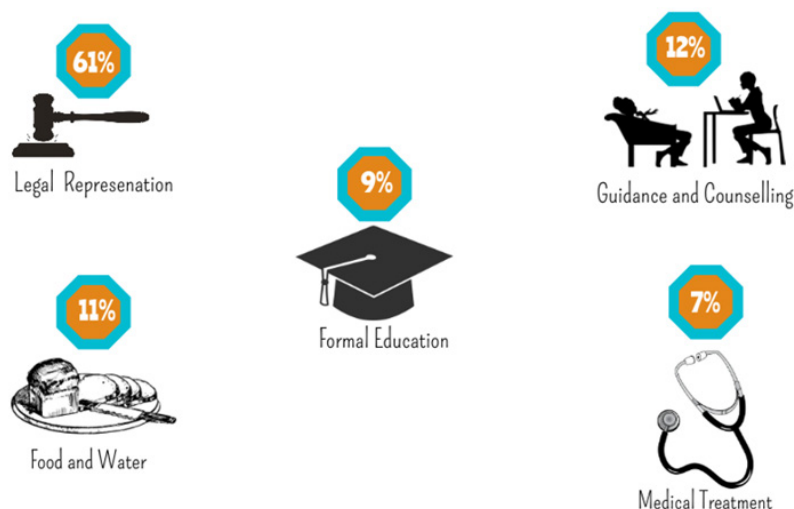
34 See, Museveni inches closer to scrapping bail for capital offenders. Accessible on <https://www.monitor.co.ug/uganda/news/national/museveni-inches-closer-to-scrapping-bail-for-capital-offenders--3570096> (Accessed on 21st October 2021).

35 See, Anger as cabinet okays bail reforms. Accessible on <https://www.monitor.co.ug/uganda/news/national/anger-as-cabinet-okays-bail-reforms-3585864> (Assessed on October 21, 2021)

5. CHAPTER FIVE: ACCESS TO JUSTICE IN JAIL

5.0. Introduction

The survey also sought to establish what inmates considered as the most vital services. Inmates were given a list of five services to choose from- legal representation, guidance and counselling; medical treatment; formal education; and food and water.

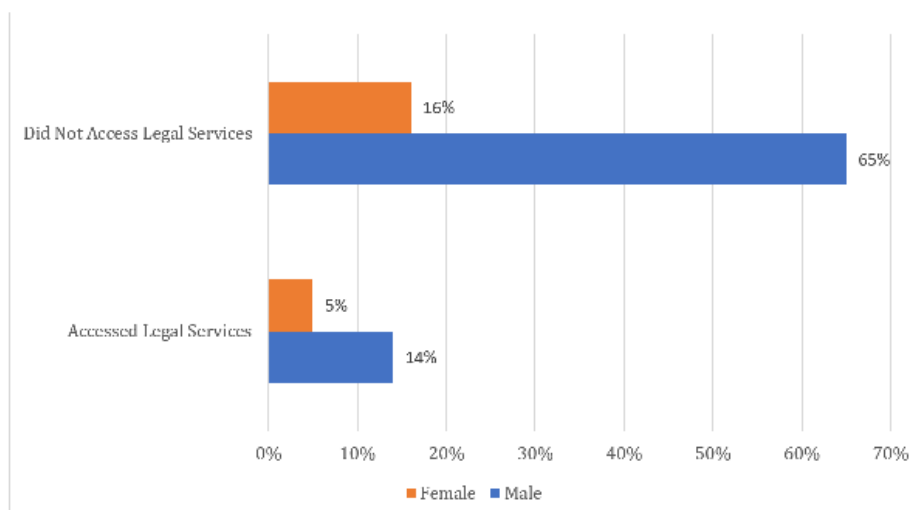


Legal representation ranked as the most prioritized need among the inmates, 61%, counselling second with 12%, followed by food and water 11%, formal education at 9% and medical treatment at 7%.

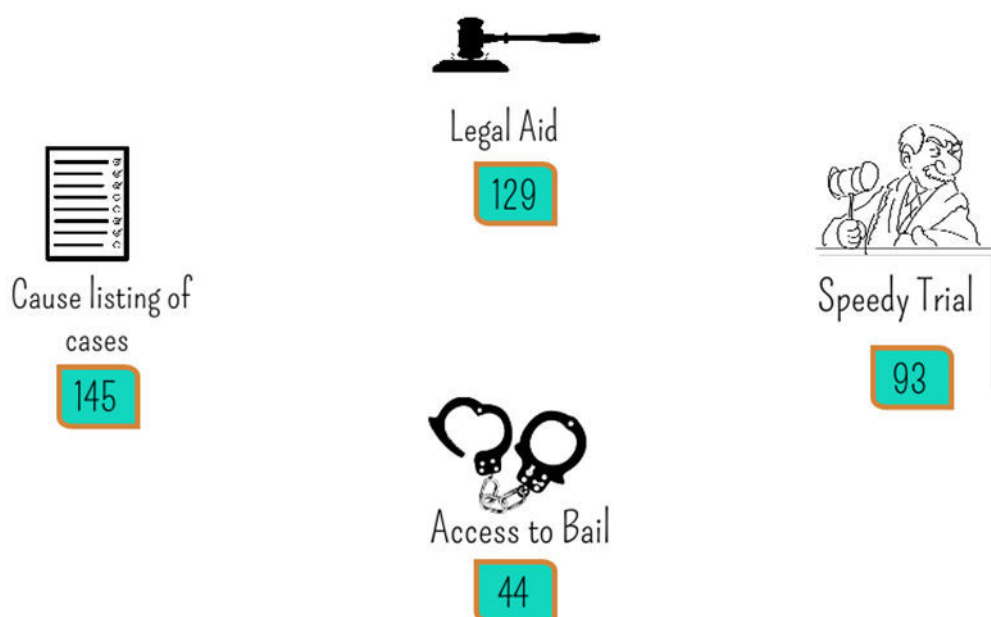
Against the background that most of the prison inmates had very limited levels of education, and engaged mainly in informal and peasant employment, accessing legal services is out of their reach. Provision of legal aid, currently accessible in a number of prisons visited, does not cover most of the prisoners and tends to focus on the most vulnerable of the prisoners such as refugees.

Of the 613 inmates interviewed, only 33 were able to hire private lawyers while the highest number did not have access, and a few others were met by pro bono lawyers. It is not surprising, therefore, that legal aid as a means of knowing about the right to bail ranked 7th behind the media, and only ahead of judges/magistrates and police officers.

Figure 10: Percentage of detainees who have accessed legal services (Source: ASF baseline survey data)



This is not necessarily because legal aid service providers do not promote awareness on the right to bail, but because few of the inmates ever have access to any form of legal aid services.



In the course of this study, of the 613 inmates interviewed, the three greatest legal needs highlighted by the inmates were having their cases cause listed (145), followed by the need for legal aid (129), and a speedy trial (93).

Table 13: Legal needs among inmates (Source: ASF baseline survey data)

No.	Need	Number of inmates	% of Inmates
1	Plea Bargaining	25	4%
2	Access to bail	44	7%
3	Speedy Trial	93	15%
4	Community Service	4	0.7%
5	Tracing sureties	8	1.3%
6	Legal Aid	129	21%
7	More Government Lawyers	4	0.7%
8	Access to information	22	3.6%
9	Tracing Missing Files	3	0.5%
10	More Courts	6	1.0%
11	Cause listing of their cases	145	24%
12	Reduce time spent on remand	5	0.8%
13	Reconciliation	4	0.7%
14	Others	121	20%
Totals		613	100%

Available evidence shows that access to legal services does help many prisoners secure their freedom. A 2009 report by Legal Aid Service Providers' Network, shows that paralegal advisory services³⁶ assisted up to 5,751 accused persons to obtain bail between 2008 and 2009.³⁷ Given the limited access of prisoners to legal services and the effect of legal services on their time in jail, it is not surprising that most of them feel that legal services and information is their most pressing need.

The examples below highlight the inmates need of access to services, especially legal services, in prison. Victoria, a female inmate on remand for assault says she committed the offence but has failed to get legal help on a plea bargain.

'I committed the offence, I admit it. I want to plead guilty under plea bargain, but the people who promised to help me get it have never returned and now I have been here for 3 months.'

For Cissy, a female inmate at Kigo Female Prison who has been on remand for 1 year and 4 months on a murder, all she wants is the case handled faster so she can serve her sentence as a convict and not a remand as is the case now.

³⁶ The Paralegal Advisory Services was closed due to lack of funding despite its notable contribution in promoting use of alternative measures to imprisonment.

³⁷ Legal Aid Service Providers' Network, Mapping Report: Legal Aid Service Provision in Uganda (Kampala, 2009) p.35

'I have not received any kind of legal support. A team of lawyers came here and all they asked me and other inmates if we know the status of our cases. They have since not returned. I have been on remand for a very long time and my case has never been determined. I want to go to court so I can accept the case and serve my sentence.'

Joshua, formerly a student, and now on remand at Kigo Men's prison on a charge of defilement where he has been for the last 1 year and 7 months is grateful for the legal aid offered pro bono by a team of lawyers.

'I have met a team of lawyers on pro bono initiative twice, they were very helpful because they helped me file for a plea bargain, I hope it goes through.'

For Baker, a former businessman and currently at Murchison Bay Prison on a charge of defilement, his lawyers asked for a lot of money and that was a huge impediment for him accessing them.

'My lawyers helped me apply for bail. However, they asked for a lot of money, which I did not have. This discouraged me from continuing since I did not have the money.'

Abdul, a former trader on remand for 5 years at Murchison Bay Prison on a charge of rape said he met a lawyer annually on average but wasn't helped by them even after payments.

'Some of the lawyers that come here pretending to help are crooks. They took my money, promised to help, but never got back to me once. I want to go to court, admit the charge and serve my sentence. This place is emotionally draining.'

Most of the prisoners were satisfied with the food they are given, however, others complained that it was not enough compared to the amount of work they are required to perform.

Conclusion

Access to legal representation makes a significant difference in not only the outcome of a case but in safeguarding the fair trial guarantees for individuals in conflict with the law.

6. CHAPTER SIX: CHALLENGES ENCOUNTERED IN DETENTION

6.0. Introduction

The survey sought to establish the challenges that inmates encountered in prison. While inmates highlighted multiple challenges, across all prisons and police stations, experience of torture was the commonest.

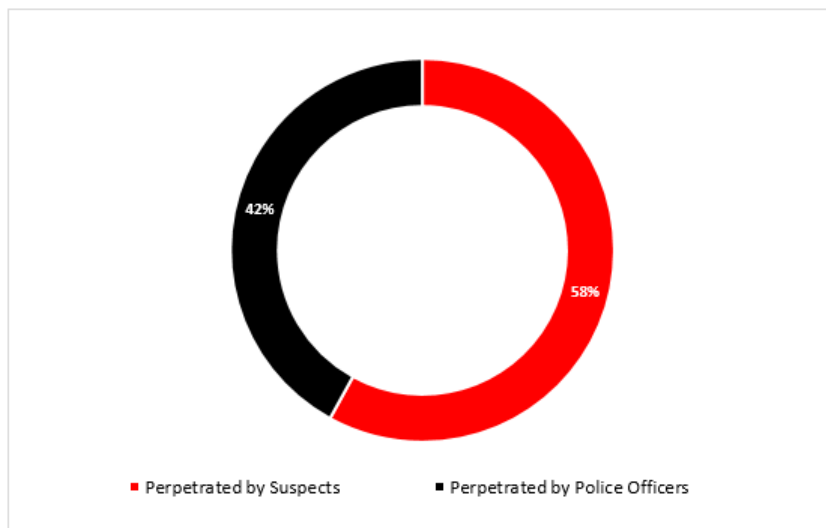
The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), defines torture as, 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'³⁸

At the national level, the *Constitution of the Republic of Uganda*, 1995 guarantees the freedom from torture, cruel, inhuman and degrading treatment or punishment and also recognises it as a non-derogable right.³⁹ *The Prevention and Prohibition of Torture Act*, 2012 enforces this provision. Under the Act, the definition of torture is drafted on the basis of the Convention against Torture (CAT). However, the Act widens the definition of torture in Uganda beyond any act and includes 'or omission'. The Act further expands the act of torture to include acts committed by private persons without the involvement of public officials thereby providing for individual criminal liability of the perpetrators of torture.

6.1. Torture in police custody

The majority of suspects in police custody (59) said they had either witnessed or experienced at least one incident of torture during their detention. Majority of the acts of torture -52% were reportedly perpetrated by detained suspects with police officers accounting for slightly less than half of the cases - 48%.

Figure 11: Perpetrators of torture within police cells (Source: ASF baseline survey data)



At Jinja Road Police Station in Kampala, Johnson, a suspect arrested for defilement said he saw what he believed are cases of torture at the facility.

'I have seen fellow suspects who are taken from here and returned with visible bruises from beatings.'

Romano, a suspect at Old Kampala Police Station arrested on suspicion of drug abuse said the policemen who took a statement from him threatened to torture him.

³⁸ Article 1 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 26th June 1987.

³⁹ Article 24 of the Constitution of the Republic of Uganda, 1995.

'The policemen threatened to beat me if I did not tell them where I got the drugs from yet I was at work and knew nothing about the drugs they wanted.'

Charles, a suspected thief at Kawempe Police Station said he was tortured but feared to narrate further details, instead he showed the interviewer his missing nails.

'I was taken from here and tortured. They told me to tell them where I kept the property but I could not since I know nothing about it. Just look at my nails.'

Sandra, a Rwandan refugee who was working as a hairdresser at Kyaka Refugee camp said she was tortured at Kireka by CMI.

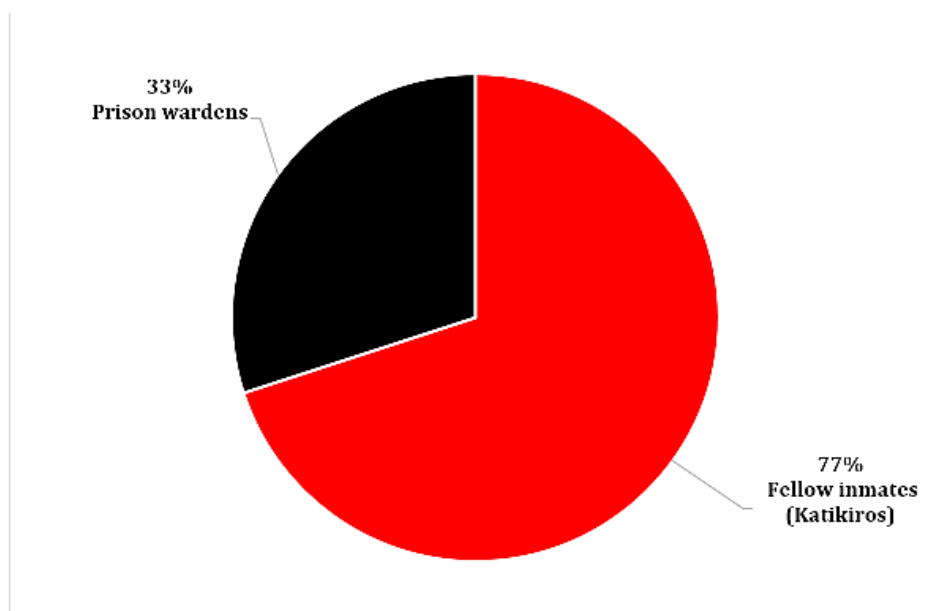
'I have never been tortured since I was brought here, however, I was tortured during my arrest and detention in Kireka by CMI.'

6.2. Torture in prisons

The percentage of those who had experienced or witnessed acts of torture was even higher in prison with 71% alleging they witnessed or experienced an incident of torture.

In prison, the main perpetrators of torture were identified as fellow inmates especially those elevated by the prisons authority to watch over fellow colleagues, commonly referred to as 'katikiros'. These accounted for 77% of the highlighted cases while the prison warders came in second (33%).

Figure 12: Perpetrators of torture within prisons (Source: ASF baseline survey data)



Allan, a prisoner at Kigo Prison in Wakiso district stated that he was only tortured by fellow inmates.

'The prison warders treat us well, however, our fellow inmates, especially the leaders mistreat us. They beat us alot.'

However, some of the prisoners did not even know what torture was, it took a bit of explanation for some to admit that there was torture in the facilities, even then, some of the interviewees looked tense as they did.

This widespread presence of torture in the prison facilities speaks volumes about the appreciation and application of laws like the Prevention and Prohibition of Torture Act, 2012.

With 74% of the 80 prisoners saying they witnessed a case of torture in custody, Arua Main Prison ranked the worst on reported incidents of torture.

In March 2020, as fears about COVID-19 gripped the country, rumours circulating in the facility are said to have caused the prisoners to try an escape involving hundreds of inmates, in the process three prisoners were shot dead. According to James, an inmate at Arua Central Prison who was on remand by that time a lot of torture was perpetrated in relation to attempts to escape.

'The authorities used brutal force to extract information about the masterminds of that escape and tortured those that were captured, and anyone thought to have been associated with the plot. I was accused of being part of those that wanted to escape. They beat us badly and I started bleeding through the nose. I was taken to the sickbay in the prison and treated for a week.'

At the same facility, the authorities continuously cautioned the interviewers of the prisoners' erratic nature and the need to handle them with utmost care, warning that they tried to escape not long ago, something they blamed on the composition of the prison especially the refugees whom they suggested are traumatized further exposing their mistrust of the prisoners. Asked whether cases of torture in prison are reported, only 10 % of all the respondents responded that they are always reported, while 22 % said they try to report depending on the circumstances. The vast majority, 68 %, said the cases were never reported.

Muzamilu, a prisoner at Arua Main Prison said the Officer-in-Charge spoke to the warder who committed acts of torture.

'A prison officer beat an inmate and injured him. We reported the case to the O.C and the officer was told to stop it.'

At Murchison Bay in Luzira, according to one inmate, it does not help reporting cases as nothing is done.

'Whenever a case is reported to the officer in charge, he does not show interest in handling such a case and that discourages us from reporting these cases.'

The reluctance to report cases of torture is understandable. Most of the incidents of torture are perpetrated by either fellow prisoners on orders of prison warders or warders themselves. It is not surprising that most prisoners in facilities under these very warders would rather hold back than report the cases for fear of reprisal as Joel, a prisoner at Murchison Bay stated.

'You can not report any case of torture involving prison warders because you will be victimized.'

The prisoners also informed the interviewers that they did not have access to proper channels, especially people from the outside, to whom they could report such cases. On the whole, Kigo Women's Prison and Gulu Old Prison recorded the least incidents, but with 69% of the respondents in each of the prisons saying they witnessed at least one case of torture during their stay on remand.

6.3. Other challenges experienced

In addition to torture, several other challenges were highlighted:

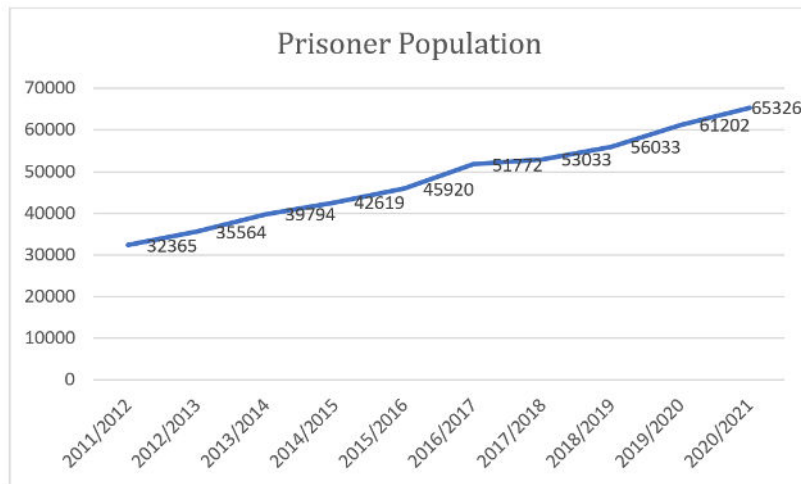
i) Congestion

After torture congestion and overcrowding was the second most cited challenge. Uganda prisons have struggled with overcrowding over the years. However, the situation has been exacerbated by the COVID-19 related restrictions. A number of prisoners complained that their access to court was greatly limited since the authorities started implementing measures to curb the spread of COVID-19. According to Henry, a prisoner in Gulu.

'I was supposed to get bail two years ago, but I have not been to court for all this time. When I asked why I was not taken to court, I was told that only a few prisoners can go to court and that courts are not working fully due to COVID-19. A few of the prisoners who have lawyers have been going to court, but I cannot afford a lawyer.'

As such, pre-trial detention significantly contributes to prison overcrowding since people can wait for years for legal proceedings to begin. As illustrated below, the prison population in Uganda has steadily exceeded the holding capacity over the years.

(source: JOLS annual performance report, 2019/2020)



It is therefore imperative that alternatives to pre-trial detention be employed at an early stage to mitigate many people, especially those charged with petty offences, from clogging both the judicial and prison systems. This however can only be guaranteed with the provision of legal aid services.

ii) Lack of communication with family and friends.

This was highlighted as a cause of stress and mental anguish by many inmates. Grace, a prisoner at Gili Gili had this to say;

'I am stressed because I have failed to communicate with my family. I am afraid that they may not even know that I am here. I wish it was easier to talk to our families.'

iii) Skin Diseases; these ranged from ring worms, lies and other communicable skin ailments. Jamal, a prisoner at Arua Central Prison said the congestion caused him a skin disease.

'I have a terrible skin disease. My skin swells, develops rashes and itches a lot. I got the infection while on remand here from another inmate whom I shared a room with. We get these skin diseases because the wards are too congested.'

Other challenges highlighted included being locked up in isolation centres, poor hygiene and sanitation, and some cases of sexual violence particularly male rape.

7. CHAPTER SEVEN: CAPACITY OF TARGETED ACTORS

7.0. Introduction

The baseline survey sought to gauge the capacity of key actors in protecting constitutional and procedural rights of persons in pre-trial detention. The key actors include civil society, judiciary, Uganda Police Force, Uganda Prisons Service and the Uganda Human Rights Commission.

7.1. Civil society organizations

Civil Society Organizations (CSOs) engaged in this sector are mainly legal aid providers and others that monitor conditions in places of detention. In the course of this study, the two main challenges highlighted by CSOs in providing legal aid services were limited coverage and insufficient funding.

7.1.1. Limited coverage of CSO interventions

Non-state legal aid providers have attempted to bridge the gap in access to legal representation through legal aid provision.⁴⁰ CSOs formalized a coordination mechanism by forming the Legal Aid Service Providers Network (LASPNET) in 2004. The mandate of LASPNET is to strengthen coordination and networking of LASPs, harmonisation and standardisation of legal aid service provision by the different service providers so as to facilitate a favourable legal and policy environment. Currently LASPNET coordinates 54 LASPs that provide a variety of legal aid services.

For instance, according to Foundation for Human Rights Initiative (FHRI) an NGO providing legal aid services to the indigent, between July 2020 to June 2021, they registered a total of 413 cases. Of the cases, 122 were land disputes, 57 domestic violence, 56 child neglects, 23 bail applications and 20 torture.⁴¹

In the course of this study, of the 613 inmates interviewed, the three greatest legal needs highlighted were to have their cases cause listed (145), followed by the need for legal aid at (129), and a speedy trial (93).

Musa, a 36-year-old farmer from Mukono, has been on remand for 3 years now. He has not been to court since he was remanded to Murchison Bay. He has no lawyer and is not sure when he will be taken to court.

This is the same for Medi, a 33-year-old farmer from Kiboga.

'I was charged with murder and remanded to Murchison Bay prison. I have spent 5 years on remand. I cannot afford a lawyer because I do not have money. As such I have not been to court since I was remanded. I know I committed the crime but what I want is to be taken to court so that I can start to serve my sentence.'

For Muhwezi, a 26-year-old farmer, the situation is not any different.

I have spent 7 years on remand. I do not have a lawyer. What I really need is a lawyer so that I am taken to court.

Fatuma, a 25-year-old business woman also narrates the same ordeal.

I have been on remand for 5 years now. Lawyers from an NGO in Kampala came and promised to help me but since the lockdown in 2020, I have not heard from them. I really need a lawyer to help me with my case.

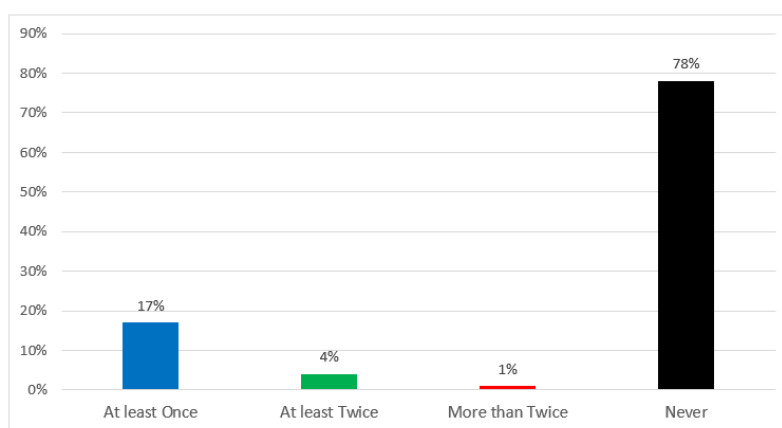
As seen above, owing to their limited level of education, and for most, low-income levels, many of the detainees are unable to hire the services of private lawyers. Many of the inmates, 78% revealed that they had never met a paralegal or lawyer throughout their time on remand with 17% noting that they had met a paralegal or lawyer at least once.

⁴⁰ Interview with Ms. Sheila Muwanga, Deputy Executive Director, Foundation for Human Rights Initiative on 29th September 2021.

⁴¹ Statistics from Foundation for Human Rights Initiative (FHRI). Interventions were in the districts of Kampala, Kalangala and Wakiso districts.

Table 14: Interaction with lawyers and paralegals (Source: ASF baseline survey data)

Categories	Male	Female	Totals	% Scores
At least Once	90	24	114	17%
At least Twice	21	6	27	4%
More than Twice	5	1	7	1%
Never	415	109	524	78%
Grand Totals	532	140	672	100%

Figure 13: Interaction with lawyers and paralegals (Source: baseline survey data)

The year 2019-2020 saw an increase in coverage of legal aid in districts from 70 to 80 districts. Legal aid clinics were opened in Kitgum, Pader and Nabilatuk.⁴² This has resulted into an increase in state funded legal aid services from 26% in 2016 to 39.02% in 2018/19.⁴³ Currently 37 out of 82 magisterial areas have access to state funded legal aid in addition to all High Court circuits.⁴⁴ This is complimented by non-state funded legal aid service providers regulated by the Law Council. Currently 26 such providers are approved to provide legal aid.⁴⁵ Although this drastic increment is vital in improving access to justice for the poor and vulnerable, it is still limited compared to the %age of Ugandans in need of legal aid services.

The extent of legal aid coverage is still limited within the country considering that many are urban based.⁴⁶ However, according to Women's Probono Initiative, they have set up toll free lines to enable them reach out to more women in conflict with the law outside Kampala.⁴⁷ The Muslim Center for Justice and Law has also scaled up their legal aid provision, by opening up more offices in different regions across the country.⁴⁸ This approach has also been adopted by Justice Defenders. Currently, Justice Defenders is operating in over 20 prisons across the country in Gulu, Lira and Central region where they provide legal aid services to the poor and marginalized in prisons.⁴⁹ Their approach has been to work with both prison staff and inmates whom they train as paralegals to self-represent as well as offer constant legal advice to inmates in prison.⁵⁰ However, according to Ms. Sheila Muwanga, Deputy Executive Director, Foundation for Human Rights Initiative (FHRI), legal aid service providers remain few across the country.⁵¹

Worse still, upcountry NGOs and CBOs lack the capacity, technical and financial, to supplement the interventions by urban based LASPs. According to Feni Twaibi, Chief Executive Officer, Arua district NGO Network, 'as the Network, we do not have the capacity to represent the inmates in court. We only make referrals. Where we cannot, our hands are tied.'⁵²

42 Legal Aid Service Providers Network, Annual Report 2019-2020, pg. 12.

43 The Justice Law and Order Sector, Annual Report, 2019/2020, Pg.13.

44 The Justice Law and Order Sector, Annual Report, 2019/2020, Pg.13.

45 The Justice Law and Order Sector, Annual Report, 2019/2020, Pg.13.

46 Interview with Ms. Sheila Muwanga, Deputy Executive Director, Foundation for Human Rights Initiative on 29th September 2021.

47 Interview with Ms. Primah Kwagala, Executive Director, Women's Probono Initiative on 14th October 2021.

48 According to Ms. Amour Hashmar, Legal Officer at Muslim Center for Justice and Law, they have opened up more offices in Mpigi, Bugiri, and Mayuge in a bid to scale up their legal aid service provision.

49 Interview with Ms. Karen Saidi, Country Director for Justice Defenders on 1st October 2021.

50 Interview with Ms. Karen Saidi, Country Manager, Justice Defenders on 1st October 2021.

51 Interview with Ms. Sheila Muwanga, Deputy Executive Director, Foundation for Human Rights Initiative on 29th September 2021.

52 Interview with Mr. Feni Twaibi, Chief Executive Officer, Arua district NGO Network, on 14th September 2021.

The Uganda Human Rights Commission (UHRC) summarizes the state of legal aid provision in Uganda:

'Most of the legal aid service is provided by civil society organizations. Legal aid by the state is limited to capital offences and does not address the needs of and access by women and other vulnerable persons. The development of a policy on legal aid would enable the disadvantaged people access legal aid and assistance which in the long run would address the challenge of prolonged pre-trial detention.'⁵³

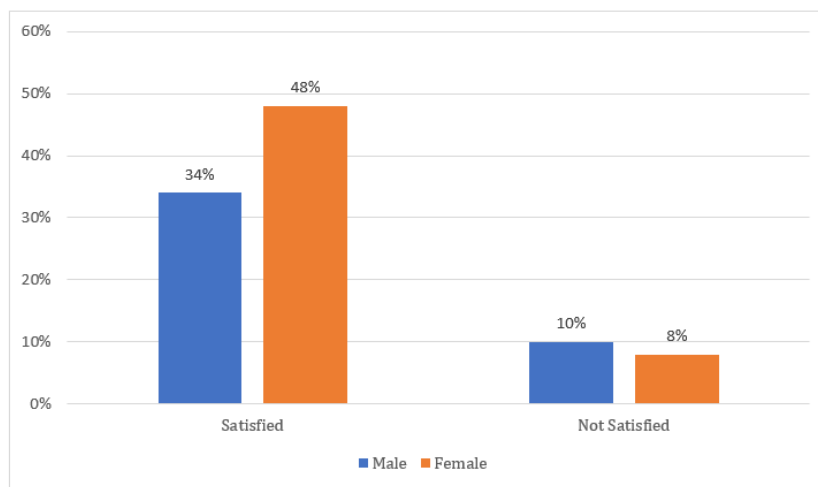
It is therefore imperative that the public and development partners continue to advocate for the enactment of the National Legal Aid bill. The bill is holistic in terms of scope to include criminal and civil cases, geographical coverage and sustainability.

7.1.2. The quality of legal representation

Despite the overwhelming need for legal aid services, the quality of legal representation offered by both state and non-state actors remains wanting. During the survey, of the inmates who managed to access a lawyer or paralegal, 82% were unsatisfied with the services they were offered while only 18% were satisfied with the services. The 82% who were unsatisfied noted that the lawyers and paralegals in prison only give attention to inmates who are willing to accept plea bargain.

Below is the level of satisfaction as highlighted by the inmates.

Figure 12: Quality of legal representation (Source: ASF baseline survey data)



This resonates with earlier statistics where 78% of the inmates had never interfaced with paralegals or legal aid service providers.

7.1.3. Access to places of detention

NGOs have been instrumental in monitoring places of detention to promote accountability and transparency. However, this has been hampered by bureaucratic tendencies in accessing detention facilities. Non-Governmental organizations have to request for permission prior to accessing detention facilities. Lack of spontaneity hinders effective monitoring and reporting of torture within detention facilities as the authorities are forewarned and can either move detainees, make them inaccessible or intimidate them into silence.

The objective of the Optional Protocol to the Convention Against Torture is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture. This resonates with Article 2 of the Convention Against Torture that enjoins State Parties to take effective measures to prevent acts of torture. As such it is the obligation of State Parties to prevent torture irrespective of whether a State Party has ratified the Optional Protocol to the Convention Against Torture.

However, this presupposes that places of detention are subject to regular external inspection. In Uganda, it is only the Uganda Human Rights Commission and International Red Cross (ICRC) that have unfettered access to detention facilities. Other institutions such as NGOs and Charitable organisations have to seek permission first.

According to an NGO staff that preferred to remain anonymous *'It is very hard to access detention facilities. We are required to make an application for permission to visit prisons and police stations to the Commissioner General of Prisons and the Inspector General of Police respectively. This request should highlight facilities intended to be visited for the entire year and when. Once permission is granted, it is not permitted to visit any facility the visit of which was not permitted under the permission. This affects our work because even though we receive complaints of torture from a facility, we are unable to reach out to the victims.'*

In addition, despite the grant of permission, notice must be served to the relevant officer in charge of the facility to be inspected, of the intended visit. *'It is highly probable that by the time we reach the said facility, all signs of torture are hidden.'*⁵⁴ This defeats the need for regular unannounced visits to safeguard against abuse.

Considering that grant of permission is at the discretion of the Uganda Prisons Service, NGOs have to be mindful of the reasons for the intended prison visit when requesting for permission. It was noted that, *'When making such requests, we avoid sensitive issues such as monitoring torture in detention facilities. We disguise our requests under providing rehabilitation for survivors of torture, because permission will not be permitted if we reference our applications with "monitoring."*⁵⁵ This may however, lead to self-censorship by NGOs for fear of denial of permission.

However, according to Ms. Natukunda Aliyo, Director Legal Services, Uganda Prisons Service, strict verification of who accesses prison facilities is as a result of prisons being a security facility, which calls for stringent measures on who access the facilities and when.

7.1.4. Limited funding

Provision for legal aid services is limited by funding. LASPs have to scale up their services in rural areas which has been made worse by the Presidents suspension of Democratic Governance Facility (DGF). According to Badru Walusansa, Director Programmes, Legal Aid Service Providers Network (LASPNET), 'the ongoing impasse between Government and the DGF has further strained the CSO sector, considering that DGF is the primary donor to CSOs in Uganda. This he notes, has already crippled some CSO interventions such as provision of legal aid, awareness campaigns and capacity building, among others.'⁵⁶

This was reiterated by Jon Temin, Director of Africa programs at Freedom House. He noted that, 'The DGF is critical to the operations of many Ugandan civic organizations mandated to advance the rule of law and good governance and some government bodies, including the Uganda Human Rights Commission. Through this action, the government of Uganda is standing in the way of progress driven by Ugandans themselves.'⁵⁷

According to FHRI, 'funding remains a challenge for LASPs. As a result, many have had to downsize their interventions.'⁵⁸ This was reiterated by Ms. Primah Kwagala. She noted that, 'running costs to sustain the office are exorbitant. For instance, most of our work centers on hiring advocates which is very costly.'⁵⁹ With the suspension of the DGF, this paints a rather grim picture for most CSOs that relied majorly on the support by the DGF.

7.2. The judiciary

The judiciary has the power to play an important role as an oversight and accountability mechanism for pre-trial detainees.⁶⁰ For instance pre-trial detainees may complain about long detention periods, torture and ill-treatment, or any other human rights violation to courts. In the course of this study, the three major issues identified that continue to hinder the judiciary from effectively exercising their mandate were case backlog, staffing gaps at the various court levels and few court sessions.

7.2.1. Case backlog

Case backlog is still a challenge for the Justice law and Order Sector and is a major contributing factor to lengthy pre-trial detention. Delays in administration of justice denies detainees justice. The Sector continues to employ efforts towards automation of Case Management System and use of innovation in addressing case backlog.⁶¹ These however are yet to realize impact.

Table 11: Court cas performance by level of court 2019/2020 (Source: JLOS Annual report, 2019-2020)

Court Level	Brought forward	Registered	Completed	Pending	Disposal rate (%)	Clearance rate (%)
Supreme Court	383	173	94	462	17	54
Court of Appeal	7,214	1,308	975	7,547	11	75
High Court	60,316	25,081	17,083	68,330	20	68
Chief Magistrates Court	44,227	97,501	79,906	61,822	56	82
Magistrates Grade I Courts	16,836	33,478	30,907	19,407	61	92
Magistrates Grade II Courts	917	2,002	1,904	1,015	65	95
Total	129,893	159,543	130,869	158,583	45	82

54 NGO staff that preferred to remain anonymous.

55 Interview with an NGO Staff who preferred anonymity, on 29th September 2021.

56 Interview with Mr. Badru Walusansa, Director Programmes, Legal Aid Service Providers Network on 29th March 2021.

57 <https://freedomhouse.org/article/uganda-suspension-democratic-governance-facility-highlights-growing-concerns>. (Accessed on 20th April 2021)

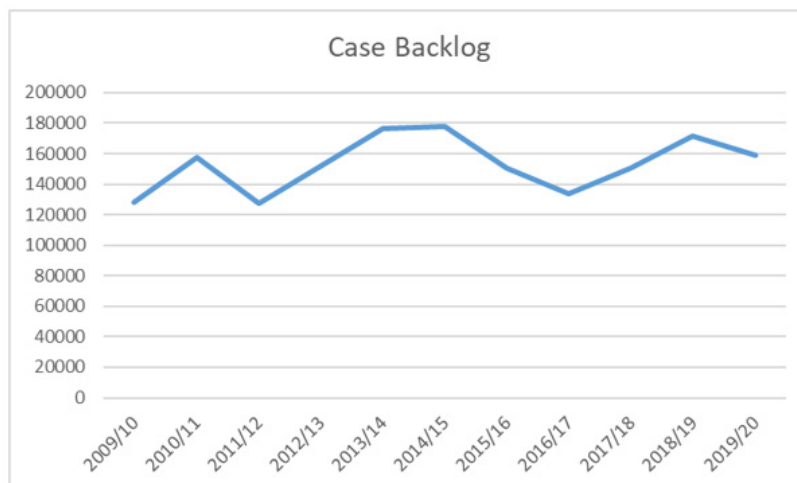
58 Interview with Ms. Sheila Muwanga, Deputy Executive Director, Foundation for Human Rights Initiative on 29th September 2021.

59 Interview with Ms. Primah Kwagala, Executive Director, Women's Probono Initiative on 14th October 2021.

60 Pre-Trial Detention in Uganda by Roselyn Karugonjo-Segawa, pg.13.

61 The Justice Law and Order Sector Annual Report, 2019-2020.

Statistics show that only 45% of the registered cases were processed and disposed, leaving a backlog of 158,583 cases. Despite the high clearance rate, (82%), the low disposal rate coupled with the pending cases is cause for concern. Equally to note is the high number of brought forward cases at the High Court and Court of Appeal which are much higher than the registered cases. This has mainly been attributed to the continued under staffing of judicial officers at most levels as seen below.



(Source: JLOS Annual Performance Reports 2009/2010-2019/2020)

7.2.2. Staffing gap

Despite the increase in case load, the judiciary continues to experience shortages of staff. His Worship, Jameson Karemani, Spokesperson of the Judiciary observed that the number of judicial officers does not match the existing crime rate. As such the volume of work is too much at every court level.⁶² He noted that currently, the Supreme court requires 20 justices but has only 10. The Court of Appeal requires 56 against the current 15 while the High Court requires 150 against the current 58.

Table 12: Judiciary staffing (Source: Judiciary)

Court Level	Current number of Judges	Required number of Judges	Human Resource Gap
Supreme Court	10	20	10
Court of Appeal	15	56	41
High Court	58	150	92

The staffing gaps contrasted against the pending case load and incoming case load, paints rather a grim picture. Omale Costa, Legal Officer with Uganda Law Society notes that, 'there are many inmates on remand however the number of judicial officers is still small to be able to handle the many cases. As such there is need to increase the number of judicial officers. This was stressed in Arua. *'Here in Arua district, we had two magistrates however one was recalled so right now we have only one.'*⁶³

His worship further expounded on the magnitude of the problem: *'Currently the Court of Appeal has over 8,000 cases pending. Considering that they operate in a panel system, this means if all the justices are available and ready to participate, you can only constitute 5 panels which is not possible at the same time. The biggest panel you can constitute is 3 meaning that if you have these 3 panels for 8,000 cases, this would take them a long time to hear and conclude these cases. As such because of this gap, appeals take long to be heard and concluded.'*⁶⁴

He further noted that, *'The same applies to the High court. For instance, currently, the Fort portal circuit has 800 pre-trial detainees who are committed. With 2 High court judges in Fort portal, if they were to handle these cases in a session form where 50 cases are handled per session, this would result in 16 sessions meaning that each judge would handle 8 sessions. This is only criminal cases yet the judge also has civil cases. As such, these cases will take longer to be heard and concluded due to the staffing gaps.'*⁶⁵

It is therefore not practical for the current number of judges to be able to hear and conclude both criminal and civil cases. This definitely results in lengthy trials and delay in the disposal of cases.

7.2.3. Few court sessions

The major issue highlighted by inmates during the course of this survey was the few court sessions. Many inmates (145) expressed the need to have their cases cause listed.

For instance:

⁶² Interview with His Worship, Jameson Karemani, Spokesperson of the Judiciary on 28th October 2021.

⁶³ Interview with Mr. Omale Costa, Legal Officer, Uganda Law Society on 14th September 2021.

⁶⁴ Interview with His Worship, Jameson Karemani, Spokesperson of the Judiciary on 28th October 2021.

⁶⁵ Ibid.

'Olaya, a 26-year-old mechanic narrates that since he was remanded 2 months ago to Arua Male prison and has not been to court. His only wish is that court should sit more frequently.'

'I am 27 years old. I was charged with murder. I have been on remand at Gulu Male Prison for 3 years. I do not have a lawyer so I do not know when my case will be heard. I need more access to court.'

'I am 19 years old. I was charged with arson. I have been in prison for seven months now. What I really need is more frequent court sessions so that my case can also be heard.'

'I am 37 years old. I was a primary school teacher before arrest. I have been on remand for 9 months. All I want is a chance to go to court.'

Long pre-trial detention is an outright violation of the right to a fair hearing. To make matters worse, the use of criminal sessions at the High Court, which are expensive to organize and irregular, has exacerbated the situation. For instance, as earlier noted, case backlog at the lower bench, where magistrates hear cases more regularly is negligible unlike at the High Court where judges only hear cases after a criminal session is organised. Judges of the High Court who are based in Kampala are members of the Criminal Division irrespective of the other Divisions of the High Court that they belong to.

As such, each of the judges is supposed to do, at least, one High Court Criminal Session in a year at Kampala.⁶⁶ This calls for review of the practice to ensure that High Court judges hear cases more regularly.

This gets worse when even after the trial commences, prosecution is not successful, leading to some cases being withdrawn, dismissed or accused persons acquitted. Innocent people end up spending long periods in detention.⁶⁷ During the course of this research, prolonged pre-trial detention was prevalent.

Table 12: Time spent on remand in prisons (Source: ASF baseline survey data)

No.	Time Period	Number of inmates	%
1	1 Week - 1 month	46	7.6
2	1 Month - 3 Months	90	14.7
3	3 Months - 6 Months	117	19.1
4	6 months - 1 Year	137	22.4
5	1 Year - 2 Years	109	17.7
6	2 Years - 3 Years	36	5.9
7	3 Years - 6 Years	68	10.9
8	6 years and Above	10	1.7
Grand Total		613	100%

Most inmates had spent on average 6 months to 1 year (22.4%) on remand while 17.7% had spent from 1 year to 2 years.

The Magistrates Court Act stipulates that when issuing an adjournment, '... no such an adjournment shall be for more than thirty clear days, or if the accused person has been committed to prison or other place of security, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.'⁶⁸ In practice however, this is often not adhered to as seen above. Cases are adjourned with no date fixed for the next hearing yet a case should be brought to court for mention. Court is mandated to set a reasonable adjournment period to ensure that inmates right to a fair and speedy trial is upheld.

It was further noted that, despite the noted improvement in case management, corruption among the JLOS actors has also exacerbated the plight of pre-trial detainees. That corruption is institutionalised in that it is not about 'first in –first out' rather, who can afford to pay for justice.⁶⁹

However, the poor performance at other court levels has also partly been attributed to the COVID-19 global pandemic that saw a nation-wide lockdown and a slowdown of Court business.⁷⁰

66 <http://judiciary.go.ug/data/smnu/13/Criminal/Division.html>. (Accessed on 17th November 2021)

67 The Uganda Human Rights commission, Annual Report, 2018-2019, pg. 39.

68 S. 122 (1) of the *Magistrates Court Act*, Cap. 16.

69 Interview with a CSO representative that preferred to remain anonymous on 29th September 2021.

70 The Justice Law and Order Sector Annual Report, 2019-2020, pg. 24.

Noteworthy, in August 2021, the Ugandan Cabinet approved the implementation of the revised structure that will see the Judiciary become an autonomous arm of government and among others, have the Court of Appeal scale up country wide.⁷¹ 'The Court of Appeal will be decentralized to regions. Construction (of headquarters) has already started in Gulu and Mbarara whereas Fort Portal and Mbale are also soon coming up.'⁷² According to His Worship, Jameson Karemani, 'We hope that if the new structure is realized, we shall have improved service delivery.'⁷³

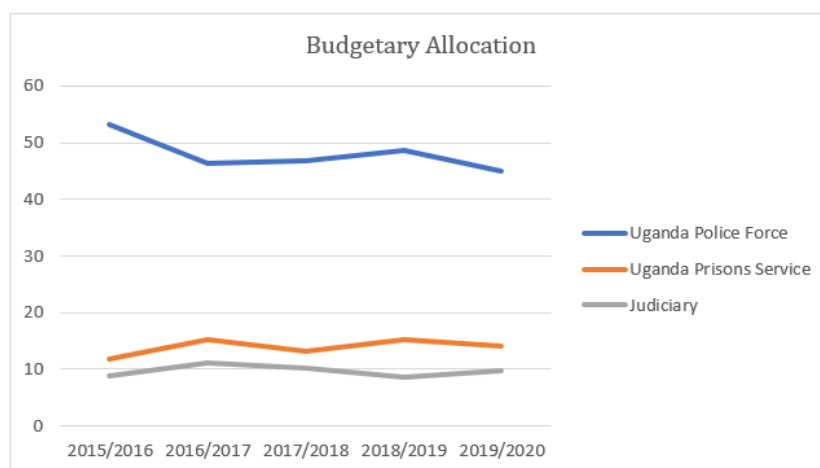
There is also need to sieve through matters that warrant someone to be remanded. Most of the people who have been on remand for longer periods of time are petty offenders thus the approach must change in the legal system. Such offenders deserve to be released on bail.⁷⁴ There is need to promote the use of alternatives to imprisonment such as police bond, community service and bail.

However, the limited resources availed to the different criminal justice actors have greatly hindered the capacity of the different justice actors from effectively adhering to the constitutional remand periods as stipulated. Below is a breakdown of the budgetary allocation to the judiciary, Uganda Police and Uganda Prisons Service.

Table 13: Budgetary allocation to the judiciary, UPF and UPS

Year	Uganda Police Force (%)	Uganda Prisons Service (%)	Judiciary (%)
2015/2016	53.2	11.8	8.8
2016/2017	46.3	15.3	11.2
2017/2018	46.9	13.2	10.1
2018/2019	48.6	15.2	8.5
2019/2020	44.9	14.2	9.7

Figure 13: Budgetary allocation



7.2.4. Mechanisms to address pre-trial detention in Uganda

This section will highlight initiatives by Government to address pre-trial detention by expediting adjudication of cases.

Plea-bargaining

Government launched the plea-bargaining Initiative in 2014. Plea-bargaining is a negotiated agreement between the prosecution and an accused person who is represented by a Lawyer. The accused person then comes before the Hon. Judge to plead guilty to the charges against him/her in exchange for a lesser sentence without going through a full trial.⁷⁵

Plea-bargaining helped in reduction in the lead time of case disposal, reduction of case backlog, reduction in costs of the justice process and enhanced coordination of stakeholders.

The above notwithstanding, plea bargaining still has challenges of moving cases from investigations to committal at the High Court for trial. Resource constraints inhibit the promotion of victim participation during the plea bargain process. Families of the victims are still reluctant for the accused to receive a reduced sentence on account of plea-bargain, preferring the maximum sentence. Sentencing disparities have been observed during plea bargains, which may impact on willingness of inmates to embrace the programme.

⁷¹ <https://www.jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/press-and-media/latest-news/item/796-cabinet-approves-new-judiciary-structure>. (Accessed on 25th October 2021).

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Interview with Bosco Okurut, Uganda Human Rights Commissioner Officer, Arua district on 14th September 2021.

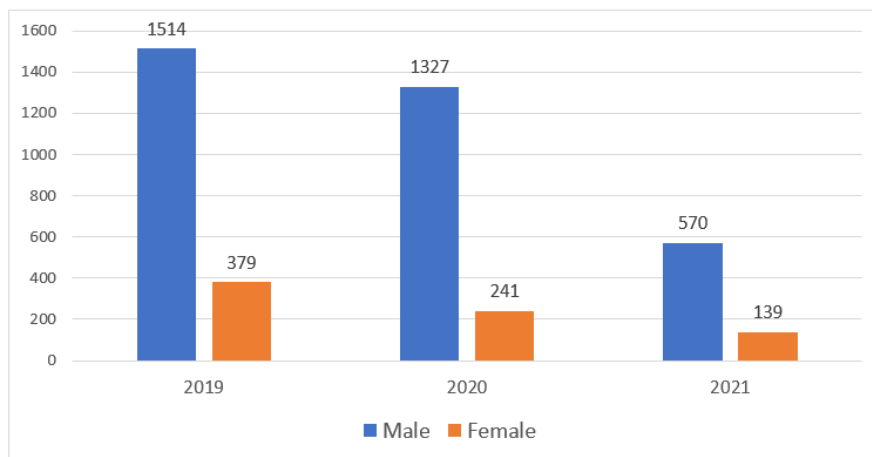
⁷⁵ <http://www.judiciary.go.ug/files/downloads/Press/Briefing/on/Plea/Bargainine/Project.pdf>. (Accessed on 11th January 2022).

Establishment of Justice Centres Uganda

The Government under the Justice Law and Order Sector established the Justice Centres Uganda (JCU) project in 2009. Its mission is to, 'promote the rights of vulnerable communities through provision of quality human rights based legal aid, legal rights awareness, community outreach, empowerment and advocacy.'⁷⁶ Currently, the project runs ten (10) centres; Fort Portal, Hoima, Jinja, Lira, Masaka, Mbale, Mengo, Mubende, Mukono, and Tororo.

With majority of legal aid service providers based in Kampala, and with no legal aid framework, Justice Centres has to an extent, been able to bridge this gap by guaranteeing the vulnerable within communities' access to justice. For instance, under the state brief system and the Prison Decongestion Programme, Justice Centres Uganda successfully concluded 2,406 cases in 2019, 5,867 cases in 2020 and 10,444 cases in 2021.

Figure 14: A graph showing the numbers of suspects that have been granted police bond as a result of JCU intervention (Source: Justice centre database)



Justice Centres Uganda presents a unique partnership for CSOs to tap into. While CSO coverage remains limited, CSOs can refer cases of persons that have overstayed on remand to Justice Centres Uganda for quick follow up. This will ensure speedy adjudication of cases thereby unclogging both the judicial and prison system. However, with the suspension of the Democratic Governance Facility (DGF)⁷⁷, this has curtailed the efforts of Justice Centres Uganda resulting in some of their offices being closed.

Quick win clearance programme

The JLOS launched the case backlog Quick Win Clearance Programme in March 2010. The Programme was launched to clear at least 18,400 old cases. The long term objective of the programme was to decongest prisons, expedite the adjudication of disputes and generally improve the legal environment for doing business in Uganda.⁷⁸ Since launching the programme, JLOS institutions have completed more than 80,000 cases through adjudication and quality assurance.⁷⁹

The JLOS Case backlog reduction programme has registered several achievements. For instance, through targeted and intensified hearing of capital cases in the High Court, the programme has reduced the average time capital offenders spend on remand from 29 months to 15.1 months. In Luzira - Upper Maximum Prison, the convict -remand ratio improved from 50:50 to 53:47- for the first time in 28 years. While in South Western Region, the convict remand ratio improved from 29.1: 70.9 to 34.3:65.57 and congestion reduced by 5.4% during the period. The average number of cases completed per judge per session increased from 30 to 50 cases.⁸⁰

Criminal sessions

A practice of trial by criminal sessions is used at the High Court. Judges of the High Court except those of the Commercial Court, are mandated to at least handle one High Court Criminal Session in a year.⁸¹ Criminal cases are not heard outside of these sessions. One of the effects of this practice is that it creates a 'limbo' state in between the Magistrates Court and the High Court, where charges have been preferred but the suspect has not yet been committed.⁸²

⁷⁶ <https://www.jlos.go.ug/index.php/about-jlos/projects/legal-aid/justice-centers>. (Accessed on 17th November 2021).

⁷⁷ The DGF was established in 2011 by the European Union, United Kingdom, Denmark, Ireland, Austria, Sweden, the Netherlands, and Norway. The DGF was providing financial and technical support to both state and non-state actors in areas such as democracy, human rights, and rule of law. However, on 2nd January 2021, President Museveni ordered the suspension of DGF activities, stating that its funds were 'used to finance activities and organizations designed to subvert Government under the guise of improving governance.' This has since stalled implementation of programs of many organizations and state entities.

⁷⁸ <https://www.jlos.go.ug/index.php/about-jlos/projects/case-backlog/reduction#:~:text=The/JLOS/Case/backlog/reduction,achievements,/which/include/the/following:&text=Through/targeted/and/intensified/hearing,29/months/to/15.1/months>. Accessed on 17th November 2021).

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ <http://judiciary.go.ug/data/smenu/13/Criminal/Division.html>. (Accessed on 17th November 2021).

⁸² 'The Plight of Pre-Trial Detainees in Uganda-Justice Delayed is Justice Denied' by Foundation for Human Rights Initiative; pg. 34

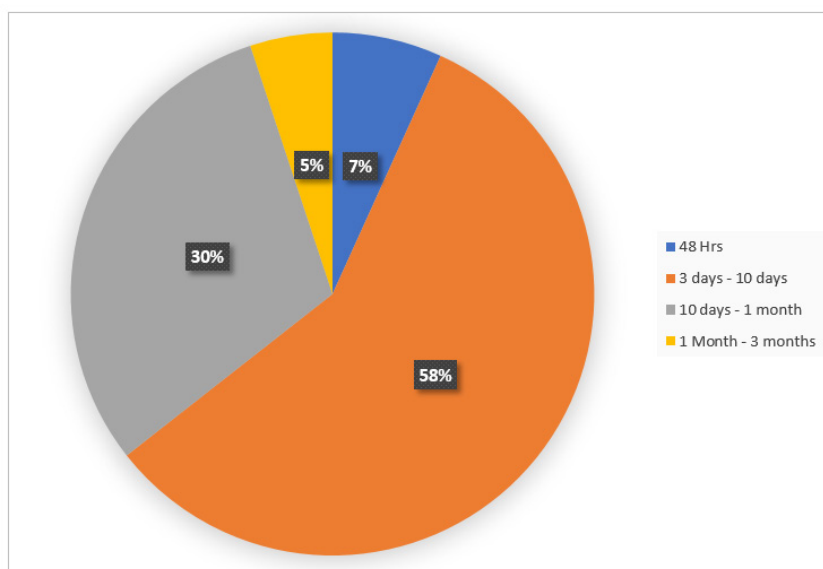
There is need for legislative reforms to grant registrars jurisdiction to take plea in cases where persons are charged with capital offences and wish to plead guilty.⁸³ In case the suspect pleads not guilty then the case is mentioned by the registrar and the matter becomes a matter of the High Court. Current practice, the suspect appears before a magistrate's court only to be remanded awaiting for the expiry of the 180 days after which he or she is committed and then remanded again awaiting trial which increases case back log and long periods of remand.⁸⁴

7.3. Uganda police force

The Constitution provides that a person arrested or detained upon reasonable suspicion that he or she has committed or was about to commit a criminal offence shall if not earlier released, be brought to court within 48 hours from the time of arrest.⁸⁵ However, detention of suspects beyond the 48 hours remained a challenge.

In 2018, the Uganda Human Rights Commission registered 323 complaints of violation of the right to personal liberty; specifically relating to detention beyond 48 hours, accounting for 34.5% of the total 936 complaints registered.⁸⁶ Of these, 296 out of 323 were reported against Uganda Police Force while only 14 were against the Uganda People's Defence Forces (UPDF).⁸⁷ During the course of this research, 57% of the suspects interviewed at police had been detained between 3 -10 days, while 30.5% had been detained between 10-30 days.

Figure 15: Detention period at police



Manpower and logistical constraints coupled with insufficient budget have been highlighted as the major constraints hindering the Uganda Police Force from effectively carrying out its mandate. According to the Ministerial Statement for 2019/2020, the Uganda Police Force has 66,388 approved posts. Of these, 43,942 are filled representing a 66.2% filled capacity. This means that 33.8% of approved posts are vacant.⁸⁸

Firstly, it has been noted that the current strength of Criminal Investigation Department (CID) personnel is only 5,292 instead of the approved 19,843 leading to work overload. The UN standard is 1:12 cases per detective per year. The current workload stands at 45 case files per detective. Worse still, in areas with high crime rate like Kampala Metropolitan policing areas, detectives have between 50 – 70 case files per year. This inadvertently hinders them from effectively exercising their functions especially their ability to carry out timely investigations before effecting an arrest.⁸⁹

Secondly, there are capacity gaps in terms of professionalism in training, skills development, mind-set, and attitudinal change.⁹⁰ These are key to adhering to the 48-hour rule and protecting the right to liberty.

⁸³ Interview with His Worship, Jameson Karemani, Spokesperson of the Judiciary on 28th October 2021.

⁸⁴ Ibid.

⁸⁵ Article 23 (4) (b) of the Constitution of the Republic of Uganda, 1995.

⁸⁶ The Uganda Human Rights Commission Annual Report, 2018-2019, pg. 39.

⁸⁷ The Uganda Human Rights Commission Annual Report, 2018-2019, pg. 39.

⁸⁸ The Justice Law and Order Sector, Annual Report, 2019/2020; pg. 36.

⁸⁹ Pg. 125 of the Uganda Police Force Annual Crime Report, 2018.

⁹⁰ The Annual Police Crime Report, 2020, pg. 222.

Table 14: Breakdown of status of cases received by the UPF (Source: Justice Law and Order Sector Annual Report 2018-2019)

Category	2017	%	2018	%
Total No. of cases	252,065		238,746	
Cases taken to court	66,626	26%	73,035	31%
Convictions	18,961	8%	22,263	9%
Acquitted	1,419	1%	1,248	1%
Dismissed	9,613	4%	11,121	5%
Pending in court	38,425	15%	36,633	15%
Ongoing inquiry	105,017	42%	90,763	38%

The high number of cases pending due to ongoing investigations (105,017 in 2017 and 90,763 in 2018) affirms the need to boost the capacity of the Uganda Police Force.

S. 38 (1) (a) of the Police Act, provides for the right to police bond. That, 'notwithstanding any other law to the contrary, no fee or duty shall be charged on the following, issued or taken by a police officer...a bail bond in a criminal case. Not only does a police bond guarantee the liberty of an individual but it affords the investigations the time necessary to be conducted with due regard to the law.⁹¹ In practice, however, police bond is rarely issued and suspects often time have to pay for police bond. For instance, Omale Costa notes that, 'some police officers know the law and the right of suspects to police bond. However, because granting it is their means of survival, they extort money from suspects relatives before granting it.'⁹² As such, many suspects that cannot afford to pay for police bond are detained longer than necessary.

When asked whether they were aware about the right to police bond, 37% were aware while 63% were not.

Table 15: Awareness of police bond (Source: ASF baseline survey data)

Awareness to Police Bond	Female	Male	Grand Total	% Score
No	3	34	37	63%
Yes	1	21	22	37%
Grand Total	4	55	59	100%

7.3.1. Mechanisms by the Uganda police force to address human rights

The Uganda Police Force has established three (3) key measures to ensure adherence to the 48-hour rule as well as combat impunity and prevent torture.

Directorate of Human Rights and Legal Services

The Uganda Police Force elevated the Legal department to a directorate of Human Rights and Legal services to address the issues of human rights observance in the Police. In addition, it improved its regional coverage of functional human rights desks by 18%, translating into 77.7% national coverage. The Uganda Police Force expansion has resulted in 28 policing regions across the country, all of which have human rights regional desks.⁹³ In addition, four Human Rights Desks were established in specialized units including; Field Forces Unit (FFP), Professional Standards Unit (PSU), very important persons protection unit (VIPPU), forensics, logistics and engineering. The four specialized units are meant to handle various complaints arising from field operations and entrenching human rights standards and accountability in police operations.⁹⁴

However, the directorate faces challenges of ensuring adherence to human rights requirements due to logistical constraints experienced in the delivery of policing services.⁹⁵ There is need for logistical support in form of computers to the human rights officers in some of the regions.⁹⁶

Professional standards unit

The Police Professional Standards Unit (PSU) was created in July 2007 as a new Unit within the Uganda Police Force. The driving rationale behind the creation of this unit was the need to respond to the critical issues of corruption, human rights abuse, and professional misconduct in the police and also answer the question of "whereas UPF polices the public, who polices the UPF?" S.70 of the *Police Act CAP 303* as

91 Uganda: The Right to a Fair Trial-Next Steps, 2012; by Foundation for Human Rights Initiative, pg. 25.

92 Interview with Mr. Omale Costa, Legal Officer, Uganda Law Society on 14th September 2021.

93 Interview with Mr. James Kusemererwa, Head, Human Rights and Legal Services on 10th November 2021.

94 Pg. 17; The Justice Law and Order Sector, Annual Performance Report, 2017/2018.

95 Interview with Mr. James Kusemererwa, Head, Human Rights and Legal Services on 10th November 2021.

96 Interview with Mr. James Kusemererwa, Head, Human Rights and Legal Services on 10th November 2021.

amended by Act No.16/2006, states that a member of the public is entitled without prejudice to any legal redress available to him/her to make a complaint against any police officer. The PSU provides a platform for such complaints. The key PSU functions are to among others, act as an in-house mechanism for addressing complaints against police officers and handle specific investigations into alleged professional misconduct within the Uganda Police Force.

Use of police parades

Empowerment of police officers requires that police officers are equipped with adequate knowledge and skills to prevent torture. This entails equipping them with relevant information on the 'dos' and 'don'ts' when relating with suspects during arrest and while in detention. It is common practice for all police stations to train the police officers about torture prevention during the Monday and Wednesday parades. However, this has been noted as inadequate. 'What we need is to ensure that all police officers are equipped from the onset with the requisite human rights knowledge. CSOs should support the police by training police officers in training schools as well especially on the *Human Rights Enforcement Act, 2019* and the *Prevention and Prohibition of Torture Act, 2012*. The *Human Rights (Enforcement) Act, 2019* provides for among others, personal liability for infringement of rights and freedoms.

7.4. Uganda Prisons Service

The Uganda Prisons Service scaled out human rights committees; for both inmates and staff, within prisons and human rights desks to counter abuse and impunity. The human rights committees are an oversight and accountability mechanism within prisons. The Uganda Prisons Service maintains a 100% coverage of human rights committees in all its 253 prison units.⁹⁷ It established thirteen (13) new human rights desks and committees to monitor and supervise the observance of human rights within staff and inmates.

However, in the course of this research, incidences of torture were reported. 71% of the inmates alleged to have witnessed torture in prisons with 29% reported to not having witnessed the same. Below are the findings per prison.

Table 16: Torture prevalence in prisons (Source: Baseline survey data)

Torture Prevalence in prisons			
Prison	Total interviews	% that witnessed Torture	% that did not
Arua main prison	80	74%	26%
Gili Gili Prisons	75	71%	29%
Gulu Main Prison	61	70%	30%
Gulu women Prison	28	71%	29%
Kigo prisons	72	71%	29%
Kigo Women's prison	16	69%	31%
Kitalya Min Max prison	44	70%	30%
Kitalya Farm Prison	24	71%	29%
Luzira Murchison Bay	109	71%	29%
Luzira Women's Prison	40	70%	30%
Old Gulu	16	69%	31%
Pece prison	48	71%	29%

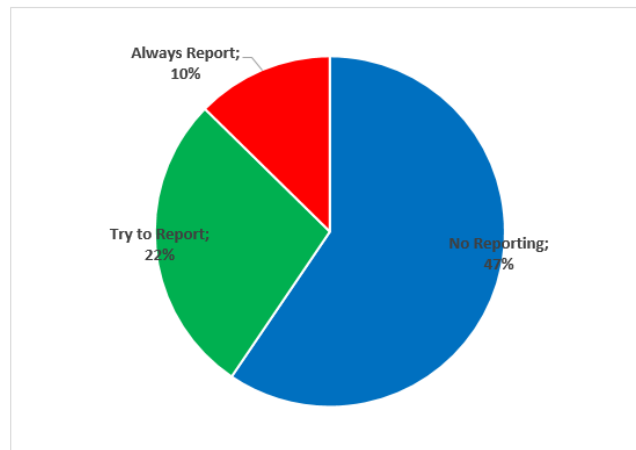
Fellow inmates were the major perpetrators of torture (77%) followed by prison warders (33%). However, interviews with the inmates alluded that fellow inmates perpetrate torture on the instructions of the prison warders. An inmate at Kigo male prison had this to say: *The wardens instruct our leaders to beat us. The leader can even slap or beat you when the prison wardens are present. Directive to cane usually comes from the prison wardens.*

Nonetheless, it was noted that there is a glaring disparity between policy and practice. Despite the establishment and said functionality of these committees, none of the inmates that alleged torture within prison had reported to the committee members.

Kato, a 30-year-old mechanic from Salama: *'I have been on remand for 1 year and 8 months. At Kigo there is physical torture by prison warders. If one person disobeys their instructions, they beat up every other person in the same ward. There is no mechanism of reporting our grievances against prison warders.'*

Of the 71% respondents who witnessed torture, 47% alluded to how reporting is so complex, (in terms of who to report to), 12% fell under the category of always trying to report while 10% noted that they report to either ward leaders or prison warders.

Figure 16: Torture reporting trends (Source: Baseline survey data)



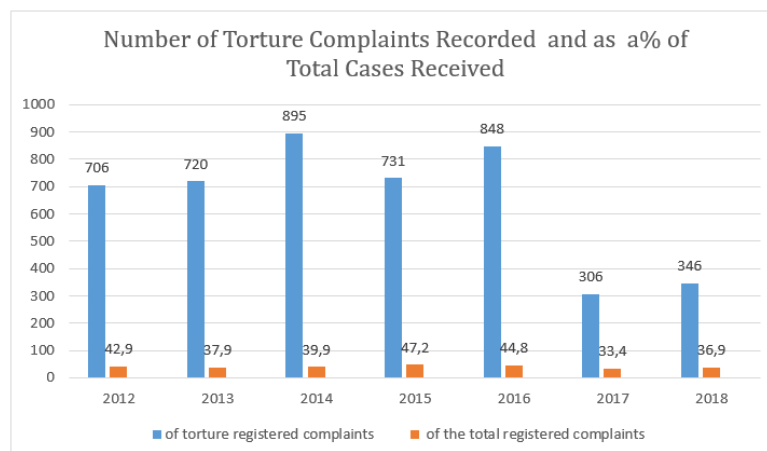
This may partly be due to fear for reprisal or general lack of awareness of the mandate of the human rights committees.

According to the Uganda Human Rights Commission annual reports, torture has been the most commonly reported human rights violation from 2012 to date. The African Centre for the Rehabilitation and Treatment of Torture Victims (ACTV) also recorded an average of 1,090 torture survivors between 2016-2017.

Table 17: Torture prevalence (Source: UHRC Annual Human Rights Reports, 2012-2018)

Year	Number of Torture Complaints Registered	Torture as % of the Total Registered Complaints
2012	706	42.9
2013	720	37.9
2014	895	39.9
2015	731	47.2
2016	848	44.8
2017	306	33.4
2018	346	36.9

Figure 17: Torture complaints registered by UHRC (Source: UHRC Annual Human Rights Reports, 2012-2018)



From the reports, the Uganda Police Force, Uganda Peoples' Defence Forces and the Uganda Prisons Service have been cited as the main perpetrators of torture.

These institutions have set up Human Rights Committees/ desks to counter human rights violations within their detention facilities.

Human rights committees

The Uganda Prisons Service scaled out human rights committees; for both inmates and staff, within prisons and human rights desks to counter abuse and impunity. The human rights committees are an oversight and accountability mechanism within prisons. The Uganda Prisons Service maintains a 100% coverage of human rights committees in all its 259 prison units.⁹⁸

Nonetheless, there is also a glaring disparity between policy and practice. Despite the establishment and said functionality of these committees, none of the inmates that alleged torture within prison had reported to the committee members. As discussed above, many opted to keep quiet because they felt there was no one to report to, while for those who did report, it was usually to the Officer in Charge, or prison warders. This may partly be due to fear for reprisal or general lack of awareness of the mandate of the human rights committees.

7.5. Uganda Human Rights Commission (UHRC)

Article 52 (1) of the *Constitution of the Republic of Uganda, 1995* mandates the Uganda Human Rights Commission to visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations to the government.⁹⁹

In 2018, the Uganda Human Rights Commission conducted 962 inspection visits to places of detention that comprised of 409 police stations, 384 police posts, 163 government prisons, 5 remand homes and one military detention facility.¹⁰⁰ There is however need for the UHRC to develop a legal pathway with legal aid service providers to ensure timely referral and response to human rights issues especially considering that UHRC has free access to detention facilities.

In addition to inspecting detention facilities, the Uganda Human Rights Commission also provides tailored sensitization of the detainees and inmates about their rights, duties and responsibilities,¹⁰¹ during which we tell them about their rights, duties and responsibilities and in so doing we create awareness to them training to security officers on the Prevention and Prohibition of Torture Act, 2012. An interview with the Uganda Human Rights Officer in Arua district confirmed this. *'We provide annual capacity building sessions to both police and prison officers where we get to sensitize them about the Torture Act and the need to respect and promote human rights.'*¹⁰² This was reiterated in all prisons visited.

Conclusion

While non-state actors have creatively enhanced access to justice for many, there has been no standardized method of practice resulting in an ad hoc approach. With the limited funding, there is need for improved coordination among LASPs to ensure wider coverage. Challenges within Access to Justice Sub Programme of the Governance and Security Programme (former JLOS are inter linked and require a multi-pronged approach. For instance, increasing number of judges without addressing the staffing gaps within police and the Office of the Directorate of Public Prosecutions runs counter to addressing accessing to justice challenges.

⁹⁸ Pg. 17, The Justice Law and Order Sector, Annual Report, 2017/2018.

⁹⁹ Article 52 (1) (b) and (c) of the Constitution of the Republic of Uganda, 1995.

¹⁰⁰ Pg. 216 of the Uganda Human Rights Commission Annual Human Rights Report, 2018.

¹⁰¹ Interview with Mr. Bosco Okurut, Uganda Human Rights Officer, Arua on 14th September 2021.

¹⁰² Interview with Mr. Androa Anthony, Uganda Human Rights Commission Officer in Arua District on 10th June 2019.

8. CHAPTER EIGHT: BEST PRACTICES

8.0. Best practices: Progressive pre-trial detention provisions

The ICCPR provides that 'all persons shall be equal before the courts and tribunals' and that 'everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'.¹⁰³ This is reiterated under Article 28 of the *Constitution of the Republic of Uganda, 1995*. The right to a fair trial is an internationally accepted human rights standard proclaimed to protect each individual person's basic rights from unlawful curtailment or deprivation by the state.

For a criminal justice system to operate with legitimacy, it must operate in accordance with due process, which means that 'fair, reliable and consistent' procedures are followed at all stages of the justice system.¹⁰⁴ In this chapter we highlight best practices from other common law jurisdictions tailored to safeguard the right to a fair and speedy trial.

8.1. South Africa

As of 2015, South Africa was celebrated as a success story for reducing the number of pre-trial detainees. South Africa's legal framework on arrests and pre-trial detention has been hailed as meeting international standards. A number of factors explain this success story.

First, the country's legislative provisions recognize the fundamental rights of detained persons and provide for alternatives to remand detention with the latter only recommended as a last resort.¹⁰⁵ For instance, under the South African Criminal Procedure Act, a person under detention may be given bail as long as this serves the interest of justice and where the possibility of release on bail is not raised, the court is mandated to ascertain whether they would like to exercise their right to bail.¹⁰⁶ Where the court considers that it is in the interest of justice to release the accused person on bail and that a sum of money must be paid to court to release the said person, it will then hold a separate inquiry into the ability of the accused to pay the sum of money being considered appropriate for the accused.¹⁰⁷ Where the court determines that the accused cannot raise the said sum of money, it is then mandated to consider other conditions excluding the money as per Section 60 (2B) (b) (i).

In addition to this bulwark of statutory firewall, the Constitutional Court has delivered judgements that underscore the importance of bail and urged for pre-trial detention to be used as a last resort.

"Bail serves not only the liberty interests of the accused, but the public interest by reducing the high number of awaiting trial prisoners clogging our already over-crowded correctional system, and by reducing the number of families deprived of a bread winner."¹⁰⁸

As a result of these legal safeguards, between 1995 and 2015, the country moved from 140 pre-trial detainees per 100,000 prisoners to slightly over 80 pre-trial detainees per 100,000 prisoners.¹⁰⁹ This figure has since been maintained and as of 2020, the country had an average of 88 pre-trial detainees for every 100,000 prisoners.¹¹⁰

8.2. Malawi

S.161 (f) of the Malawi-Criminal Procedure and Evidence Code Act, Cap.8:01, sets a time limit in pre-trial detention after committal. It provides that,

'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 in relation to that offence shall be sixty days.'

The Criminal Procedure and Evidence Code Act, Cap.8:01, further sets a time limit of 90 days for persons charged with serious offences such as treason, genocide, murder, rape, defilement and robbery, pending commencement of trial.¹¹¹

¹⁰³ Article 14 of the International Covenant on Civil and Political Rights, 1966.

¹⁰⁴ Penal Reform International, 'Making Law and Policy that Work', pg. 42.

¹⁰⁵ Study on the Use of Bail in South Africa, Nicola de Ruiter and Kathleen Hardy. Accessible on <http://apcof.org/wp-content/uploads/023-apcof-research-study-on-the-use-of-bail-in-south-africa-nicola-de-ruiter-and-kathleen-hardy-.pdf> (Accessed on November 9, 2021)

¹⁰⁶ Section 60 (1) (c)

¹⁰⁷ Section 60 (2B) (a)

¹⁰⁸ S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat 1999 (4) SA 623

¹⁰⁹ Pre-Trial Detention and Its Over-Use: Evidence from ten countries. Catherine Heard and Helen Fair, November 2019. Accessible on https://www.prisonstudies.org/sites/default/files/resources/downloads/pre-trial_detention_final.pdf (Accessed on 9th November 2021)

¹¹⁰ See, <https://www.prisonstudies.org/country/south-africa> (Accessed on 9th November 2021)

¹¹¹ S.161 (G) of the Criminal Procedure and Evidence Code Act, Cap.8:01

Uganda has no provision providing for a remand period that a person once committed should be held awaiting trial. Such a provision would go a long way in securing the rights of suspects to a speedy trial. Practice is that inmates once committed inordinately stay on remand without appearing before the courts. Most of these cases have fallen through the cracks and have been forgotten by the criminal justice system.

8.3. International covenants of pre-trial detention

Lawful custody

Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides as follows:

Everyone has the right to liberty and security of persons. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established in law.

The Committee on human rights explained the circumstances pertaining lawful custody as per Article 9 in *A.W. Mukong v. Cameroon*¹¹² as follows:

'Remand in lawful custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances. Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.'

In this case, the applicant had been arrested and detained for several months. He alleged that this was contrary to Article 9. The State party argued that the arrest was effected in accordance to the laws of Cameroon and therefore, could not be contrary to Article 9. The Committee found that since the State party had not proved that the detention was "necessary...to prevent a flight, interference with evidence or the recurrence of the crime" it was neither reasonable nor necessary in the circumstance of the case.

¹¹³

Time spent in detention

Concerning time spent in detention, the African Commission on Human Peoples' Rights held that indefinite detention of persons can be interpreted as arbitrary as the detainee does not know the extent of his punishment and in violation of Article 6 of the African Charter on Human and Peoples' Rights, which is similar to Article 9 (1) of ICCPR.¹¹⁴ In *Constitutional Rights Project and Civil Liberties Organization v. Nigeria*¹¹⁵ the court held that, 'it constitutes an arbitrary deprivation of liberty to detain people without charges and without the possibility of bail where the victims had been held for over three years.'

8.4. Netherlands

As of 2019, only 29 per cent of all prisoners in the Netherlands were on pre-trial detention.¹¹⁶ Under Dutch law, a number of checks and balances are put in place to check pre-trial detention and ensure that it is only exercised as a last resort as required under Rule 6.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures. These are discussed below.

As is required under the ICCPR, Article 15 of the Dutch Constitution states that deprivation of liberty is only allowed with a legal basis. The first stage of pre-trial detention under Dutch law is called *bewaring*¹¹⁷. This must be done within three days and 15 hours from the time of arrest and can only last a maximum of 14 days. *Bewaring* can only be ordered by an investigative judge upon a motion by the public prosecutor.¹¹⁸ At the hearing, the judge checks for the legality of the arrest¹¹⁹ and the defence, already given available evidence is given a chance to make a case against pre-trial detention of the suspect.

The second stage of pre-trial detention takes place within 14 days after the initial pre-trial detention is ordered by the investigative judge. This second stage, known as the *gevangenhouding* must be ordered by a panel of three judges.¹²⁰ These two stages act as a sieve so that only those who must, can be detained. Pre-trial detention can only be ordered if prosecution establish at least one *geval* (case) and a *grond* (legal ground) to justify the detention.¹²¹ However, even when the judge establishes that the conditions for pre-trial detention are met, it is not mandatory to order pre-trial detention. Under paragraph 1 of Article 67 of the *Code of Civil Procedure (CCP)* only suspects of offences which carry a minimum penalty of four years' imprisonment can be held in pre-trial detention, except for offences such as minor assault, verbal threatening of a person or destruction of property. Paragraph 3 gives additional criterion for circumstances under which pre-trial detention may be allowed; serious suspicion that the suspect did commit the offence, flight risk, and a strong reason of public interest.

¹¹² Communication No.458/1991, (views adopted on 21 July 1994), in UN doc. GAOR, A/49/40.

¹¹³ Ibid.

¹¹⁴ ACHPR, *Organisation contre la Torture and Others v. Rwanda*, Communications No. 27/89, 49/91, and 99/93, decision adopted during the 20th ordinary session, October 1996.

¹¹⁵ ACHPR, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, communication No. 102/93, decision adopted on 31 October 1998.

¹¹⁶ Pre-Trial Detention and Its Over-Use: Evidence from ten countries. Catherine Heard and Helen Fair, November 2019.

¹¹⁷ '*Bewaring*' is an order issued by an examining magistrate on application by the public prosecutor to have a suspect remanded. Before the order is given the public prosecutor must show ground(s) warranting the order.

¹¹⁸ Article 63 of the Dutch Code of Criminal Procedure.

¹¹⁹ Article 59a of the Dutch Code of Criminal Procedure.

¹²⁰ Article 65 of the Dutch Code of Criminal Procedure.

¹²¹ Article 67a of the Dutch Code of Criminal Procedure.

Under paragraph 2 of Article 67a of the CCP, the grounds are, suspicion that the offence carries a maximum sentence of at least 12 years' imprisonment and has shocked the legal order, strong suspicion that the suspect will commit another offence that carries a maximum of 6 years or threatens the health and safety of persons, risk that the suspect will harm investigations if released, and suspicion that the suspect engaged in an act of violence in a public space or public servant.

These safeguards ensure that suspects are only detained when a number of conditions are met and as a last resort. Under these circumstances, the prosecution is unable to use pre-trial detention as a tool without making a clear case. In contrast, in November 2021, a Uganda Justice in the Court of Appeal, Fredrick Egonda-Ntende decried the flaws in Uganda's criminal justice system as he allowed an appeal and quashed a conviction after the accused was held for 5 years under pre-trial detention and later convicted of the offence and sentence, only on appeal, after a total of 10 years in detention, when he was told that he was wrongly convicted and freed.¹²²

122 Seremba Denis v. Uganda. Criminal Appeal No.480 of 2017.

9. CHAPTER NINE: CONCLUSION AND RECOMMENDATIONS

Despite Uganda having a relatively comprehensive legal framework safeguarding against lengthy pre-trial detention, ranging from a 48-hour limit in police custody; a 60-days limit on remand for suspects charged with non-capital offences; and a 180-days limit before committal to the High Court for suspects charged with capital offences, major challenges enforcing these rights persist. As a result, many detainees have inordinately been incarcerated beyond their constitutionally mandated period. Most worrying however, is the lack of a stipulated time frame following committal and before trial in the High Court. This has resulted into unnecessary lengthy detention of persons on committal. Uganda's pre-trial detention population stood at 50% (29,933) having increased drastically from 46.6% in December 2019.

A majority of suspects and inmates in detention come from economically and socially disadvantaged backgrounds. Most live in poverty, are illiterate or have limited education, (261) had attained only Primary Leaving Examination while a majority (59%) identified as peasants. This has contributed to their confrontation with the criminal justice system as they are more likely to be involved in petty crimes as a way to make ends meet. More so, socially and economically marginalized groups, who experience multiple layers of discrimination in all spheres of life, such as refugees and women, are most at risk of incarceration.

Despite the noted great awareness of the right to bail, this knowledge has not translated into access to justice for inmates on remand. This is because without services of a lawyer or legal aid, detainees are not aware of the process for application of either police bond or bail or even able to negotiate with the various JLOS actors to ensure that their cases are heard. Worse still, a big majority are not aware of the status of their cases, or even able to apply for bail let alone ensure that their cases are cause listed. It is imperative that the National Legal Aid bill is enacted to provide a framework for Government to scale up legal aid provision.

There is also need to coordinate and strengthen sensitization of suspects and inmates to facilitate knowledge and awareness about their rights and the criminal justice processes. To ensure appreciation and compliance with the existing human rights standards, JLOS actors need to equally be targeted.

To facilitate further compliance and enforcement of the constitutional provisions pertaining to pre-trial detention, there is need to ensure that existing safeguards such as release on mandatory bail, time limits for detention before committal are strictly enforced. There is also need to advocate for amendments of the legal framework to provide for a stipulated time limit for detention following committal to ensure that inmates are not inordinately detained.

RECOMMENDATIONS

To the Uganda Police Force:

1. Appoint more human rights officers countrywide and strengthen their capacity to monitor and promote adherence to the 48-hour rule and other human rights standards.
2. Ensure continued capacity building of both Human Rights Officers and other police officers to keep up with the current procedural and human rights standards relating to investigation and crime prevention.
3. Adopt zero tolerance towards torture within the police Force by investigating and charging implicated police officers in torture perpetration to curb impunity within the Force.
4. Establishment of an independent police oversight body that is independent of police to ensure that errant police officers are held accountable.
5. Enforce sanctions for police officers who violate standard of arrest and detention as provided for in the Luanda Guidelines. In particular, Uganda police force should emphasise investigation before arrest.

To the Uganda Prisons Service:

1. Ensure the effective functioning of human rights committees within prison facilities by identifying and facilitating capacity building opportunities.
2. Initiate investigations into alleged torture occurrences within prisons to curb impunity and ensure implementation of the Prevention and Prohibition of Torture Act, 2012.
3. Provide guidelines on S.15 of the Human Rights Enforcement Act on un-conditional release of prisoners who are unreasonably being detained in prison.

To Government:

1. Ratify the Optional Protocol to the Convention Against Torture in line with international standards to ensure effective implementation of the Prevention and Prohibition of Torture Act, 2012.
2. Implement the alternative to imprisonment for petty offenders like police bond, bail, community service in order to reduce on the number of pre-trial detainees.

To the Judiciary Rules Committee:

1. Review and explore amending the Judicature Act, Cap.13, to expand the jurisdiction of Registrars to take plea for capital offences so as to reduce backlog and long periods of pre-trial detention.
2. Consider widening the jurisdiction of the Magistrates to determine a prima facie case before committal to the High Court to avoid frivolous prosecutions.
3. Consider developing special guidelines to address situations of refugees who lack sureties.

To the Judiciary:

Strike with nullity each and every trial marked by violations of the accused's non derogable rights;

To Parliament:

Expedite the tabling and enactment of the National Legal Aid Bill to extend legal representation to both capital and non-capital offenders and ensure representation starts from time of arrest to disposal of case to counter abuse.

To Ministry of Finance, Planning and Economic Development:

1. Allocate more budgetary resources to the Uganda Police Force, Uganda Prisons service, and Judiciary to strengthen their capacity to execute their mandates effectively.
2. Allocate more budgetary resources to the Office of the Director of Public prosecution to recruit more prosecutors to match the recent efforts that have widened the pool of judicial officers.

To Development Partners:

1. Revive the Paralegal Advisory Services to scale up legal aid provision across the country.
2. Lobby Government to appoint more judicial officers and prosecutors.

To Uganda Human Rights Commission (UHRC):

1. To intensify visits to places of detention to assess conditions of persons in detention and make necessary recommendations.
2. To train members of the human rights committees in prisons to boost their capacity to respond to human rights abuses especially empower them to submit names of inmates that have overstayed on remand and/or due for release on mandatory bail.

To Civil Society:

1. Lobby Government to ratify the Optional Protocol to the Convention Against Torture to allow for independent inspections in places of detention.
2. Incorporate training of security officers within organization work plans and facilitate distribution of relevant materials such as legislations to these agencies.
3. Need to advocate for strengthening of community service as an alternative to imprisonment for petty offences.
4. Advocate for the implementation, and train security agencies to adhere to the Human Rights Enforcement Act, 2019.
5. Lobby for the revision of use of criminal sessions at the High Court to ensure that High Court judges hear cases more regularly.
6. Lobby for the passing of the Legal Aid Bill and setting up of a state funded public defence office.

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■ **Headquarters**

Avenue de la Chasse 140
1040 Brussels
Belgium
Tel.: +32 (0)2 223 36 54
communication@asf.be

■ **Office in Uganda**

Plot 16, Vale Road, Naguru
P.O.Box 36710, Kampala

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