



KNOWLEDGE ATTITUDES AND PRACTICES ON PRE-TRIAL DETENTION

AVOCATS SANS FRONTIÈRES, 2023

www.asf.be

 Austrian
Development
Cooperation

funded by the austrian development cooperation

ACKNOWLEDGEMENTS

This baseline report was made possible within the framework of the project “Protecting procedural and constitutional rights through access to justice” (2020-2023) funded by the Austrian Development Cooperation (ADC). This is a joint action led by Avocats Sans Frontières (ASF) and Legal Aid Service Providers Network (LASPNET-U).

ASF is particularly grateful to Mr Melody Niwamanya and his team from Pazel Conroy Consulting Ltd for their work in the process of the data collection, data analysis, and report writing. We would also like to thank all of our partners and stakeholders that participated in the interviews to provide information. Finally, special acknowledgments go to ASF staff who contributed in coordinating, reviewing, editing and finalizing the report: Mr. Thijs Van Laer (Regional Director), Ms. Irene Winnie Anying (Country Director), Ms. Faridah Kyomuhangi (ASF Programms Coordinator) Ms. Lucie Benaiteau (Research and Learning Manager), Mr. Rashid Bunya (Project Coordinator), Ms. Joan Agoe (Legal Officer), Ms. Sharon Joy Lucima (ASF M&E Officer), Ms. Sheraz Bukenya (ASF Communications Officer). We thank them for their contribution towards this report.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	6
1 Introduction and background.....	10
1.1 ASF's work in pre-trial detention in Uganda.....	10
1.2 Purpose and objectives of the survey	10
1.3 Survey approach and design.....	11
1.4 Data collection methods.....	11
1.5 Data analysis.....	12
2 Legal framework on pre-trial detention.....	13
2.1 National framework.....	13
2.2 Regional and international framework.....	15
3 Knowledge of procedural and constitutional rights during pre-trial detention.....	16
3.1 Community members.....	16
3.1.1 Rights on arrest and detention by police.....	16
3.1.2 Rights during remand period.....	17
3.1.3 Rights of juveniles in detention.....	18
3.1.4 Specific provisions: police bond.....	19
3.1.5 Specific provisions: mandatory bail.....	20
3.2 Police detainees.....	21
3.3 Prison Inmates.....	22
3.4 Key conclusions about the knowledge of rights.....	24
4 Attitudes on pre-trial processes.....	25
4.1 Community members.....	25
4.1.1 Prior experience reporting a case to the police.....	27
4.1.2 Rating of trust of different justice stakeholders.....	28
4.1.3 Likelihood of being asked for a bribe.....	28
4.1.4 Trust in cultural or local courts.....	29
4.2 Police Detainees.....	31
4.3 Prisoners.....	32
4.4 Key conclusion regarding attitudes.....	33
5 Practices Regarding Pre -Trial Processes.....	34
5.1 Communities.....	34
5.1.1 Willingness to interact with police as a witness.....	34
5.1.2 Willingness to pay a bribe.....	35
5.1.3 Mob justice by the community.....	36
5.2 Police Detainees.....	37
5.2.1 Time spent in police detention.....	37
5.2.2 Experiences of arrest and detention.....	38
5.2.3 Access to the services of a lawyer.....	38
5.2.4 Willingness to pay a bribe.....	39
5.3 Prison Inmates.....	39
5.3.1 Time spent in detention.....	39
5.3.2 Access to the services of a lawyer.....	40
5.3.3 Experience in detention.....	40
5.4 Juveniles.....	41
5.5 Conclusions on practices.....	43

TABLE OF CONTENTS

6	Perspectives of duty bearers on protecting procedural and constitutional rights in Uganda.....	44
6.1	General challenges.....	44
6.2	Uganda Police Force (UPF).....	45
6.3	The judiciary.....	48
6.4	Office of the Director of Public Prosecutions.....	51
6.5	Uganda Prisons Service and Remand Homes.....	53
6.6	Local Councils and cultural leaders.....	55
6.7	Advocates, Paralegals and Legal Aid Service Providers (LASPs).....	56
7	Conclusion and recommendations.....	58
8	Annex.....	60
8.1	Community Members.....	60
8.2	Police Detainees.....	60
8.3	Prison Inmates.....	61
8.4	Young people (Remand Homes).....	62

LIST OF FIGURES

FIGURE 1:	% of community respondents who know specific rights on arrest and detention	18
FIGURE 2:	% of community respondents who know specific rights on remand	19
FIGURE 3:	% of community respondents who know about police bond	21
FIGURE 4:	% of community respondents who know about mandatory bail	22
FIGURE 5:	% of police detainees who know specific rights on arrest and detention	23
FIGURE 6:	Police detainees' knowledge of the right to access bond	23
FIGURE 7:	% of prison inmates who know specific rights on remand	25
FIGURE 8:	Prison inmates' knowledge of mandatory bail	26
FIGURE 9:	Perception of community respondents about how fairly the case was handled	29
FIGURE 10:	% of community members rating specific duty bearers as 'somewhat' or 'very' untrustworthy	30
FIGURE 11:	% of community members who think they are likely to receive fair and impartial treatment from specific stakeholders	30
FIGURE 12:	Perceptions by community respondents of the likelihood of being asked for a bribe by specific duty bearers	21
FIGURE 13:	% of community members who would trust the local or cultural courts rather than the police and judicial officers	32
FIGURE 14:	Reasons for trusting local or cultural courts over police and judicial officers	33
FIGURE 15:	% of police detainees rating duty bearers as 'somewhat' or 'very' untrustworthy	34
FIGURE 16:	Perceptions by police detainees on the likelihood of being asked for a bribe	34
FIGURE 17:	% of prison inmates rating duty bearers as 'somewhat' or 'very' untrustworthy	35
FIGURE 18:	Perceptions by prison inmates on the likelihood of being asked for a bribe	35
FIGURE 19:	% of community respondents who would be willing to report a case to the police if they saw someone committing a crime	37
FIGURE 20:	% of community respondents willing to pay a bribe if asked to do so in order to get justice	38
FIGURE 21:	% of community respondents reporting that people sometimes do justice themselves in their community	39
FIGURE 22:	% of police detainees who were informed of their right to a lawyer upon arrest	41
FIGURE 23:	% of police detainees who accessed the services of a lawyer	42
FIGURE 24:	% of prison inmates who accessed the services of a lawyer	43
FIGURE 25:	Prison inmates' assessment of access to various services in prison	44
FIGURE 26:	Prison inmates' assessment of the occurrence of various human rights violations	45
FIGURE 27:	% of juveniles who reported the presence of a parent or guardian at various points of their arrest and detention	46

ACRONYMS AND ABBREVIATIONS

ASF	Avocats Sans Frontières
ACHPR	African Commission on Human and Peoples' Rights
ADC	Austrian Development Cooperation
AIGP	Assistant Inspector General of Police
AIDS	Acquired Immunodeficiency syndrome
CBO	Community Based Organisation
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COVID-19	Coronavirus disease
DGF	Democratic Governance Facility
FGDS	Focus Group Discussions
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEC	Information, Education and Communication
JATT	Joint Anti-Terrorism Taskforce
JLOS	Justice, Law and Order Sector
KAP	Knowledge, Attitudes and Practices
LASPNET	Legal Aid Service Providers Network
LC	Local Court
NGO	Non-Government Organization
ODPP	Office of the Director of Public Prosecutions
OC	Officer-in-Charge
PS	Police Station
PWD	Person With Disability
SPSS	Statistical Package for Social Sciences
UPDF	Uganda People's Defence Forces
UPF	Uganda Police Force
UPS	Uganda Prisons Service
UN	United Nations

LIST OF TABLES

- Table 1: Average number of days spent by police detainees in detention by respondents. 40
- Table 2: Social demographics of community members. 64
- Table 3: Social Demographic characteristics of police detainees. 65
- Table 4: Socio-demographic characteristics of prison inmates. 66
- Table 5: Social demographic characteristics of young people (remand homes). 67

EXECUTIVE SUMMARY

Uganda has an elaborate legal framework regulating pre-trial detention, which includes detailed provisions regarding procedural and constitutional rights. Compliance with these provisions, however, continues to be a challenge: many persons going through the criminal justice system suffer violations of their human rights. These include arbitrary or illegal arrests, overstaying in police custody, the lack of access to police bond, or violations of the right to mandatory bail. The most vulnerable and indigent are those who suffer most from the lack of compliance with procedural and constitutional rights.¹

Avocats Sans Frontières (ASF), in partnership with the Legal Aid Service Providers Network (LASPNET), is implementing a three-year project (2020-2023) entitled “Protecting procedural and constitutional rights through access to justice” in the districts of Kampala, Arua, Gulu, Hoima, Lamwo, Kitgum, Wakiso and Masindi. In 2022, ASF commissioned a survey to investigate the level of knowledge, attitudes, and practices of key stakeholders towards pre-trial detention under the criminal justice system in Uganda. The survey was undertaken in four locations of Gulu, Arua, Lamwo and Kampala. A total of 405 community members, 96 police detainees, 54 prisoners, and 47 officials from Justice Law and Order sector (JLOS) institutions and legal aid service providers were interviewed, using both qualitative and quantitative methods.

Based on the data collected, the present report explores the knowledge, attitudes and practices of users of the criminal justice system, namely communities and pre-trial detainees, along with the perspectives of duty bearers, thereby shedding light on the root causes of violations of procedural and constitutional rights. With this evidence base, the report provides recommendations for action and positive reforms in the area of pre-trial detention.

Knowledge, attitudes and practices of communities and detainees

The report findings show that a key challenge which exacerbates the continued violation of rights during detention is the **lack of knowledge by the public** with regard to their pre-trial constitutional and procedural rights. Only half (50%) of respondents in the community were able to mention some of the rights of people arrested by police. Community respondents were least knowledgeable of the right to be produced in court within 48 hours after arrest (only 30% had specific knowledge of the time limit), a key safeguard against overstaying and human rights violations at the police station. Moreover, only 39% of the respondents had heard about the right to be released on mandatory bail after a certain period on remand.

Police detainees also had low levels of knowledge of their rights, with only 31% reporting knowledge of specific rights. 27% knew of their right to access a lawyer, while only 36% had actual knowledge of the legal provisions related to police bond, such as the fact that it is free and mandatory after 48 hours of detention without being presented to a judge.

¹ASF, Protecting constitutional and procedural rights of pre-trial detainees through access to justice in Uganda. Baseline Report, 2022. Available online at: https://asf.be/wp-content/uploads/2023/01/ASF_Baseline-survey-Protecting-constitutional-and-procedural-rights-of-pre-trial-detainees-through-access-to-justice-in-Uganda_2023.pdf (Accessed 23rd October, 2023)

Finally, prison inmates interviewed during the survey had slightly better levels of knowledge of their rights (57% could name specific rights), which could be attributed to sensitization meetings held by prison wardens and NGOs. However, only 21% of inmates were able to mention the period after which bail becomes mandatory (60 days for non-capital offences, and 180 days for capital offences).

The lack of knowledge of key procedural and constitutional safeguards, both within the community and in places of detention, is not a surprising finding. However, it re-confirms the importance of dissemination of these technical provisions in order for rights-holders to be empowered to demand respect for their rights.

Regarding attitudes and perceptions, findings show a lack of trust in some criminal justice institutions, in particular in the Uganda Police Force (UPF). Community respondents noted issues such as delays and inefficiency in the treatment of cases, as well as corruption. 83% of community respondents perceived police officers to be “very likely” to ask for a bribe in the course of their work. The police were also the institution most often rated as “untrustworthy” by respondents (24%). Both police detainees and prison inmates also reported low levels of trust in the police to handle cases, and mentioned experiences of being asked for bribes. Such a high level of distrust in the police may impede access to justice and human rights, as communities who do not trust the police will be less likely to report cases or collaborate with the police, and detainees may feel less confident in advocating for the respect of their rights in their interaction with the police. A consequence of the distrust of the police was also the finding that the majority (57%) of community members trusted local or cultural courts rather than the police to handle their cases, especially in rural areas such as Lamwo and Arua.

Finally, the study also sought to identify prevalent practices with regard to pre-trial detention and the administration of justice, in order to understand how realities may differ from the provisions of the law. Among community respondents, a particularly outstanding finding concerned the prevalence of mob justice, with about 89% of respondents acknowledging its existence in their community.

At the level of police detention, a key finding identified from detainee surveys concerned the duration of detention, which averaged 5.3 days, far beyond the legal limit of 48 hours. Finally, an important issue was also raised with regard to legal aid: only 16% of police detainees and 30% of prison inmates had access to a lawyer.

Perspectives and challenges faced by duty bearers

In order to fully contextualize the above findings, the study also sought to gather the opinions of duty bearers on their role in protecting procedural and constitutional rights, and their attitudes and practices within the criminal justice system. Stakeholders from various institutions were interviewed, including the Uganda Police Force (UPF), the Judiciary, the Office of the Directorate of Public Prosecutions (ODPP), the Uganda Prisons Service (UPS), cultural and Local Council leaders, probation officers and the in-charge of a remand home.

The perspectives of Legal Aid Service Providers (LASPs), who are not considered duty bearers but still play a key role in access to justice, were also gathered.

Overall, the stakeholders interviewed demonstrated solid knowledge of their role in upholding constitutional and procedural rights and stressed the fact that the execution of their roles is interdependent within the criminal justice chain link (police, prison, judiciary, ODPP). Yet, they identified several systemic challenges which greatly impeded their ability to fulfil their duties. Beyond the expected human resource challenges and inadequate funding issues, stakeholders also discussed coordination gaps amongst JLOS institutions, or dysfunctional checks and balances within the criminal justice system. Interviews with UPF staff highlighted difficulties in completing investigations within 48 hours, negative attitudes towards releasing suspects on bond, delays in presenting suspects in Court, and issues of corruption, among others. Some of the issues highlighted by judicial officers included understaffing and high caseloads, the scarcity of High Court sessions, negative attitudes towards bond or bail, and issues with regards to witness and victim participation. Similar challenges were reported by state attorneys. Interviewees working in prisons and remand homes put emphasis on the issue of overcrowding, and local leaders highlighted the need to improve linkages with local and cultural systems. Finally, interviews with advocates and paralegals highlighted key issues in legal aid service provision, including the lack of services in rural areas such as Lamwo, and funding gaps following the closure of the Democratic Governance Facility (DGF). Such findings highlight the pressing need for government to address access to legal aid as a matter of national policy.

Based on the findings of this study, ASF makes the following recommendations:

General recommendations:

To the Government of Uganda:

1. Improve coordination between criminal justice institutions (police, prisons, judiciary, ODPP) through regular funding of District Chain-linked Committee (DCC) and Regional Chain-linked Committee (RCC) meetings, to ensure that checks and balances are functioning and that institutions work together to solve systemic issues.
2. Ensure continuous training of duty bearers on human rights protection within the context of their duties.
3. Ensure that duty bearers found in breach of their duties are held accountable, in particular through the implementation of the Human Rights Enforcement Act 2019.
4. Maintain efforts to eradicate corruption, particularly within the Uganda Police Force.
5. Engage and empower cultural and local leaders in supporting the administration of alternative dispute resolution, sensitizing communities about criminal justice and individual rights, providing support to individuals in contact with the criminal justice system, and referring cases to police when necessary.
6. Employ more interpreters in the police, prison and court services to facilitate effective communication between the accused persons and criminal justice stakeholders. This is particularly crucial in areas where foreign languages are used, such as in refugee-hosting districts.

To Parliament:

1. Consider amendment of the Trial on Indictments Act and the Magistrates Courts Act to repeal the requirement for committal proceedings or expand the scope of jurisdiction of Magistrates Court in offences triable by the High Court to include powers to evaluate evidence and hear applications arising in such cases.
2. Expedite the passing of the Legal Aid Bill to ensure free legal representation for the most vulnerable and indigent persons.

Specific recommendations:

To the Uganda Police Force:

1. Enforce standards of arrest and detention, including the need for reasonable grounds to arrest a suspect and the rule to produce a suspect in court within 48 hours.
2. Strengthen investigative capacities of police officers to ensure sufficient evidence collection before making an arrest, to minimize the risk of prolonged detention.
3. Ensure that officers who violate the constitutional and procedural rights of suspects (including standards of arrest) or solicit bribes are held accountable.
4. Increase oversight towards the adequate treatment of juveniles, including their separation from adults in detention and ensure the presence of parents or guardians during arrest and trial processes.
5. Intensify awareness raising and community outreach to improve communities' understanding and appreciation of the role of police through community policing initiatives like regular community engagements, dialogues, and educational programs that promote mutual understanding and trust.

To the Office of the Director of Public Prosecutions

Promote a culture of expeditious and professional investigations by emphasizing the responsibility of state attorneys to provide checks and balances for police behaviour, including by refusing to sanction files where there is insufficient evidence of the suspect's guilt and/or where the suspect's non-derogable rights were violated.

To the Judiciary

1. Promote the role of judicial officers in rooting out bad practices and delayed proceedings by striking with nullity all cases which involve a violation of the accused's non-derogable rights or order the discharge of the accused on bail when the time limit for mandatory bail has passed.
2. Provide refresher trainings to judicial officers on promoting, protecting and guaranteeing constitutional and procedural rights.

To the Uganda Prisons Service

1. Promote regular updates to courts of cases of prisoners who have overstayed on remand beyond mandatory bail period.

To Legal Aid Service Providers

1. Maintain and scale up legal aid activities, including in the most difficult areas by providing incentives for advocates to work there or through mobile clinics.
2. Train more community-based paralegals and equip them with key technical knowledge and skills to support suspects and accused persons, especially in hard-to-reach areas.

1. INTRODUCTION AND BACKGROUND

1.1 ASF's work in pre-trial detention in Uganda

Established in 1992, Avocats Sans Frontières (ASF), in partnership with the Legal Aid Service Providers Network (LAPSNET), is implementing a three-year project (2020-2033) entitled "Protecting procedural and Constitutional rights through access to justice", also referred to as the "Pre-Trial Detention" (PTD) project. The project, funded by the Austrian Development Cooperation (ADC), is implemented in Kampala, Arua, Gulu, Hoima, Lamwo, Kitgum, Wakiso and Masindi districts.

The design of the PTD project is aimed at restoring respect for procedural and constitutional rights in the administration of criminal justice, as part of a broader objective to promote respect for human rights and adherence to the rule of law in Uganda. The PTD project has adopted a holistic approach to addressing challenges in the administration of criminal justice in Uganda through a focus on situations of detention, and is expected to achieve: (i) enhanced capacity for civil society to advocate for the protection of constitutional and procedural rights, (ii) strengthened provision of legal aid services to uphold procedural rights in the administration of justice, and (iii) a more robust engagement with central government institutions in order to influence policy.

Uganda is subject to several international treaties and national laws regulating pre-trial detention, providing procedural safeguards relating to arrest and detention, the right to a fair trial, or freedom from torture or cruel, inhuman or degrading treatment or punishment. Yet, despite having ratified international and regional human rights instruments and having a strong domestic legal regime regarding the rights of people under pre-trial detention, structural challenges remain with regards to the administration of justice, limiting the realization of the rights of people in conflict with the law. Systematic deviations from the legal standards of arrest, remand and pre-trial detention still exist.

1.2 Purpose and objectives of the survey

Through investigating the perspectives of different stakeholders, the survey aimed to understand the root causes of the disconnect between law and practice, so as to offer actionable recommendations for a better protection of procedural and constitutional rights.

The overall objective of the survey was to investigate the level of knowledge, attitudes and practices (KAP) of key stakeholders in pre-trial detention under the criminal justice system in Uganda. The specific objectives included the following:

1. To analyse the perceptions, attitudes, and practices of key stakeholders (communities, detainees, duty bearers) under the criminal justice system on pre-trial detention.
2. To make targeted recommendations toward the protection of procedural and constitutional rights of pre-trial detainees.

In the context of the PTD project, the survey also aimed to inform the design of sensitization campaigns and engagement with key stakeholders in the administration of justice.

1.3 Survey approach and design

The KAP survey was conducted using a mixed-method approach, combining both qualitative and quantitative research methods. The survey was implemented in four districts (Gulu, Lamwo, Arua and Kampala), targeting community members, police detainees, prisoners, and key actors in the justice sector such as the police, prison officials, resident state attorneys, judicial officers, legal aid service providers, probation officers and private lawyers.

1.4 Data collection methods

Interviews using structured survey questionnaire

Data was collected from a total of 405 community members (216 females and 189 males) at a confidence level of 95% and a margin of error of 4%. In addition to this, a total of 96 police detainees (71% males, 29% females), 54 prison inmates (87% males, 13% females) and 29 young people (59% males, 41% females) in remand homes were reached through purposive sampling. The gender imbalance of the police, prison and remand home samples is due to the higher proportion of men in places of detention. For instance, at Lamwo Police Station, there were no female detainees for lack of a separate detention facility for women. More information on the geographical distribution and the socio-economic profile of respondents is available in Annex I.

Tailored questionnaires were developed to facilitate interviews. Data collection in the community was conducted by experienced researchers using data collection tools translated in the local languages (Luganda, Lugbara and Acholi). Data collection in the police and prisons was preceded by lengthy clearance processes, which are the norm when it comes to interviewing suspects. Unfortunately, no prison inmates could be interviewed in Kampala due to delays in obtaining clearance for prison entry. Data collection in the remand homes of Kampala and Gulu was also subjected to clearance from the Ministry of Gender, Labour and Social Development. However, the survey team was only allowed to ask juveniles questions related to criminal justice practices, and were therefore unable to collect data on their knowledge or attitudes.

Focus Group Discussions (FGDs) in the community

The consulting team conducted a total number of 8 Focus Group Discussions (2 in each district). The FGDs reached a total of 120 community members (65 men and 55 women). The Focus Group Discussions aimed to help contextualize the findings of the structured survey questionnaire, by providing qualitative insights from the communities. Emphasis was put on obtaining a gender balance in the FGDs, so as to ensure that women's perspectives on pre-trial detention were also represented.

Key informant interviews (KIIs) with stakeholders

A total of 47 key informants were reached at national and subnational levels from a range of criminal justice institutions, including: Uganda Police Force (8), the Judiciary (7), Uganda Prisons Service (5, including 1 in-charge remand home) and the Office of the Director of Public Prosecutions (4). 10 advocates, 5 probation officers, 6 Local Council (LC) chairpersons and cultural leaders and 2 staff of Civil Society Organizations (CSOs) were also interviewed.

Desk review

A number of documents were reviewed as part of data collection, including the Uganda Human rights reports published by different organizations, the Police Annual Crime report, the Uganda Human Rights Commission Annual reports, the Constitution of Uganda, the UN General Assembly Resolution 43/173, and other international and regional treaties and covenants on human rights. The desk review also took into account findings from ASF's recently conducted Baseline Survey², and the PTD project's semi-annual reports.

1.5 Data analysis

Quantitative data were analysed using appropriate descriptive statistics generated using SPSS Statistics. Findings were disaggregated by gender, age groups, education level, marital and PWDs status. Qualitative data collected from Focus Group Discussions (FGDs) and key informant interviews (KIIs) were analysed using content analysis.

² Ibid.

2. LEGAL FRAMEWORK ON PRE-TRIAL DETENTION

2.1. National framework

Pre-trial detention refers to the locking up of a suspect or an accused person on criminal charges in a police station, remand home and/or prison before the start or completion of their trial.

Domestically, the laws that govern matters of pre-trial detention include the 1995 Constitution of the Republic of Uganda (as amended), the Penal Code Act Cap 120, the Trial on Indictments Act Cap 23³, the Criminal Procedure Code Act Cap 116, the Police Act Cap 303 of 2012, the Uganda Peoples Defence Forces Act 2005, and the Children's Act Cap 59 of 1996. This legal framework provides procedural safeguards relating to pre-trial detention, including arrests, conditions of detention, right to a fair hearing, freedom from torture or cruel, inhuman, and degrading treatment or punishment.

Article 23 of the Constitution provides that “no person shall be deprived of personal liberty” except for certain cases such as the execution of a sentence or a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others. A person arrested and detained under Ugandan Law has the following rights under the Constitution of the Republic of Uganda:

Box 1: Constitutional rights of persons under any form of detention in Uganda

- *Right to be kept in a place authorized by Law* ⁴
- *Right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice*⁵
- *Right to be brought to Court as soon as possible but not later than 48 hours*⁶
- *Right to have their next of kin informed, at their request and as soon as practicable, of the restriction or detention*⁷
- *Right to access the next-of-kin, lawyer and personal doctor* ⁸
- *Right to access medical treatment, including, at the request and at the cost of that person, access to private medical treatment*⁹
- *Right to bail* ¹⁰
- *Right to compensation for unlawful arrest, restriction, or detention*¹¹
- *Right to deduct from their sentence days spent in custody before the completion of the trial*¹²
- *Right of habeas corpus*¹³
- *Right to protection from torture and other cruel, inhuman or degrading treatment or punishment* ¹⁴
- *Right to a fair, speedy, and public hearing*¹⁵
- *Right to a lawyer at the expense of the state for offences that carry the death penalty or life imprisonment*¹⁶

³as amended by Trial on Indictments (Amendment) Act, 2008

⁴Constitution of the Republic of Uganda, article 23(2)

According to the Criminal Procedure Code Act Cap 116 (Section 15), arrests can be made under the authority of the Uganda Police Force (UPF), the Uganda People's Defence Forces (UPDF) and ordinary persons who, upon arrest, are required to hand over the arrested person to the appropriate authorities for further action. The UPDF have jurisdiction over military personnel and other individuals who are subject to the Uganda Peoples' Defence Forces Act, for example, those found in illegal possession of firearms. It is important to note that there are also special agencies which combine the police and the military, such as the Joint Anti-Terrorism Taskforce (JATT) and the Rapid Response Unit.

Pre-trial detention is categorized into two stages, i.e. police detention and remand in prison. When arrested by the police, an individual may be released until the police completes investigation, in exchange of security which acts as a guarantee that the person will present themselves at the station whenever required to do so. This is known as police bond, defined in s.38 (1)(a) of the Police Act which also provides that no fee or duty shall be charged in exchange of police bond. Lawful detention by police ends at 48 hours of detention, as per article 23(4) of the Constitution of the Republic of Uganda, which provides that an arrested person should be brought to Court as soon as possible but no later than 48 hours after arrest. This is to allow for control of the lawfulness and necessity of detention by the judiciary. If it is not practicable for the person to be brought to Court within 48 hours, the person should be released on police bond. Release on police bond is provided for under Section 25(1) of the Police Act, CAP 303[1]. As per section 38 of the same Act, no fee shall be charged for police bond.

When a person suspected of having committed an offence is presented in Court, the next stage of pre-trial detention begins, which may end if the Court grants the accused person bail. The right to bail is defined in article 23(6) of the Constitution which provides that an arrested person is entitled to apply to court for discretionary bail, and that the Court may grant it on such conditions it considers reasonable. In case bail is not granted, and the person has been awaiting trial for a specified number of days, articles 23(6)(b) and (c) of the Constitution provides for mandatory release on bail. The person shall be released after 60 days if trial has not yet commenced for a non-capital offence, and after 180 days for a capital offence, provided that the case has not yet been committed to the High Court.

⁵Constitution of the Republic of Uganda, article 23(3) and International Covenant on Civil and Political Rights, Article 9(2)

⁶Constitution of the Republic of Uganda, article 23(4), and International Covenant on Civil and Political Rights, Article 9(3)

⁷Constitution of the Republic of Uganda, article 23(5)(a)

⁸Constitution of the Republic of Uganda, article 23(5)(b)

⁹Constitution of the Republic of Uganda, article 23(5)(c)

¹⁰Constitution of the Republic of Uganda, article 23(6), and Magistrates Courts Act, section 76

¹¹Constitution of the Republic of Uganda, article 23(7)

¹²Constitution of the Republic of Uganda, article 23(8)

¹³Constitution of the Republic of Uganda, article 23(9), and International Covenant on Civil and Political Rights, article 9(4)

¹⁴Constitution of the Republic of Uganda, article 24

¹⁵Constitution of the Republic of Uganda, article 28

¹⁶Constitution of the Republic of Uganda, article 28(3)(e)

¹⁷See also the Uganda Peoples' Defence Forces Act 2005

2.2 Regional and international framework

At the international level, the most significant treaties providing for the right to personal liberty and stipulating more specific pre-trial detention rights include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR)[1], and the United Nations Covenant against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)[2]. Important international standards have been codified in the General Assembly (GA) resolution 43/173 - Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).[3] .

At regional level, Uganda is a state party to other treaties, including the African Charter on Human and Peoples' Rights (ACHPR)[4]. Important standards relevant for the African continent can be found in the Luanda guidelines on the conditions of arrest, police custody and detention, which provide, inter alia, that pre-trial detention is a measure of last resort and must only be used when necessary and whenever there are no alternatives available.

¹⁸As Amended by the Police (Amendment) Act, 2006

¹⁹Uganda ratified on 21st June 1995

²⁰Uganda ratified on 3rd November 1986

²¹Uganda ratified on 22nd July 1985

²²Uganda ratified on 10th May 1986

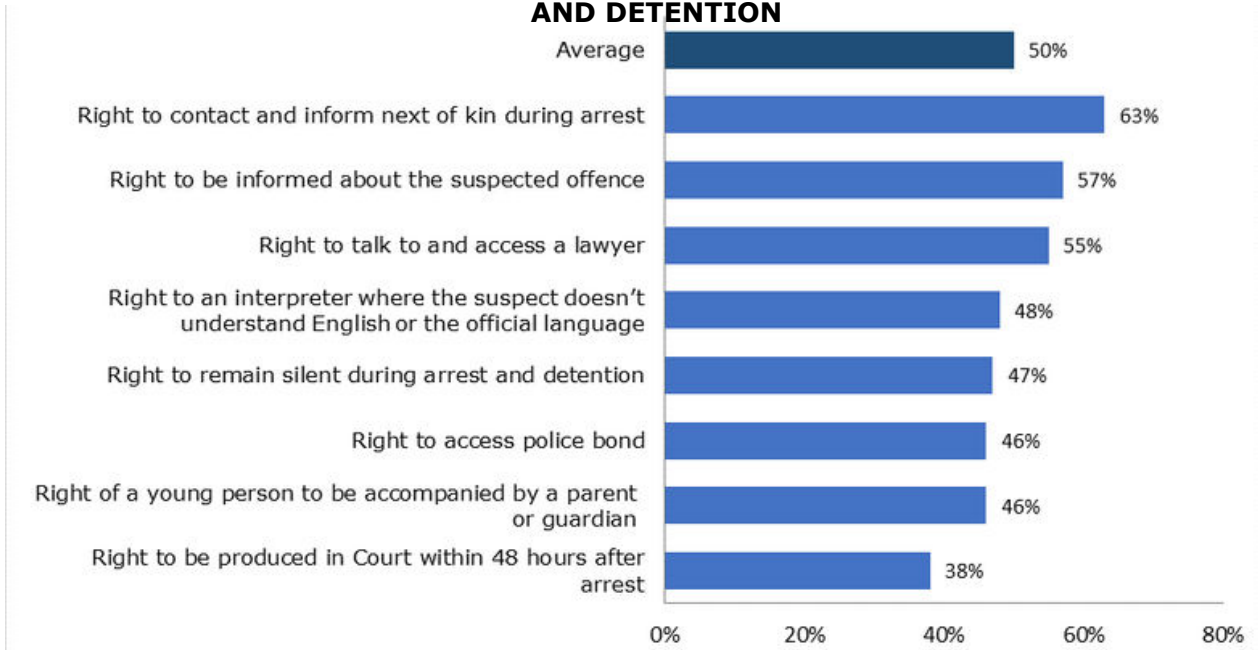
3. KNOWLEDGE OF PROCEDURAL AND CONSTITUTIONAL RIGHTS DURING PRE-TRIAL DETENTION

For individuals in the community who might one day find themselves or their relatives in conflict with the law, knowledge of one’s rights is key to demanding that they be enforced. Through findings from the survey, focus groups and key informant interviews, this chapter explores the level of knowledge of communities, pre-trial detainees and prison inmates on the constitutional and procedural rights relevant to pre-trial detention.

3.1. Community members
3.1.1. Rights on arrest and detention by police

During the survey, respondents were asked to mention any rights that they were aware about that were specific to people who have been arrested and detained. On average, 50% of community members were knowledgeable about the main procedural and constitutional rights applicable during arrest and detention (43% of male respondents and 57% of female respondents). Respondents were most knowledgeable about the right of a person to contact and inform their next of kin during arrest (63%). The other rights that were most known included the right to be informed about the suspected offence at arrest (57%) and the right to contact or access a lawyer (55%). Community members were least aware of the right to be produced in Court within 48 hours after arrest (38%). This has strong implications when it comes to enforcing such rights, as community members who are unaware of the 48 hour time limit may be more likely to overstay in police detention.

FIGURE 1: % OF COMMUNITY RESPONDENTS WHO KNOW SPECIFIC RIGHTS ON ARREST AND DETENTION



However, having knowledge about a right doesn't always translate into knowing the full details of how such rights can be assured or protected. As one FGD participant in Kampala noted: "I know that during arrest, we must be allowed to inform our family members, but I don't know what needs to be done or said so that such a right is respected. I always see people being arrested, and they are not even allowed to say anything; they are arrested with brutal force."

Such experiences demonstrate that the lack of knowledge of the procedural aspects of the justice system can be a big hindrance to communities' ability to pursue their rights during arrest and detention. This calls for sensitization not only on the rights themselves, but on the specific ways one can ask for them to be enforced. Moreover, community members highlighted the futility of knowing one's rights if duty bearers are not ready to comply with the law. One FGD participant in Lamwo explained: "I was arrested for a small crime; when I asked to pick up my phone and call my wife, I was not allowed. It was my workmates who followed me to the police station who informed my family about my whereabouts. Knowing the law doesn't seem to help if the officers don't want to apply that law."

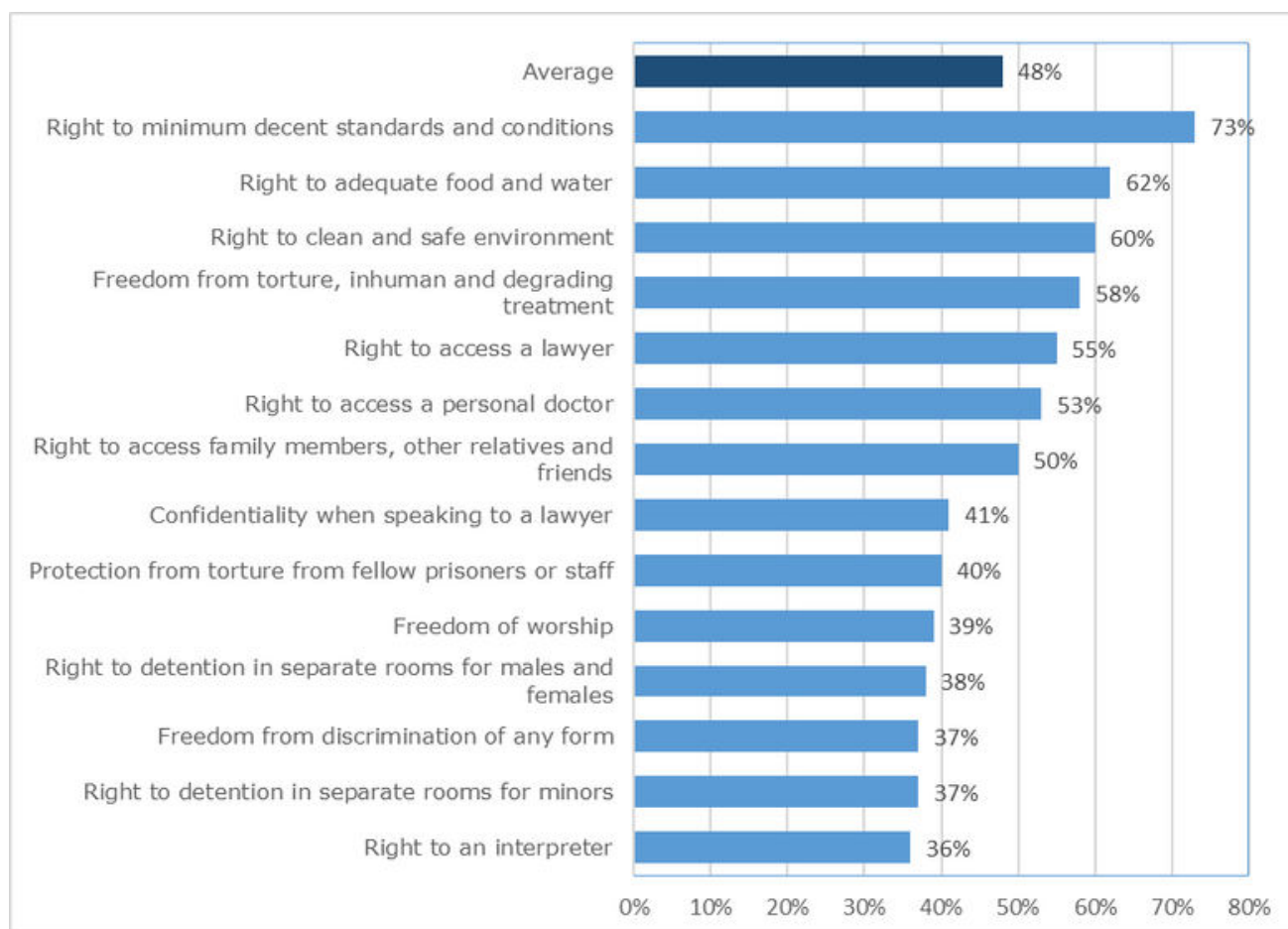
3.1.2. Rights during remand period

The community members were also probed about their knowledge of the rights of inmates in pre-trial detention (see figure 2). On average, 48% of community members (42% of males and 54% of females) had knowledge of some of the constitutional rights that accrue to inmates on remand. The rights most mentioned included the right to minimum decent standards and conditions in detention (73%), right to adequate food and water (62 %) and the right to a clean and safe environment (60%).

On the other hand, the rights that were least mentioned included protection from any form of abuse from fellow prisoners or prison staff (40%), confidentiality when speaking to a lawyer (41%), the right to detention in separate rooms for minors (37%) and freedom from discrimination (37%).

On the whole, these figures seem to show that community members were more aware of the economic and social rights of prisoners (related to basic necessities such as food, water and cleanliness) than of civil and political rights, even if the freedom from torture or degrading treatment and access to a lawyer were also prominently mentioned. Most worrying was the apparently low knowledge about significant procedural rights such as confidentiality when speaking to a lawyer, the right to detention in separate rooms for males, females, and minors, the freedom from discrimination and the right to an interpreter. A low level of knowledge of these rights could prevent individuals from accessing them while finding themselves in a situation of detention on remand, which highlights the need for sensitization so that community members know what conditions they are entitled to when in detention.

Figure 2: % of community respondents who know specific rights on remand



3.1.3. Rights of juveniles in detention

For communities to understand the rights of juveniles is also critical, especially as parents have a duty to protect their children when they come into conflict with the law. The community members' knowledge about the rights of juveniles during arrest and detention was relatively low, with an average awareness of 48% of the various rights. Women were more knowledgeable than men about the rights of juveniles during arrest and detention (53% compared to 41% for males).

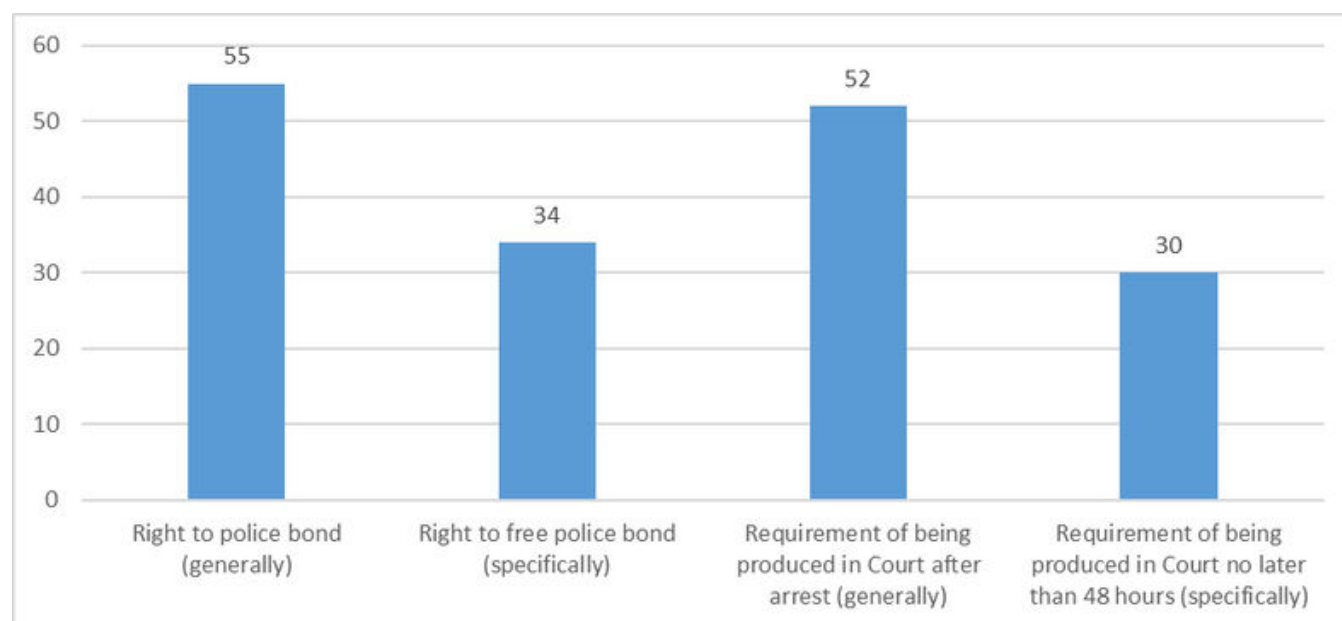
The rights that community members most mentioned included: separate detention rooms for boys and girls (61%), the right to adequate food and water (57%), the right to education (54%), and freedom of worship (53%). The rights that were least mentioned included the right to daily exercises/recreational activity (31%), the right to decent standards and conditions of detention (35%), and the right to an interpreter where the suspect doesn't understand English (40%).

3.1.4. Specific provisions: police bond

The right to police bond is a key component of the right to freedom for people in pre-trial detention. The Police Act states that “a police officer on arresting a suspect without a warrant shall produce the suspect so arrested before a magistrate’s court within 48 hours unless earlier released on bond. ” Any person arrested and taken to a police station for breaking the law may be released until the police complete its findings, and no money should be paid for police bond.

Only 52% (209) of community members had ever heard of the legal requirement of being produced in court after arrest, while only 30% had the actual knowledge of the time limits within which one has to be produced in court after arrest. But such knowledge of the provision was not a guarantee of accessing police bond for suspects and their relatives. Many people mentioned during the FGDs that they had not used that knowledge to hold the police officers accountable, as illustrated in the experience of a FGD participant from Lamwo: “I know of a person who was held in police custody for more than seven days without making a statement. There is nothing we could do about it because we didn’t have the money to pursue justice.”

Figure 3: % of community respondents who know about police bond



Difficulties in claiming very specific procedural rights such as the 48-hour time limit in police detention were even more important for vulnerable populations such as refugees, who may not be familiar with Ugandan law and processes. One FGD participant in Lamwo explained: “The dynamics differ for us as refugees; we don’t know anything as per the laws here in Uganda. Also, we have not had an opportunity to witness court processes, we do not have an understanding of what is required to give bond. We fear that being refugees, we can easily be mistreated if we get involved.”

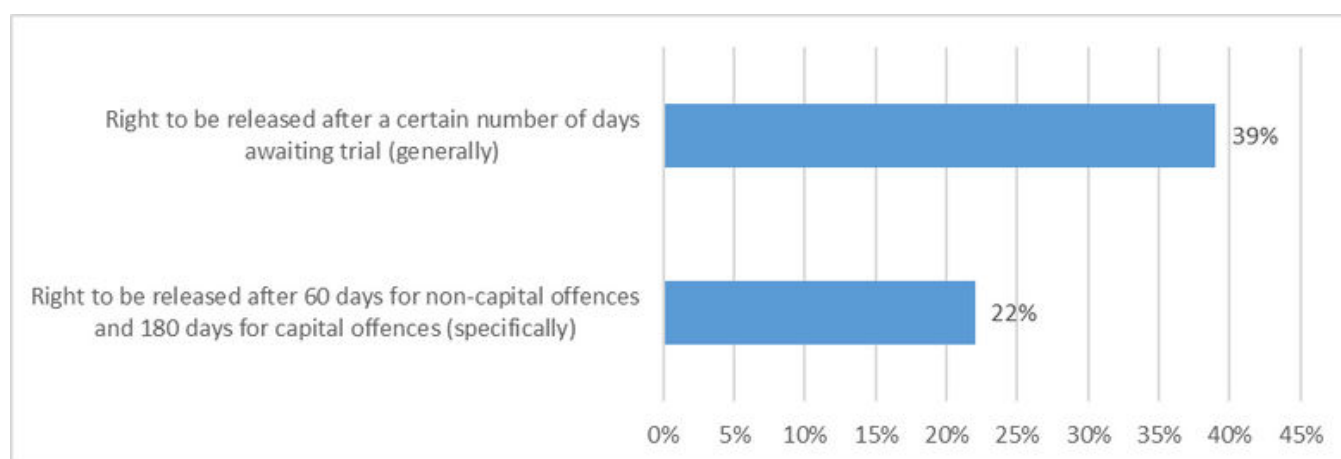
²³ Police Act, Cap.303, section 25(1)

3.1.5. Specific provisions: mandatory bail

Bail is the release of an accused person by a court before the completion of the case, on the understanding that the released person will turn up for his or her trial or whenever required. Usually, the accused will be required to give security in the form of cash or some other property. Under Article 23 (6)(b) and (c) of the Constitution of the Republic of Uganda, in cases of petty offences (that is, offences triable by the Magistrates' Court) a person shall be released on bail on such conditions as the court considers reasonable if they have spent sixty days on remand without trial. For capital offences, which need to be tried by the High Court, the same shall take place if the accused person has been in custody for one hundred eighty days before being committed to the High Court for trial.

Among community respondents, only 39% had ever heard about the right to mandatory bail, that is, the right to be released after a certain number of days awaiting trial. Even then, only 22% had specific knowledge of the period within which a person should be released on mandatory bail if they had been in detention.

Figure 4: % of community respondents who know about mandatory bail

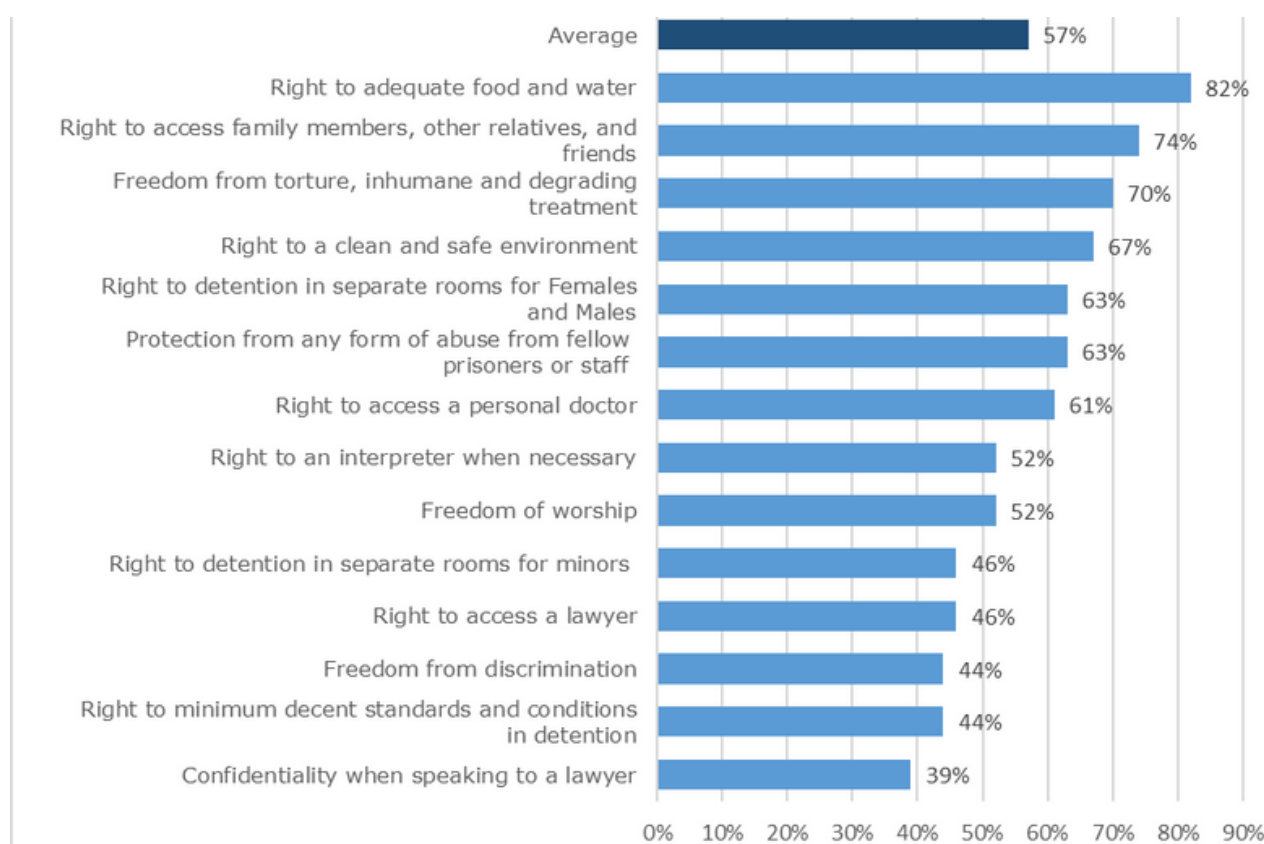


The low knowledge of community members regarding their constitutional rights to access police bond, and to access to bail once in prison detention is a big gap in protecting the constitutional and procedural rights of pre-trial detainees. Without such knowledge, most violations of rights (whether intentional or not) by duty bearers are likely to go unchallenged. Continuous community sensitization is necessary to remedy this issue.

3.2. Police detainees

The detainees at the police station interviewed for this report were asked to mention the rights that they expected to access while in detention at the police station. The findings show that the detainees had very low knowledge about their rights, with only 31% on average reporting knowledge regarding specific rights. Police detainees reported slightly higher knowledge about the right to be informed of the suspected offence (51%) and the right to contact and inform the next of kin during arrest (48%) compared to other rights mentioned. The rights of which detainees were least aware were: the right to remain silent during arrest and detention (16%), the right of a young person to be accompanied by a parent/guardian during arrest or when making a police statement (22%) and the right to an interpreter where a suspect doesn't understand English (22%).

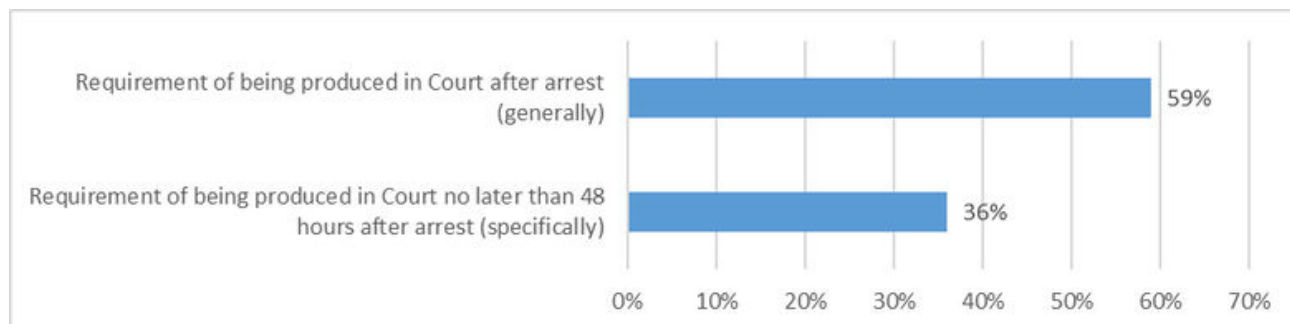
Figure 5: % of police detainees who know specific rights on arrest and detention



The low level of knowledge among police detainees about their rights could lead to them being detained longer than the mandatory period, without any sort of remedy. The fact that only 27% knew their right to a lawyer makes it even more likely that detainees could be kept in detention without any form of assistance to get them to access their mandatory right to police bond.

Finally, on access to bond, findings show that 59% of police detainees had heard about the legal requirement of being produced in court after a certain number of hours upon arrest, while only 36% had knowledge of the exact number of hours.

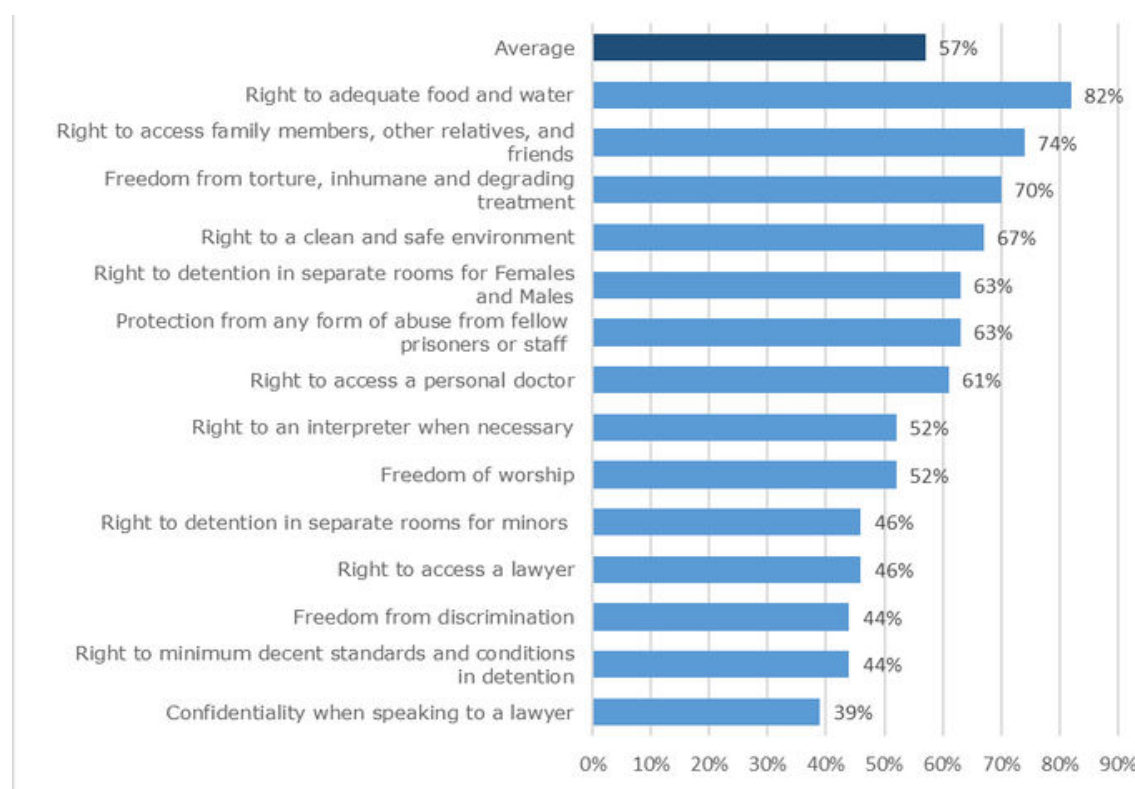
Figure 6: % of Police detainees' knowledge of the right to be produced in court within 48 hours or be released on police bond



3.3. Prison inmates

Prison inmates on remand were asked about their rights while on pre-trial detention. The knowledge of their rights was slightly above the average of respondents (57%) which could be attributed to the sensitization sessions periodically organized by prison wardens and different human rights organizations. Inmates' knowledge of their rights was highest in Gulu at 82%, followed by Arua at 63%, and was the lowest in Lamwo at 37%. Overall, inmates were most knowledgeable on the right to adequate food and water (82%), the right to access family members, relatives, and friends (74%), and freedom from torture (70%). Rights of which inmates were least aware included confidentiality when speaking to a lawyer (39%), the right to decent standards and conditions (45%), and the right to access a lawyer (46%).

FIGURE 7: % OF PRISON INMATES WHO KNOW SPECIFIC RIGHTS ON REMAND

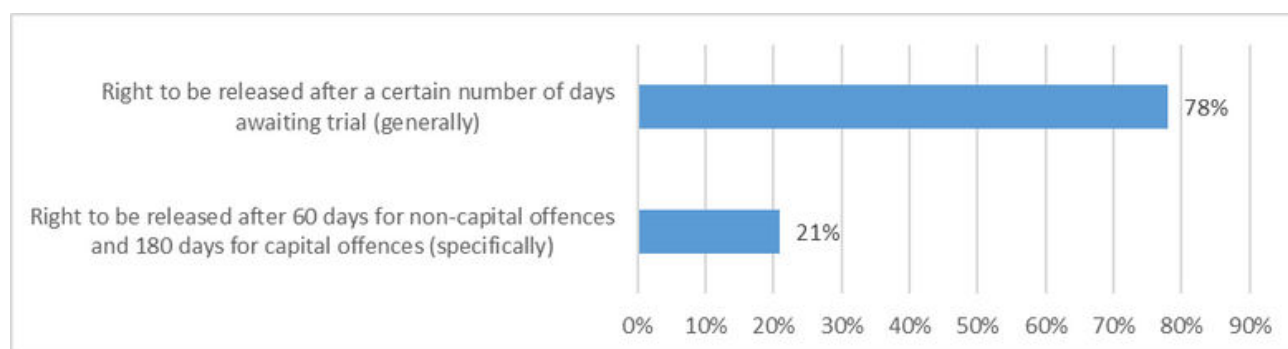


²⁴ A possible explanation for this difference could be found in the limited number of human rights organizations in Lamwo, and therefore the lack of sensitization of inmates on key procedural and constitutional rights

The finding that inmates have low awareness of their right to access a lawyer (47%) compounds the limited knowledge of rights by inmates. Lawyers are critical in educating prisoners about their rights and supporting them to access their constitutional rights during detention. Still, the above-average knowledge of prisoners about their rights is a good sign, as such knowledge allows them to advocate for their rights during detention. For example, prisoners in Gulu mentioned that they occasionally demand better food portions, especially when they notice that there is a decrease in the availability of food. However, despite good awareness and knowledge of their laws, pre-trial detention rights violations continue to be reported.

Finally, prisoners were asked about the right to apply for bail, and the right to mandatory bail after a certain period. Out of the 54 prisoners, 78% had heard about the mandatory requirement to be granted bail after a certain period; however, only 21% were able to mention the specific period of 60 days for non-capital offences, and 180 days for capital offences.

FIGURE 8: PRISON INMATES' KNOWLEDGE OF MANDATORY BAIL



3.4. Key conclusions about the knowledge of rights

Limited knowledge of procedural and substantive rights

Whereas prisoners and police detainees surveyed during this study have heard about specific rights and legal provisions, they lack knowledge about the full range of rights and the legal provisions to enforce them. This affects their ability to demand for the protection of their rights. It is therefore important that detainees and inmates are further supported to improve their level of knowledge and their ability to advocate for their rights. Most important also is the need to make the services of lawyers and legal aid service providers available to inmates and detainees through the various legal aid entities.

In terms of awareness and knowledge of their rights, community members were generally more knowledgeable of their rights (48%) compared to police detainees (31%). However, prisoners on remand were more knowledgeable than the rest (57%), owing to the different sensitization activities they benefited from while in prison. The level of awareness of pre-trial detention rights remains low across the different groups of respondents, which calls for concerted efforts to sensitize and educate communities and people in detention.

Knowledge of rights does not translate into access

The knowledge about the right to apply for bail and the right to police bond does not immediately translate into access to justice for those in police detention and on remand. Findings show that whereas a higher proportion of the inmates had knowledge about the right to apply for bail, very few were able to apply for it for several reasons, including the lack of sureties. Another reason for this was also the willingness and capacity among duty bearers to ensure that individuals could access their rights. This is exacerbated by human resource and knowledge gaps in the justice system, which limit duty bearers' ability to effectively promote, protect and uphold the constitutional rights of detainees and prisoners.

Need for targeted sensitizations for specific categories of detainees

Knowledge of rights was particularly low in Lamwo District, specifically among refugee communities. Refugees in Lamwo who are mainly from South Sudan have lived for a long time in an environment marked by violent conflict and structural challenges, including limited access to information and gross human rights abuses. There is also a language challenge as most of the refugees do not speak English. In Lamwo, especially in the refugee settlement, there is a need to tailor interventions on pre-trial detention and access to justice to be conflict-sensitive, taking into consideration issues of the language barrier and cultural and psychosocial support where the need arises.

4. ATTITUDES ON PRE-TRIAL PROCESSES

The survey also sought to establish communities and detainees' attitudes about pre-trial processes, including pre-trial detention. Respondents were asked, based on their prior experiences with criminal justice institutions, to provide their perceptions with regards to fairness, respect for human rights, and corruption, which allows the report to draw lessons on their trust that the system can uphold the procedural and criminal rights defined in law and allow for effective access to justice.

4.1. Community members

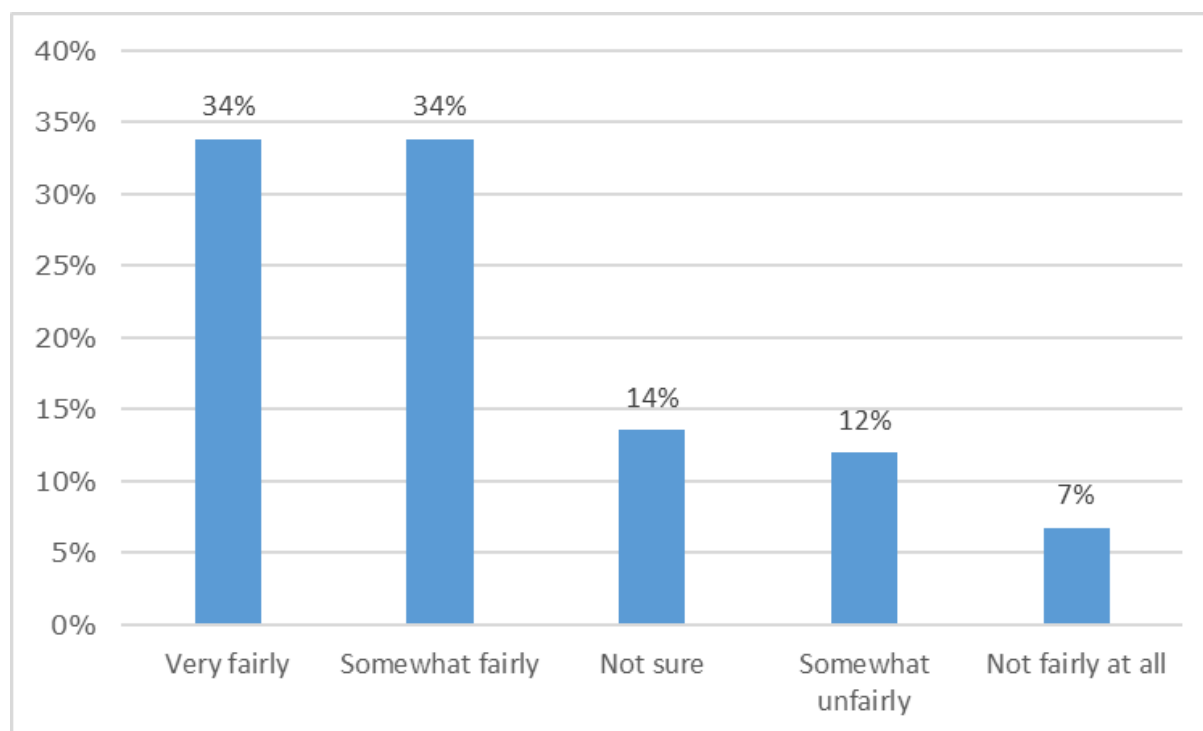
4.1.1. Prior experience reporting a case to the police

Community respondents were asked if they or someone they knew had ever reported a case to the police. Overall, 48% had already reported a case to the police or knew someone who had. This means that almost half had some experience in dealing with the police, which likely shaped their perceptions and attitudes.

In terms of districts, 48% of respondents in Kampala, 21% in Arua, 63% in Gulu and 59% in Lamwo reported having ever reported a case to the police or knowing someone who had. Regarding age groups, older respondents (36 years and above) were slightly more likely (52%) to have ever reported a case, or know someone who had, compared to younger respondents (46%).

Those who reported a case or knew someone who had reported a case to the police were asked about how fairly they felt they had been treated. 34% of the respondents reported that their case was handled "very fairly", while 34% reported it being handled "somewhat fairly". While these figures are positive, it is important to note that 32% of respondents reported that they were "not sure" or that their case was treated somewhat unfairly or not fairly at all, as shown in Figure 9. Moreover, this question was only asked to those having reported cases to the police, and who may therefore already have had higher levels of trust in this institution when they decided to approach it.

Figure 9: Perception of community respondents about how fairly the case was handled



When comparing perceptions of fairness across the various districts, Kampala and Lamwo were the districts where communities were least convinced about the fairness of their treatment by the police. 44% of respondents in Kampala and 32% in Lamwo felt that their case had been treated somewhat unfairly, not fairly at all, or were not sure.

Community respondents who had previously reported a case to the police, or knew someone who did, were also asked whether they would recommend others to report their case to the police if they needed justice. Overall, only 29% (34% of female respondents and 23% of male respondents) said that they would, while 45% would not and 26% were not sure.

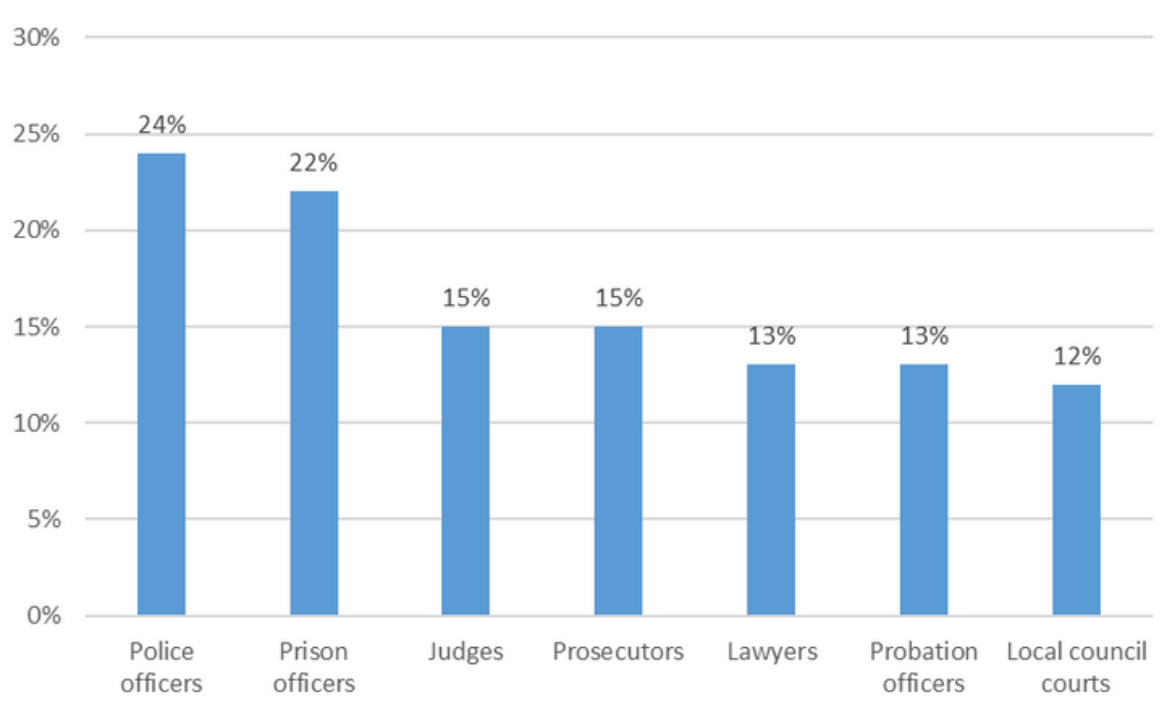
As seen during the focus group discussions, there was often a perception in the community that the police were not efficient, and that suspects were released too quickly after arrest, which may be due to a misunderstanding of the concept of police bond. One participant in Kampala explained: “When we report cases to police, the suspect is arrested in the morning, but in the evening they will be back doing their work. We keep wondering if we have any laws to hold criminals accountable.”

During the FGD in Lamwo, participants noted the challenge of police taking too long to conduct investigations and bring the suspects to book. One participant said: “In July, a young male refugee was caught stealing goats and taken to police at Palabek Police station. We expected the boy would be imprisoned, but he was left to roam around the Palabek Ogili areas. When we contacted police, they said they were still investigating the matter. The boy stole again, and this time, the community wanted to kill him, but he escaped back to South Sudan.”

4.1.2. Rating of trust of different justice stakeholders

Community respondents were asked to rate the different justice sector stakeholders regarding their trustworthiness in terms of their respect for human rights^[1]. Findings show moderate levels of trust across different justice stakeholders. The analysis focused on the percentage of community members rating various duty bearers as “somewhat” or “very” untrustworthy. Police officers were those most likely to be rated as untrustworthy (by 24% or almost a quarter of respondents), followed by prison officers (22%), then by judges and prosecutors (15%). One of the reasons for police to be rated as the least trusted institutions may simply be that they are the most known by communities, which makes their challenges more visible. However, the finding still highlights a need for more action to be taken in order to improve trust in the police.

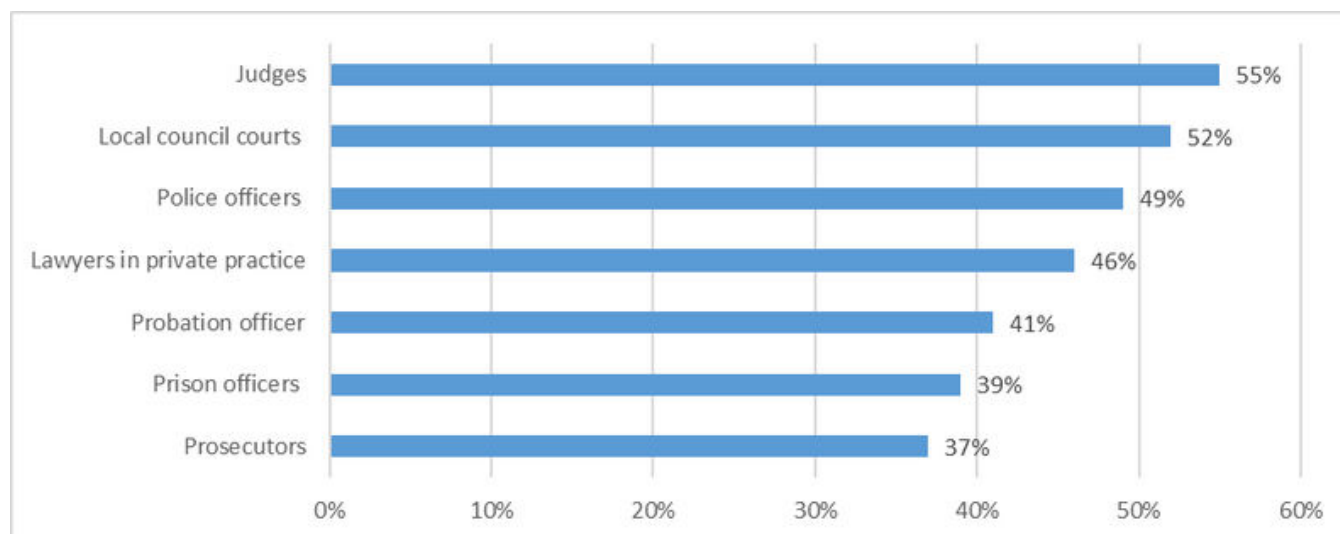
FIGURE 10: % OF COMMUNITY MEMBERS RATING SPECIFIC DUTY BEARERS AS “SOMEWHAT” OR “VERY” UNTRUSTWORTHY



Community respondents were also asked about their perceived likelihood of getting a fair and impartial treatment from the respective justice sector institutions. As shown in figure 11 below, they believed they were most likely to get fair and impartial treatment from judges (55%), local courts (52%), police officers (49%), and lawyers in private practice (46%).

²⁵ The prompt given to respondents was: “Please tell us how trustworthy the following officers are in terms of their respect for human rights during trial, investigation and detention of suspects”. They were then given a list of specific duty bearers to rate using the following options: “very trustworthy”, “somewhat trustworthy”, “unsure”, “somewhat untrustworthy”, “very untrustworthy”.

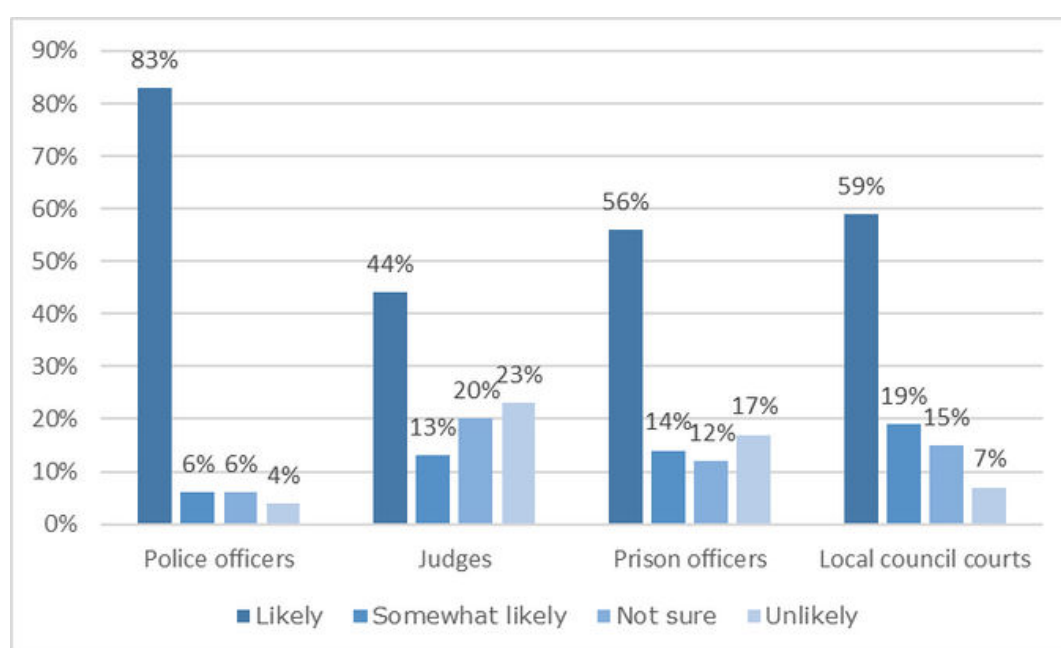
FIGURE 11: % OF COMMUNITY MEMBERS WHO THINK THEY ARE LIKELY TO RECEIVE FAIR AND IMPARTIAL TREATMENT FROM SPECIFIC STAKEHOLDERS



4.1.3. Likelihood of being asked for a bribe

Community respondents were asked how likely they thought several duty bearers were to ask for a bribe during the execution of their work. 89% of respondents perceived police officers as likely or somewhat likely to ask for a bribe. The majority of respondents also perceived local council courts (78%), prison officers (70%) and judges (57%) as likely or somewhat likely to ask for a bribe. This demonstrates a very strong association by communities between corruption and duty bearers, particularly the police.

FIGURE 12: PERCEPTIONS BY COMMUNITY RESPONDENTS OF THE LIKELIHOOD OF BEING ASKED FOR A BRIBE BY SPECIFIC DUTY BEARERS

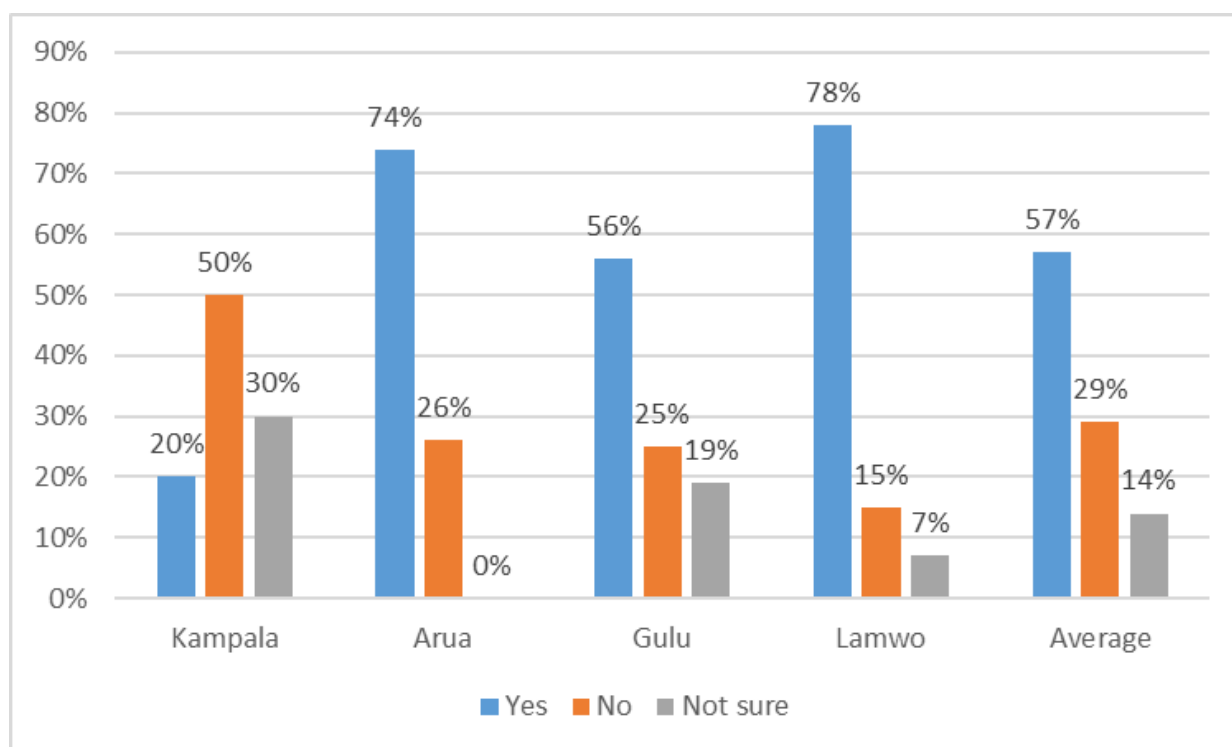


4.1.4 Trust in cultural or local courts

Local Council Courts (LC) are established under the Executive Committees (Judicial Powers) Act at sub county, parish and village levels. They are generally composed of five members, two of which at least should be women. At the current time, the law provides jurisdiction for local council courts to try certain causes and matters of a civil nature, causes and matters arising out of infringement of bye-laws and Ordinances made under the Local Governments Act, and matters relating to land^[1] as well as a selected number of criminal offences committed by children^[2]. Cases which may be dealt with by local courts may include (but are not limited to) damage to property, trespass, land disputes relating to a customary tenure, or elopement with a minor. Local council courts are generally inclined towards reconciliation and dispute resolution and may make orders for a variety of reparative measures.

In focus group discussions, respondents often expressed greater trust in local and cultural systems than in the police. During the survey, 57% of community respondents also expressed that they would trust the local or cultural courts over the police and judicial officers. By district, preference for the local and cultural courts was highest in Lamwo (78% of respondents preferring them over police and judicial officers) and Arua (74%). In Kampala, however, only 20% expressed the same preference, while a little over half preferred their cases being dealt with by the police and judiciary. This is likely due to Kampala being an urban district, where the influence of local and cultural systems is less strong than in rural areas.

FIGURE 13: % OF COMMUNITY MEMBERS WHO WOULD TRUST THE LOCAL OR CULTURAL COURTS RATHER THAN THE POLICE AND JUDICIAL OFFICERS



Interestingly, women tended to display a stronger preference in the cultural and local system than men (60% versus 53%), especially in Arua (88% versus 60%). Persons with disabilities

²⁶ LOCAL COUNCIL COURTS ACT OF 2006, SECTION 10

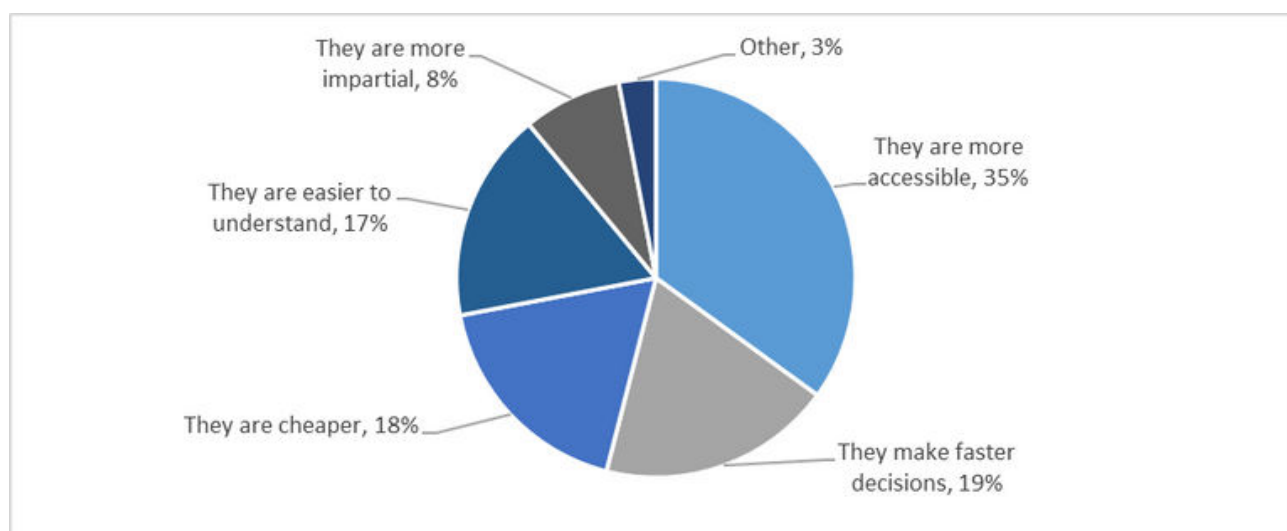
²⁷ LOCAL COUNCIL COURTS ACT OF 2006, SECTION 49

also exhibited a stronger preference for the cultural and local system than persons without disabilities (71% versus 55%).

During the FGDs conducted upcountry, community members decried the costs involved in engaging the police to handle their cases as a major deterrent. As stated by a participant in Gulu, “Police will ask you to buy fuel for their car or motorbike to go and arrest the suspect; others will ask you for lunch.” Another FGD participant in Lamwo remarked, “We choose not to involve the police when we have cases because once they get the suspect, they extort money from them, and the suspect is released, and yet we (the complainants) had put in a lot of money to facilitate the arrest. In most cases, the LCs and cultural leaders are willing to listen to both parties and reach a fairer conclusion.”

The survey enquired about the reasons for respondents’ preference for local or cultural courts. Overall, 36% reported that these are more accessible than the police or judiciary, 19% reported that they make faster decisions, 18% reported that they are cheaper, and 17% reported they are easier to understand. Overall, the local or cultural courts are favoured because of their accessibility and straightforward justice process that community members find easier to understand. However, not all community members prefer local or cultural courts. In Lamwo, at Palabek Kal trading Centre, close to a refugee settlement, the community members perceived that the Refugee Welfare Committee leaders in the settlement favoured refugees. In another context, in Gulu city, some members also noted a form of bias, in this case of cultural leaders favouring an offender who has money. “When a rich person commits a crime, they give money to the cultural leaders, and the case will be ruled against the victim.” This is consistent with the above perception that local council court officials were likely, albeit less than the police, to solicit bribes from individuals.

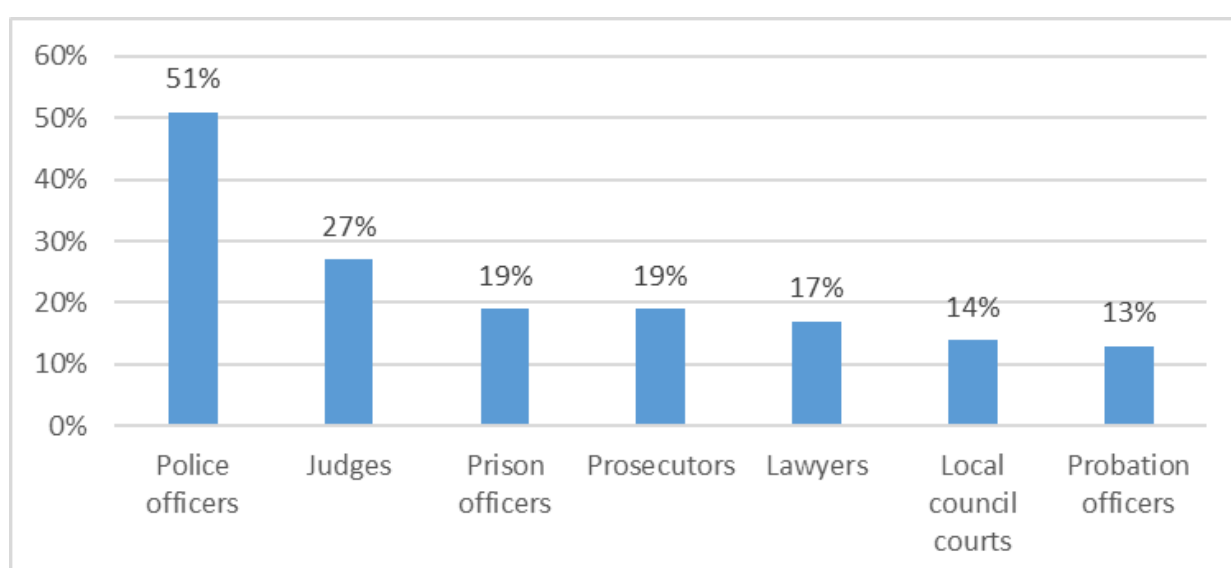
FIGURE 14: REASONS FOR TRUSTING LOCAL OR CULTURAL COURTS OVER POLICE AND JUDICIAL OFFICERS



4.2. Police Detainees

Like community respondents, police detainees were also asked to rate the level of trust they have in the key justice sector players to respect human rights during the trial, investigation, and detention of suspects. Perhaps unsurprisingly, police detainees' trust in key stakeholders was generally lower than community members'. Police officers, in particular, were most often rated as untrustworthy (51%). They were followed by judges (27%), prison officers (19%) and prosecutors (19%). Similarly, when asked about the likelihood of getting fair and impartial treatment from the various stakeholders, 47% of detainees felt that they were unlikely to get such treatment from police.

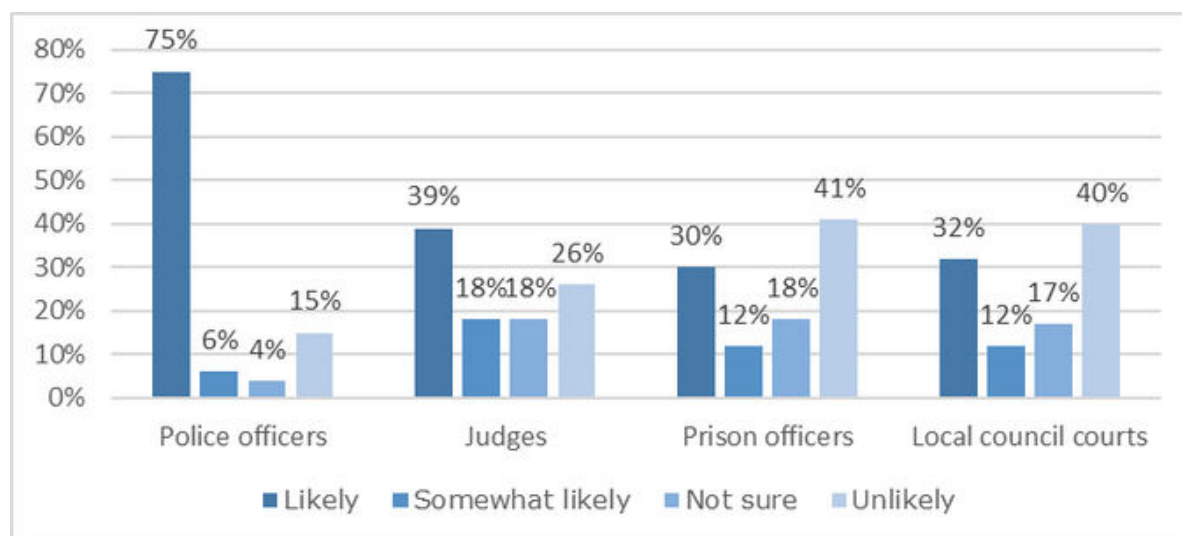
FIGURE 15: % OF POLICE DETAINEES RATING DUTY BEARERS AS "SOMEWHAT" OR "VERY" UNTRUSTWORTHY



Around half (49%) of detainees reported a preference for local or cultural courts in the handling of cases. Similarly to the responses from the community, the results by districts show that Kampala detainees were the least likely to prefer local or cultural courts (27%). Highest rates of preference for local courts was in Lamwo (80%), followed by Gulu (55%) and Arua (53%). The main reasons given for trusting cultural or local courts were that they are cheaper (36%), more accessible (26%) and easier to understand (26%).

Finally, as with the community, 81% of police detainees also felt that police officers were likely or somewhat likely to ask for a bribe during the execution of their work. Such low trust in the police on the part of police detainees is understandable, yet worrying, as it may further deter them from seeking to assert their rights during pre-trial detention.

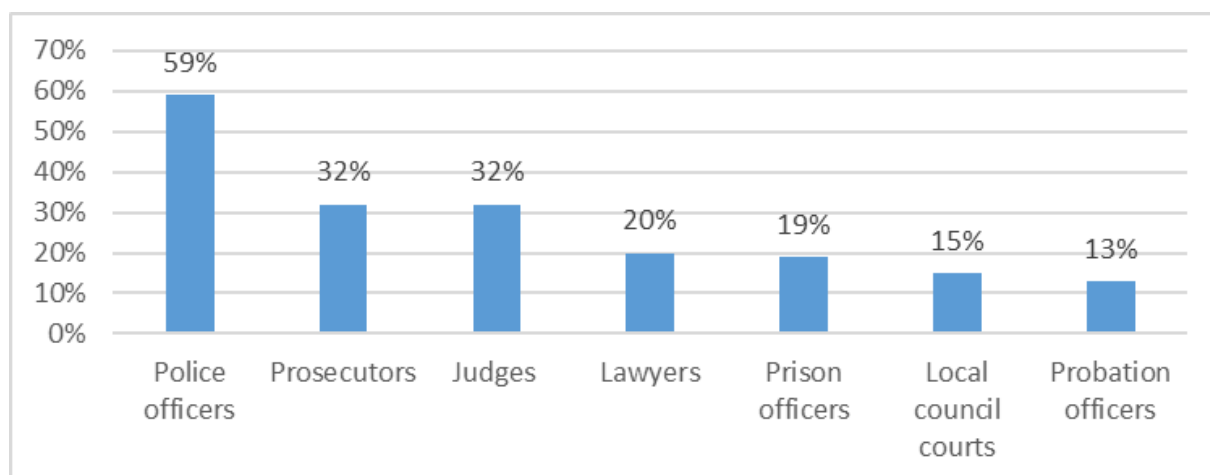
FIGURE 16: PERCEPTIONS BY POLICE DETAINEES ON THE LIKELIHOOD OF BEING ASKED FOR A BRIBE



4.3. Prisoners

Prison inmates on pre-trial detention reported the lowest levels of trust in key justice sector players. The police were the institution most often rated as untrustworthy (59%), followed by judges (32%) and prosecutors (32%).

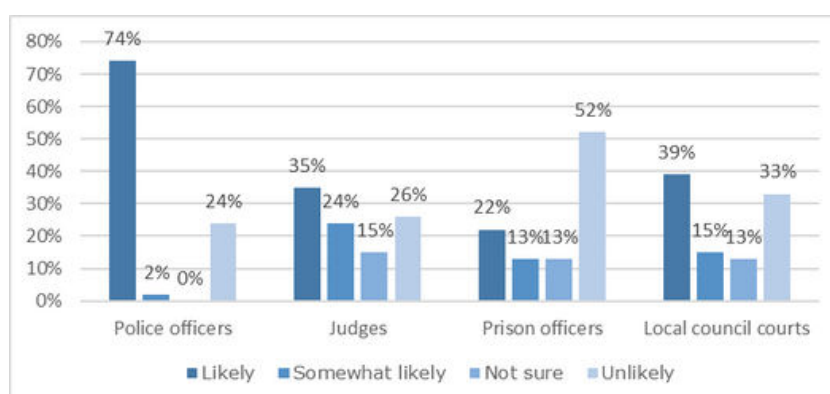
FIGURE 17: % OF PRISON INMATES RATING DUTY BEARERS AS "SOMEWHAT" OR "VERY" UNTRUSTWORTHY



When asked about the likelihood of getting fair and impartial treatment from the respective justice sector institutions, the institution most highly rated by inmates were cultural or local councils courts (59%). They were followed by prison officers (44%) and lawyers in private practice (41%). Consistently with these findings, the majority of police inmates (67%) also expressed a preference towards cultural or local courts compared to the police and judicial officers, the main reasons being that they are cheaper (39%), more accessible (22%) and easier to understand (17%). This preference was highest in Lamwo (80%).

Finally, 76% of prison inmates interviewed also perceived the police as likely or somewhat likely to ask for a bribe. However, only 35% felt that prison officers were likely or somewhat likely to do so.

FIGURE 18: PERCEPTIONS BY PRISON INMATES ON THE LIKELIHOOD OF BEING ASKED FOR A BRIBE



4.4.Key conclusion regarding attitudes

Low levels of trust in the police may impede access to justice and human rights

Findings on low levels of trust in the police are concerning when it comes to both access to justice and the protection of procedural and constitutional rights. Communities will be less likely to go to the police to report cases if they perceive that they will not receive fair and impartial treatment, or that they are going to be asked for a bribe. This may lead to underreporting of crime in the community, lack of cooperation with the police, or communities taking justice into their own hands through mob justice. Moreover, police detainees may also feel less confident in advocating for themselves and their rights if they believe that they will not be treated fairly, or will have to pay a bribe, further compounding the risk of (continued) human rights violations. It is important that initiatives are put in place to increase trust in the police among communities.

Preference for local and cultural courts calls for intentional inclusion of such systems

In more rural districts, the strong preference of communities for the local and cultural court system compared to the police and judiciary points to the need for the Uganda Police Force to continue engaging communities regarding its role, in order to improve the confidence of the community members in the force. It is also a reminder to the Justice, Law and Order Sector players that the cultural or local council courts are very relevant in the lives of their communities. As such, there is a need to build their capacity on issues relating to human rights of detainees and on their jurisdiction to handle or try different cases. Capacitation initiatives can include the conduct of investigations, witness protection, and general court processes, such as application for bail. Linkages should be reinforced between the formal and the informal justice system, as this will dispel the misconceptions about each system to the respective duty bearers. Such linkages could work as a catalyst to ensure that the two systems work with each other, thereby improving the chances of swift access to justice in communities.

5. PRACTICES REGARDING PRE-TRIAL PROCESSES

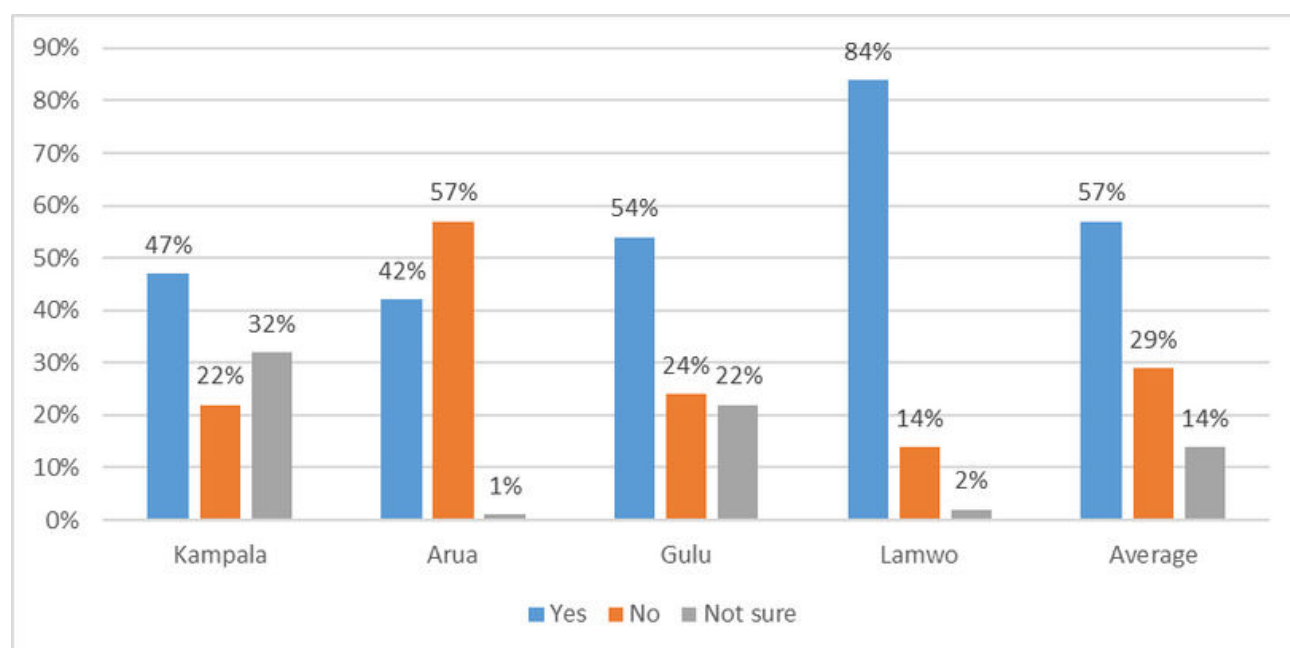
The final theme explored in the surveys of community members, police detainees and prison inmates related to practices regarding pre-trial processes. These included individual's own practices (their past interactions or behaviour that they are willing to adopt in future interactions with the criminal justice system) as well as, more broadly, practices that take place within the system and which influence how individuals are treated.

5.1. Communities

5.1.1. Willingness to interact with police as a witness

In order to understand whether negative attitudes towards the police may have implications for individuals' willingness to interact with them, respondents from the community were asked whether they would be willing to report a case to the police if they saw someone committing a crime in the community, such as robbery, domestic violence or theft. Overall, the majority of respondents (57%) said that they would be willing to report a case to the police. Nevertheless, 29% said that they would not and 14% were not sure. Negative attitudes towards reporting a case to the police were higher among respondents in Arua, where the majority (56%) said that they would not be willing to report a case to the police. In contrast, in Lamwo, 84% said they would be willing to report a case to the police, with only 14% saying they would not do so.

FIGURE 19: % OF COMMUNITY RESPONDENTS WHO WOULD BE WILLING TO REPORT A CASE TO THE POLICE IF THEY SAW SOMEONE COMMITTING A CRIME



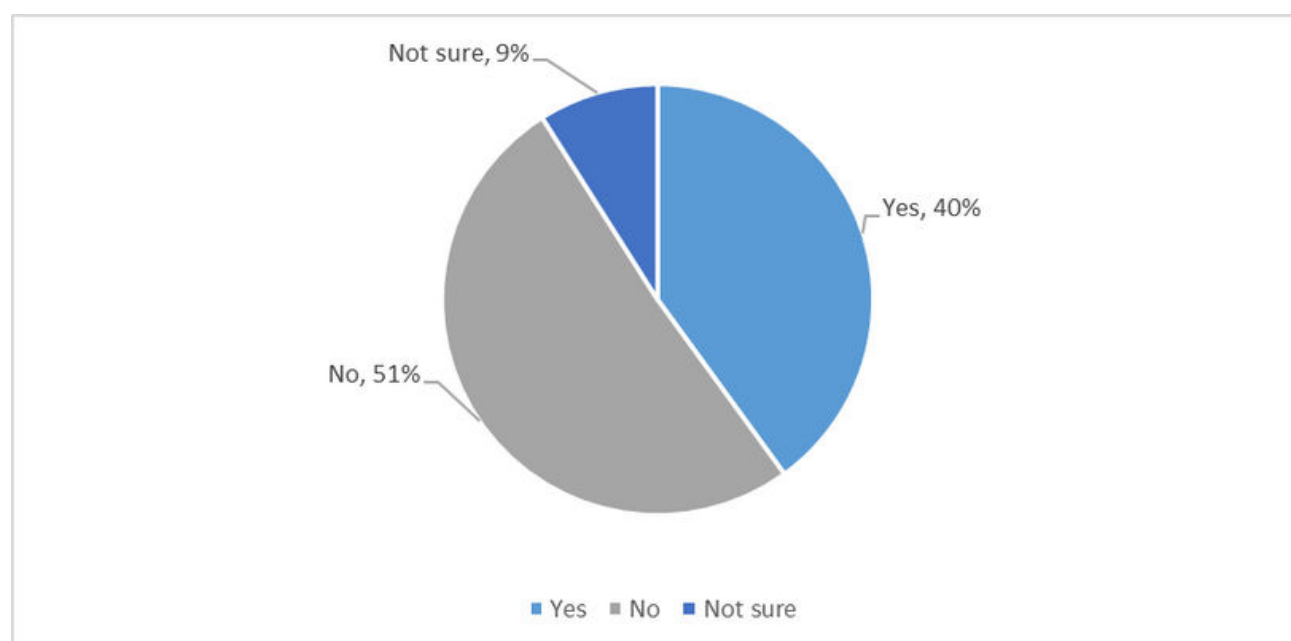
When asked why they would not be willing to report cases to the police, 47% of respondents stated that the police take too long to solve cases, while 42% stated that they do not trust the police. A significant proportion (21%) also reported a fear that the police would suspect them first.

In the same way, respondents were asked whether they would be willing to act as witnesses at the police station for a case they had some knowledge about. Overall, only about half of respondents (53%) said that they would be willing to do so, while 14% were not sure and 33% stated that they would not be willing to. Unwillingness to act as a witness was particularly high in Arua, with over half (56%) of respondents being unwilling to act as a witness.

5.1.2. Willingness to pay a bribe

Given the perception that police will often ask for bribes in the course of their work, community members were also asked whether they would pay a bribe if they were asked for one by police officers to get justice. Overall, 40% of community members stated that they would be willing to do so, while 51% would not, and 9% were not sure. Willingness to pay for a bribe was highest in Kampala, where 62% of respondents stated that they would do so if asked to in order to get justice. This is a concerning finding, which demonstrates how entrenched corruption may have become in the administration of justice.

FIGURE 20: % OF COMMUNITY RESPONDENTS WILLING TO PAY A BRIBE IF ASKED TO DO SO IN ORDER TO GET JUSTICE



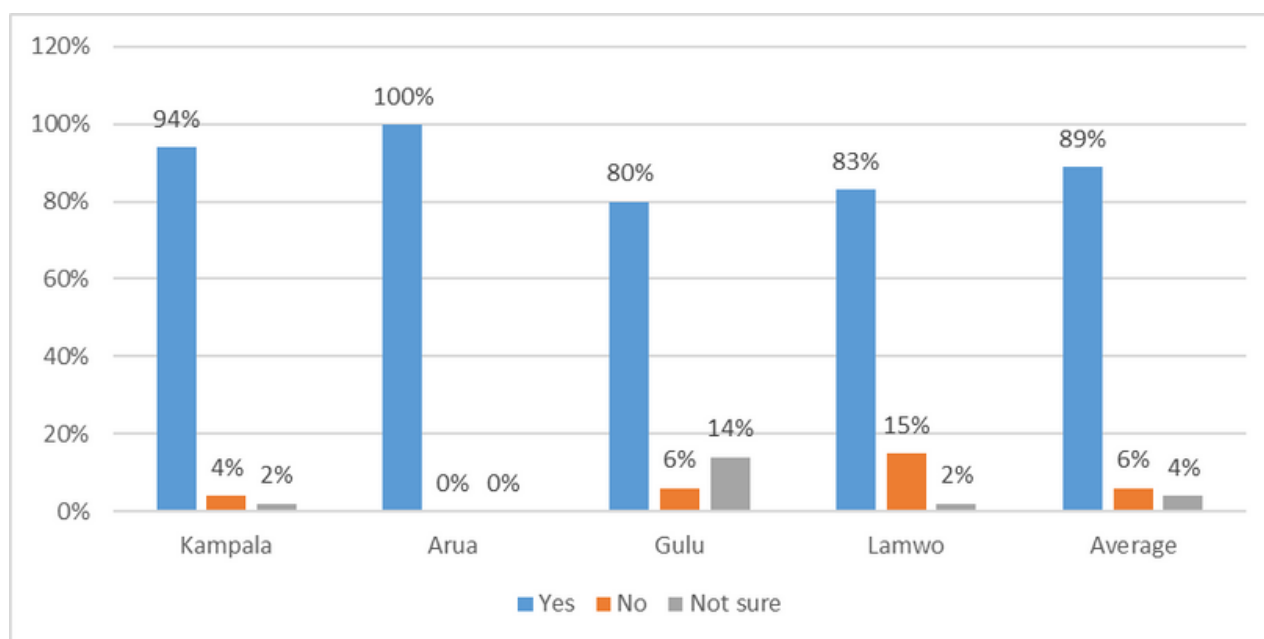
²⁸ UGANDA POLICE FORCE, ANNUAL CRIME REPORT, 2020. ACCESSIBLE AT: [HTTPS://WWW.UPF.GO.UG/WP-CONTENT/UPLOADS/2021/04/ANNUAL-CRIME-REPORT-2020-1.PDF?X74136](https://www.upf.go.ug/wp-content/uploads/2021/04/ANNUAL-CRIME-REPORT-2020-1.PDF?X74136) (ACCESSED 23RD OCTOBER, 2023)

5.1.3 Mob justice by the community

A legitimate concern which may result from low trust in the police, along with perceptions of inefficiency and corruption, is the recourse by communities to mob justice. Mob justice is a form of extrajudicial punishment or retribution in which a person suspected of committing a crime or caught committing a crime is disgraced, beaten, or even killed by a crowd. Mob justice is particularly concerning since it does not provide for the fair treatment of suspects and goes against the presumption of innocence. The police Annual Crime Report 2020 shows that 547 persons were lynched in the course of the year, out of whom 518 were male adults, 22 were female adults, and 7 were male juveniles[1]. These numbers may be underestimated given that mob justice happens outside of any legal framework and is not always reported.

Community respondents were asked about the occurrence of mob justice in their communities; they were asked whether people sometimes do “justice” themselves, for instance through physical violence or punishment. An overwhelming majority of respondents (89%) reported that people indeed did so in their community. All the respondents (100%) in Arua reported that people sometimes commit mob justice, followed by Kampala at 94%, Lamwo at 83% and Gulu at 80%. This very clear finding was also consistent across gender, disability status and age.

FFIGURE 21: % OF COMMUNITY RESPONDENTS REPORTING THAT PEOPLE SOMETIMES DO JUSTICE THEMSELVES IN THEIR COMMUNITY



Community respondents pointed to several factors that contribute to a willingness to engage in mob justice. A key factor is a lack of trust in the formal criminal justice system to administer fair and timely access to justice. One FGD participant in Lamwo said “Cases of suspected murderers being released a few days after an arrest have always irked the population; that is why when any suspected criminal is found, even if for chicken theft, they will be killed by the mob, to eliminate such characters from the society.”

5.2. POLICE DETAINEES

5.2.1. Time spent in police detention

In order to give context to the perceptions, attitudes and practices of police detainees, the study sought to understand their experiences of police detention. A key point, as mentioned previously, is the length of time spent in police detention, given that a person should be brought to court within 48 hours after his or her arrest, and should be released if no charges are brought against him or her.

As seen in the table below, the average number of days spent in police detention among respondents was a little over five days. The average was the highest in Lamwo (7.8 days), followed by Kampala (six days), Arua (five days), and Gulu (2.6 days). The maximum number of days spent in detention was the highest in Arua and Lamwo, at 21 days. In Kampala and Gulu, the maximum number of days spent in detention was 20 and six days, respectively. On average, females tended to have spent fewer days in detention.

TABLE 1: AVERAGE NUMBER OF DAYS SPENT BY POLICE DETAINEES IN DETENTION BY RESPONDENTS

Background Characteristics	Average No. of days	No. of Respondents	Minimum	Maximum
District				
Kampala	6	19	1	20
Arua	5	19	1	21
Gulu	2.6	20	1	6
Lamwo	7.75	20	2	21
Gender				
Male	5.98	57	1	21
Female	3.57	21	1	20
Overall	5.33	78	1	21

The length of time spent by respondents in detention is a concerning finding, as the average of five days is above the 48 hours required by law. This is also likely to be an underestimation, given that respondents were interviewed while still in detention – it is therefore unknown how long after the interview they were finally released or presented to Court.

Some of the respondents in police detention mentioned that they had no idea why they were being detained and what would happen to them next. Some were ignorant of their rights and were resigned to their fate. A detainee in Kawempe noted: “I have been here for seven days, I was arrested for walking late at night, and no one has told me what will happen next”. Another one in Gulu said: “I was arrested together with my brother for alleged involvement in theft. But we have not been told what we stole, and it’s now been five days here in the cells. We need help to get out of here, but no one is helping.”

5.2.2. Experiences of arrest and detention

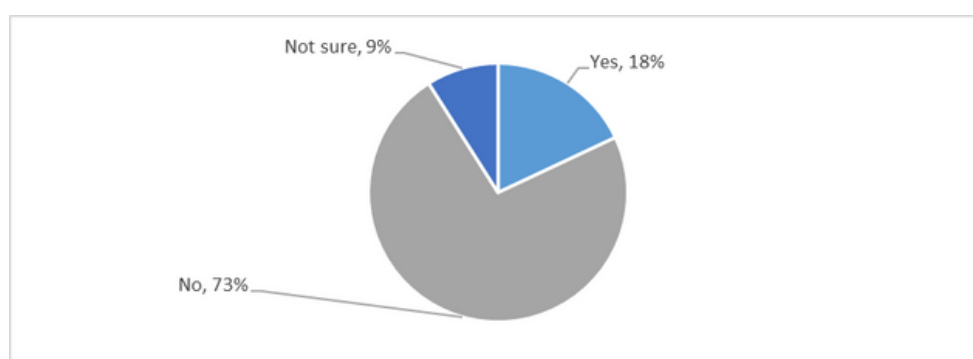
During arrest, only 68% of respondents reported that they were told of the crime they were suspected of committing, while 26% were not. This is in contravention of Article 23(3) and 28(3)(b) of the Constitution, which provides for the right to be informed immediately of the reasons for one's arrest. Respondents were also asked if they had made a statement when they were arrested. Overall, 76% of police detainees made statements when they were arrested, but 21% did not. In Gulu, up to 40% of detainees had not recorded a statement. Respondents were also asked whether they were allowed to speak to any family member or friend physically or on the phone before being taken to police. The majority (69%) had, but 31% reported that they had not.

A concerning finding of this study is that about 12% of respondents reported having been forced to make statements. There was a slight gender difference in this, as 16% of women reported having given a forced statement, versus 11% of men. Forced statements were most often reported in Gulu (25% of police detainees) and Lamwo (17%). Yet, according to s.24 of the Evidence Act, a confession made by an accused person does not constitute admissible evidence if it appears to the court that it was obtained by "violence, force, threat, inducement or promise".[29]

5.2.3. Access to the services of a lawyer

Access to legal services helps in redressing the power imbalance between detainees and the authorities. It further aids the detainees in understanding and exercising their rights while also acting as deterrence against torture and other ill-treatment and reducing the risk of arbitrary detention. Article 28 of the Constitution provides for the right to a fair hearing in the determination of civil rights and obligations or any criminal charge. Every person who is charged with a criminal offence shall be permitted to appear before Court in person or, at the person's own expense, by a lawyer of their own choice, and in cases of a capital nature, the person shall be entitled to legal representation at the expense of the State[30]. Furthermore, a suspect shall be informed of this right by the competent authority promptly after arrest and shall be provided with adequate time and reasonable facilities to prepare his or her defence[31].

FIGURE 22: % OF POLICE DETAINEES WHO WERE INFORMED OF THEIR RIGHT TO A LAWYER UPON ARREST



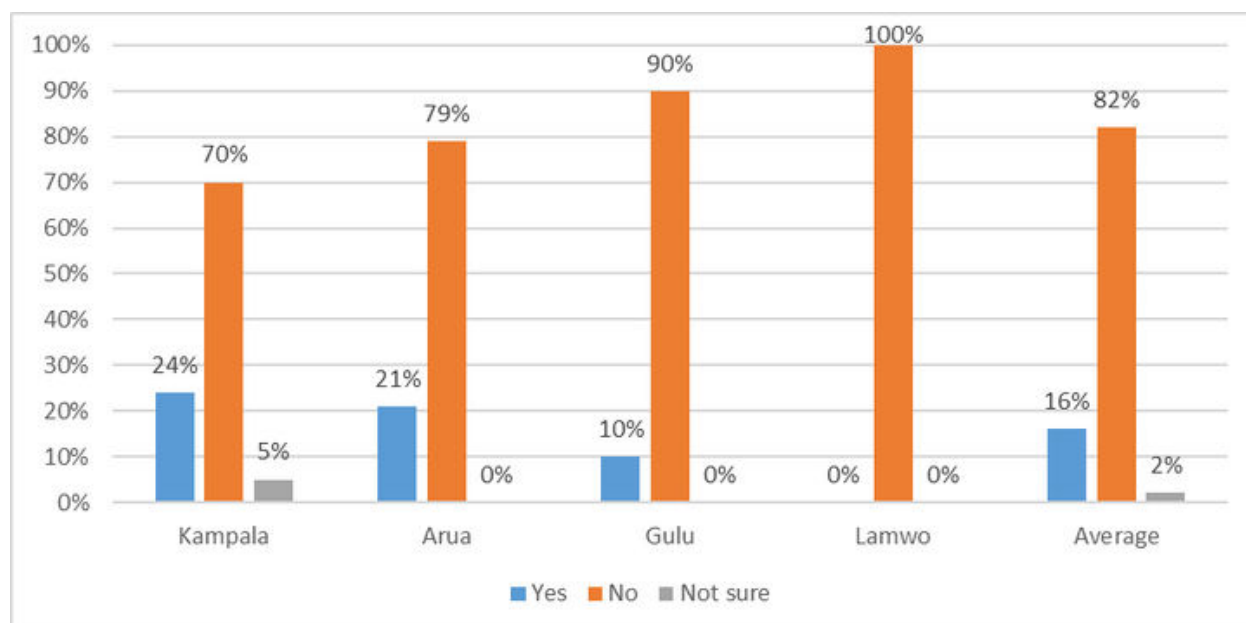
The prison detainees were asked whether they were informed about their right to a lawyer upon arrest. Contrary to international standards and the Constitution, only 18% were told of this right, while 73% were not. It may therefore not be surprising that only 16% of respondents had accessed the services of a lawyer (24% in Kampala, 21% in Arua, and 10% in Gulu). None of the detainees in Lamwo had accessed the services of a lawyer.

²⁹Principle 21, General Assembly resolution 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

³⁰ Constitution of the Republic of Uganda, Art 28(3)(d) and (e)

³¹Constitution of the Republic of Uganda, Art 23(3) and Art 28(3)(c)

FIGURE 23: % OF POLICE DETAINEES WHO ACCESSED THE SERVICES OF A LAWYER



Regarding the detainees who had never had access to the services of a lawyer, the main reasons given included affordability (39%), ignorance about the need for one (24%), lack of a lawyer (18%), and not being allowed to access one (5%). Denying a detainee access to the services of a lawyer is a violation of their constitutional rights. In Kampala and Arua, a high percentage didn't access the services of a lawyer because of costs (58% and 67% respectively) while, in Lamwo, 45% noted that they lacked lawyers to represent them.

5.2.4. Willingness to pay a bribe

Responses to the survey showed that 23% of police detainees interviewed (46% from Kampala, 16% from Arua, 5% from Gulu, and 5% from Lamwo) were asked to pay money to access police bond or to be granted release. By gender, about 24% of male detainees and 21% of female detainees were asked for money. It seems that corruption was accepted as a common fact by part of the police detainee sample, as 40% said that they would be willing to pay a bribe if they were asked for it.

5.3. PRISON INMATES

5.3.1. Time spent in detention

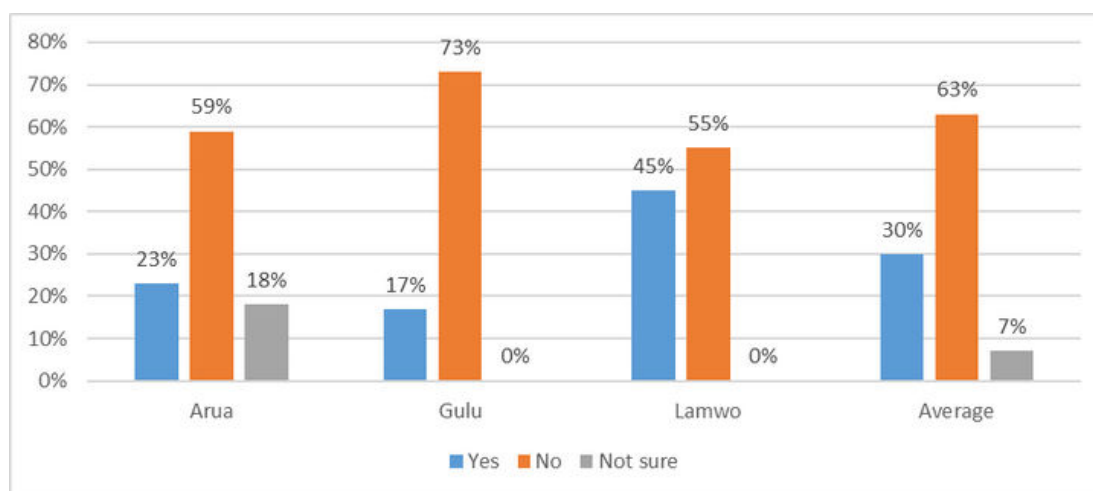
A total of 54 prison inmates on pre-trial detention were interviewed in Arua, Gulu and Lamwo about their experiences in the criminal justice system. In terms of the period spent in detention, 39% had spent less than 30 days, and 54% had spent more than 30 days. 6% of the respondents were not sure about the number of days spent in prison/detention.

³²Uganda Prisons Service, Monthly statistics summary, July 2023. Accessible at: <https://prisons.go.ug/sites/default/files/July%20%202023%20Report.pdf> (Accessed on 23rd October, 2023)

5.3.2. Access to the services of a lawyer

Findings showed that only 30% of prison inmates had access to the services of a lawyer. This is higher than for detainees at the police station, but still represents a minority of the sample. Per district, 23% had access to a lawyer in Arua, 17% in Gulu and 45% in Lamwo. Moreover, only 30% (41% in Arua, 25% in Gulu and 20 % in Lamwo) stated that they were told about the right to access the services of a lawyer when they were arrested. When asked why they had not accessed a lawyer, 47% stated that they could not afford one, and 29% responded that they lacked a lawyer to represent them.

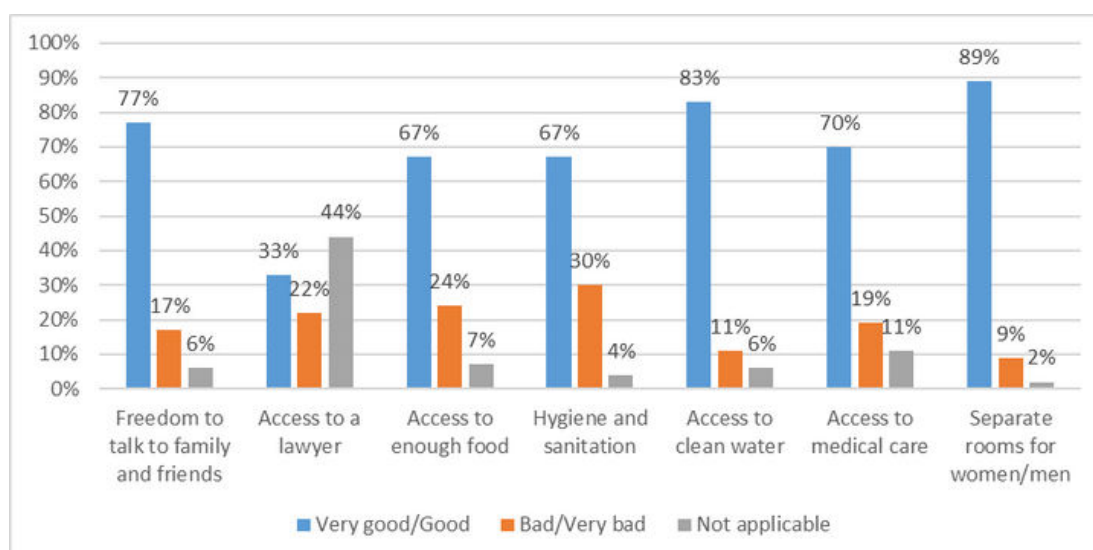
FIGURE 24: % OF PRISON INMATES WHO ACCESSED THE SERVICES OF A LAWYER



5.3.3. Experience in detention

Inmates were asked to rate their access to various rights and services in prison. As shown in the figure below, access to rights and services was rated relatively well on average. However, consistently with other findings from this study, access to the services of a lawyer was least often rated as very good or good, which may refer to the lack of lawyers and/or the lack of means to access them on the part of detainees.

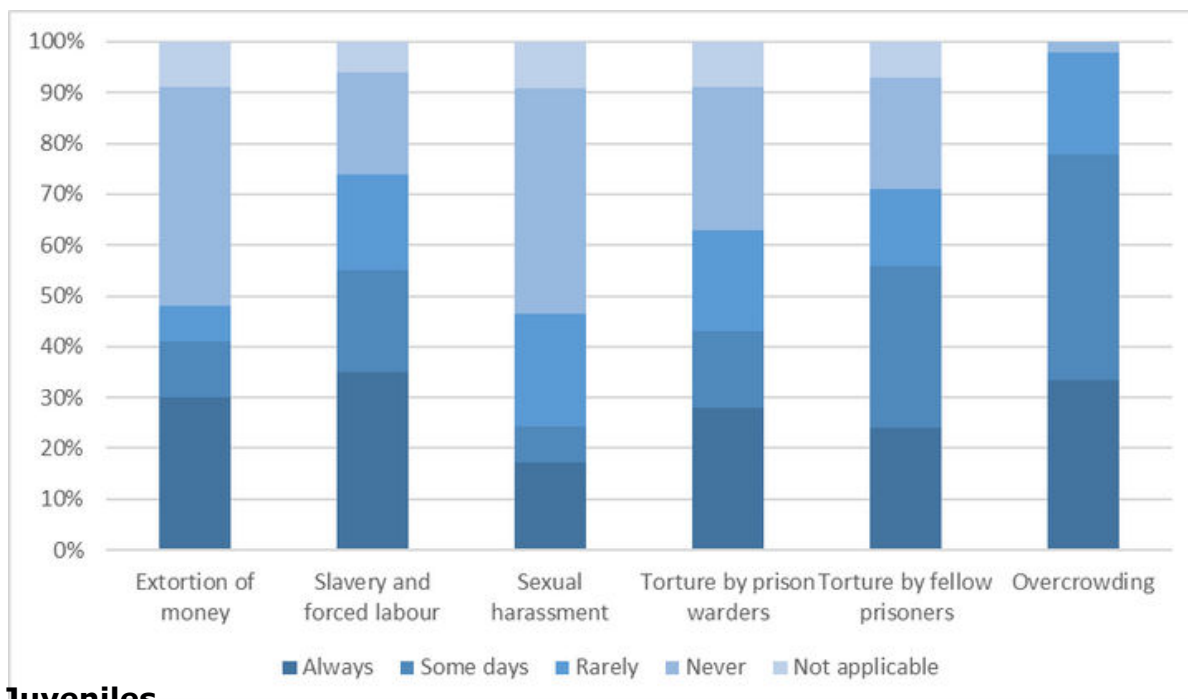
FIGURE 25: PRISON INMATES' ASSESSMENT OF ACCESS TO VARIOUS SERVICES IN PRISON



³³Constitution of the Republic of Uganda, Art 34(6), and Children Act, s.89(8)

Prison inmates were also asked to rate the level of occurrence of different violations of their human rights and freedoms. From the results, overcrowding was cited by prison inmates as occurring most often, with 33% stating it “always” happened and 44% stating it happened on “some days”. This is a key challenge in most Ugandan prisons. According to a July 2023 report by the Uganda Prisons Service, the occupancy rate of Ugandan prisons was 367.4%, revealing severe overcrowding. At this, there were on average 76,272 inmates (3,529 of these female) in Ugandan prisons, 48% of whom were pre-trial detainees.[32]

FIGURE 24: % OF PRISON INMATES WHO ACCESSED THE SERVICES OF A LAWYER



5.4. Juveniles

Young people in two remand homes were also surveyed on their experiences of arrest and detention, in order to provide a perspective on the practical implementation of several key procedural and constitutional standards related to children in conflict with the law. These standards are usually stricter than those applicable to adults, given juveniles’ specific vulnerabilities.

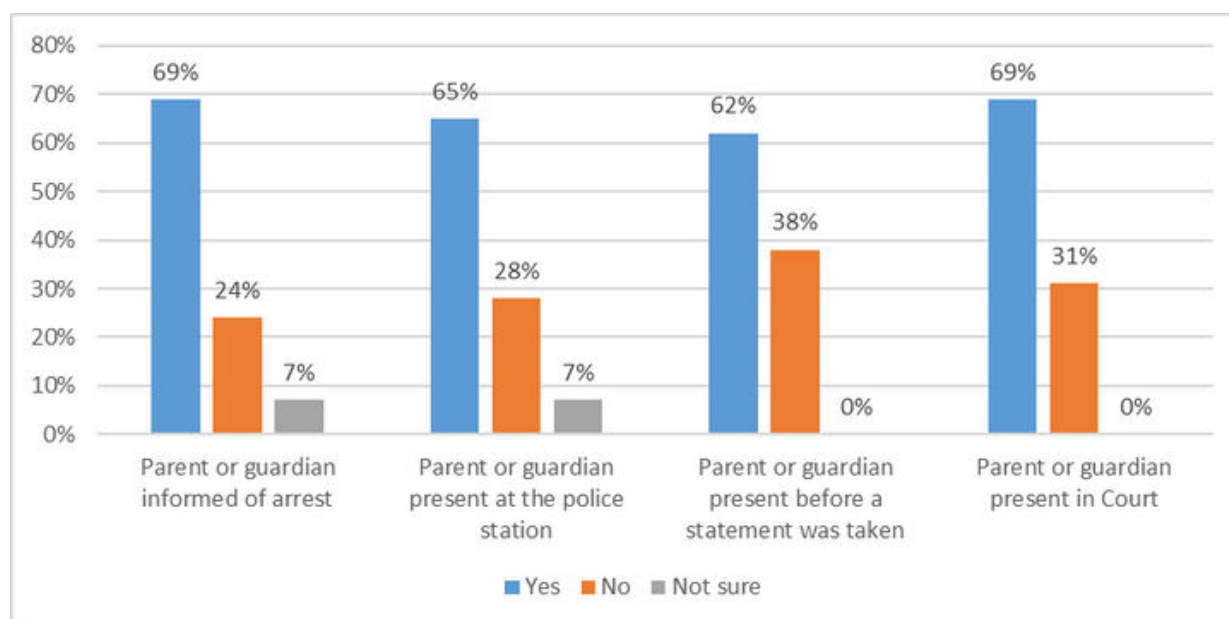
For instance, juveniles are meant to be detained in a room separate from adult detainees[33] . Respondents in remand homes were asked if since their arrest they had ever been detained in the same room with adults. While all of the respondents in Kampala stated that they had always been held separately, three of the young people interviewed in Gulu said that they had at some point been detained together with adults.

The presence of a parent or guardian is also required at a number of key points in the processing of juveniles by police. The study sought to find out from young people in remand homes if the police informed their parents or guardian upon their arrest, as provided for in s.89 of the Children Act. Overall, 69% stated that this had been the case. However, 24% stated it had not been the case, or that they were not sure. The juvenile respondents were also asked whether their parents accompanied them to the police station: 66% responded that they did, 28% that they did not, and 7% were unsure. 62% stated that a parent or guardian was present before a statement was taken from them at the police station, and 38% responded that this was not the case.

[32] Uganda Prisons Service, Monthly statistics summary, July 2023. Accessible at: <https://prisons.go.ug/sites/default/files/July%20%202023%20Report.pdf> (Accessed on 23rd October, 2023)

[33] Constitution of the Republic of Uganda, Art 34(6), and Children Act, s.89(8)

FIGURE 27: % OF JUVENILES WHO REPORTED THE PRESENCE OF A PARENT OR GUARDIAN AT VARIOUS POINTS OF THEIR ARREST AND DETENTION



A concerning finding was that only 28% of juveniles reported that their statements were taken voluntarily. There was a gender disparity in this finding, as only 17% of female juveniles remembered making a voluntary statement versus 35% of males. During key informant interviews, some stakeholders mentioned issues with the treatment of juveniles. This included the allegation that some law enforcement officers interview or question children in the absence of their parent or guardians, in contravention of the Children’s Act Cap 59, which at times results into fatal consequences. During a key informant interview, a judicial officer recounted the following:

“[In 2022], there was a story about an incident in Kiwenda, Gayaza, where a young boy was suspected of having stolen a goat. A police officer travelled to Kikyusa to investigate the matter, and as a result, during the questioning, the boy was beaten to death. During this entire exercise, no one was notified of the arrest or questioning of the boy.”

This is a striking finding which requires additional investigation into the practical application of standards specific to juveniles. This is all the more important given the fact that only 31% of juveniles reported that they were represented by a lawyer, while 69% stated that they were not. Without legal advice, there is an increased risk that juveniles are confronted with human rights violations, without the ability to advocate for themselves.

5.5. Conclusions on practices

Lack of trust in the police and mob justice

About 89% of community respondents acknowledged that community members sometimes take matters of justice into their own hands. In FGDs with communities, mob justice was directly linked to negative perceptions about the police, with the idea that police can be either too lenient towards suspects, too slow to conduct investigations, or corrupt. These perceptions need to be addressed in order to ensure that justice is served through means that respect the personal integrity of suspects and grants them a fair and impartial treatment.

Excessive time spent in detention

The police detainees interrogated for this report had stayed an average of 5.3 days in detention by the time of the survey. Detention beyond the 48 hours comes with severe risks, including a higher likelihood of suspects being tortured by police officers to confess to crimes, which some might not have committed, inaccessibility of resources to prepare for defence, detention in inadequate conditions, as well as mental health challenges such as depression and suicidal thoughts. As seen in the findings, part of the reason for overstay on detention might be the lack of knowledge and trust in rights-holders among detainees, which calls for capacity and trust-building to allow them to assert their rights. This notwithstanding, there are other systemic gaps within the police, judiciary and ODPP that need to be addressed to fast-track the processing of cases, bond, and bail applications (see Chapter 6.)

Lack of implementation of standards specific to juveniles

Despite the many child-friendly standards established in the Constitution and the Children Act, the survey found that these may not always be translated into practice. Findings on the absence of parents or guardians at key stages of proceedings and allegations of forced statements are worrying and require further research.

Access to services of a lawyer

Only 16% of those in police detention, 30% of inmates and 31% of juveniles had accessed the services of a lawyer. This limited access to the services of lawyers could be linked to the low knowledge of the right to access a lawyer, as especially police detainees were often not aware of this right. However, it may also be due to the lack of resources to afford legal assistance, and the low availability of lawyers in rural areas. The finding that none of the police detainees in Lamwo had accessed a lawyer is indicative of the gap in access to legal aid services between different districts. This may also explain the observation that Lamwo had some of the longest periods for stay in police detention, going up to 20 days. Scaling up legal aid services throughout the country is therefore a matter of priority to ensure the protection of substantive and procedural human rights, including the constitutional provision that grants detainees reasonable access to lawyers. Without such access, the procedural and constitutional rights of pre-trial detainees may well continue to be violated. Expediting the National Legal Aid Bill, currently under review in Parliament, is a crucial step to ensuring that the most indigent and vulnerable persons can effectively access legal aid.

6. PERSPECTIVES OF DUTY BEARERS ON PROTECTING PROCEDURAL AND CONSTITUTIONAL RIGHTS IN UGANDA

As previous findings presented in this report have showed, knowing one's rights is necessary, but not sufficient to ensure they are respected. The criminal justice system in general, and duty bearers in particular, must also play an active part in protecting procedural and constitutional rights. Yet, attitudes and practices among community members and detainees indicate that important gaps persist in this regard, resulting in human rights violations and a lack of trust among some in the criminal justice system.

Based on interviews with criminal justice stakeholders, this chapter will explore the perspectives of duty bearers themselves on their role in protecting procedural and constitutional rights, and on the systemic challenges that may prevent them from doing so. Addressing these structural challenges is key to ensuring lasting change in the area of pre-trial detention in Uganda.

6.1. General challenges

Before discussing the perspectives of each category of stakeholders interviewed for this report, it is important to note that duty bearers across the criminal justice system must reckon with general, cross-cutting challenges. The most significant challenges identified in key informant interviews with duty-bearers are:

- **Coordination gaps amongst JLOS institutions.** Due to silos and communication issues between various institutions, duty bearers do not always successfully work together to ensure that rights are respected. For example, when criminal court sessions are being organized, funds are distributed to the different institutions involved, but arrive at different times. This affects the timely handling of trials. Institutions particularly affected here include UPF, UPS, and ODPP.

- **Human resource challenges and understaffing:** This is a reality in most JLOS institutions. For instance, most rural districts have a limited number of judicial officers covering a wide geographical area.

- **Dysfunctional checks and balances:** Ideally, institutions should work in a complementary manner so that violations committed by one category of duty bearers can be identified, addressed and remedied by the other. For instance, state attorneys, through their role in sanctioning files, play an important part in ensuring the quality of police investigations and limiting arbitrary arrest and detention. However, they do not always play this role to the fullest. Similarly, judges must be attentive to potential violations of the accused's non-derogable rights, investigate any allegations brought up by the accused and, when confirmed, striking cases with nullity. In general, when other justice actors do not appropriately review police activity, this increases the risk of violations going unnoticed or unaddressed.

•**Corruption:** Uganda's criminal justice system continues to face important corruption challenges. Different public officers, such as police officers, continue to solicit and receive bribes to carry out their work, or omit to do so. As seen in the previous chapters, this strongly affects communities' perceptions of the criminal justice system.

•**Inadequate funding:** Beyond issues of human resources, there are often insufficient funds for institutions to adequately fulfil their role. For instance, UPF often lacks funds to cater for investigation activities (e.g. transport, fuel and maintenance costs for vehicles and motorcycles).

•**Transfer and turnover:** This is especially a challenge for UPF, UPS and the judiciary. Officials are transferred on a regular basis and leave uncompleted work assignments. New officials need time to transition into their new role, which causes delays. In the judiciary, gaps in key positions lead to case backlogs and adjournments. Even though most courts have a standard practice of not adjourning a case for more than fourteen days, cases are sometimes adjourned for a month or more. This often leads to detainees overstaying in pre-trial detention.

6.2. Uganda Police Force (UPF)

The mandate of UPF is derived from Article 212 of the Constitution and the Uganda Police Act Cap 303. The main role of the police is to keep law and order, which includes a number of roles such as detecting and preventing crime in society, arresting suspected criminals, community policing, registering cases of suspects, preparing files of suspects for prosecution, presenting suspects and evidence to the courts of law.

The police officers interviewed for this survey had strong knowledge and appreciation of the legal provisions that apply to pre-trial detention issues. According to a key UPF official interviewed for this study, the protection of the rights of suspects or accused persons starts at arrest. The suspect must be informed in the language that he or she understands of the suspected offence, of the right to remain silent and the right to a phone call to a relative, friend, or any other person. However, on the issue of the 48-hour time limit for presenting a suspect before a magistrate, the same UPF interviewee explained:

"Sometimes the investigations cannot be completed in 48 hours, especially for capital offences. However, when investigations are completed in time, the file is taken to the DPP's office or State Attorney, the same is sanctioned, and the suspect is presented in Court for plea taking. In case investigations are not completed, the suspect is released on bond until investigations are complete."

While this sentiment reflects the legal provisions on pre-trial detention, the previous chapters have shown that suspects often remain in police detention past the 48-hour mark, and struggle to access police bond. Some of the challenges discussed by key informants from UPF, which may help explain this disconnect, include:

Difficulties in conducting and completing investigations within 48 hours: The police force is sometimes not well equipped to conduct investigations. On many occasions, the police have no transportation to arrest suspects. The police is also often understaffed and suffers from a high case backlog. This affects the level of depth and time allocated to investigations on each case. If a case is complex, it might need more time and a certain set of skills to investigate it adequately. There have recently been calls by the police for the amendment of the 48-hour rule, asserting that this does not give police officer enough time to investigate serious crimes such as terrorism and murder.

Attitudes towards the arrest and detention of suspect: Despite the 48-hour rule and provisions on police bond, police are reluctant to grant bond to suspects, especially when they are suspected of committing capital offences. This is due to the likelihood of such suspects skipping bond and disappearing, or the possibility of interfering with witnesses and affecting fair investigations. Officers will also sometimes keep suspects in detention “for their own protection”, citing risks of mob justice if they are released in the community. Yet, this constitutes a violation of suspects’ procedural and constitutional rights. Arrest and detention is overused by police as a means of holding on to suspects, even when there is limited evidence about someone’s involvement in committing an offence. The Criminal Procedure Code Act (article 10) provides for standards of arrest without a warrant, a key part of which is the requirement of reasonable grounds for arresting a suspect. The UPF should ensure stricter adherence to the rule that arrest and detention are only justified when such reasonable grounds exist.

Delays in presenting suspects in court, or in the sanctioning of charges and plea-taking: Due to external circumstances such as the lack of funding or transport, police may not always be able to present suspects in court within 48 hours. Another issue is sometimes the absence of officers from the ODDP and judiciary, respectively responsible for sanctioning charges and taking a plea.

Political influence, bribery and corruption: There can be political influence at the police level resulting in releases of suspects due to pressure from politicians and other influential people. Police officers, due to their working conditions and their exposure to the public, may also be more likely to be involved in corruption. During a validation workshop to review this study, a participant from the UPF expressed concerns about the police being labelled as corrupt by respondents, and stated that corruption was a two-way issue. He emphasized the efforts to inform the public that police bond is free through the display of notices.

Poor storage and accountability systems: There have also been complaints of missing files of suspects, which is attributed to poor storage and sometimes bribery. Efforts for establishing a computerized data management system should be kept up to improve this.

Poor detention conditions and overcrowding: Most police stations are overcrowded, while others have no separate cells for juveniles.

A key challenge discussed by key informants is the **lack of child-friendly approaches** by UPF when detaining with juveniles. Though the mandatory period for holding children in detention before presenting them in court is 24 hours, this provision is often violated. Some police stations do not detain children who are suspected of committing offences, especially petty offences. They refer them to Local Councils for counselling and guidance, which can be a good practice. One of the key informants from UPF interviewed for this study, who is the Officer-in-charge of a police station, stated that in situations where children and adults tend to be held beyond the mandatory period, priority in processing the files is given to cases involving children, even for capital offences.

However, the Officer-in-charge of a remand home added that most police stations are not able to ensure safe custody of children as there are no separate cells available for them, thus making these facilities unfriendly for juveniles, especially if they are kept too long in police custody. In a key informant interview, he explained:

“The police still lacks child-friendly approaches during the arrest and detention of juveniles, and thus the issue of torture continues to be a challenge, even for juveniles. Most torture happens during arresting and recording statements, and that is where caution must be taken, especially while dealing with juveniles. The requirement that the parents or guardian of a child is present during arrest is sometimes not respected. Cases of children being tortured even to death have been reported, which is the reason why it’s important to involve the parent or guardians who can protect their children and can give consent to the police to interact with their child, or restrict or withdraw it in befitting circumstances for the wellbeing of their child.”

During a validation workshop for this study, a participant from UPF disagreed with the research finding that detainees had limited knowledge about their rights, stating that suspects often reminded them about the 48-hour rule during suspect parades. Another mentioned an increase in the number of civil suits based on infringement of the 48 hour-rule, which he attributed to heightened awareness. UPF participants also explained the prevalence of mob justice and recourse to local and cultural courts by the fact that communities expected outcomes (compensation, reparation...) which could not always be provided by the police, who must follow the law.

However, during the same workshop, gaps were also noted in understanding of some of the legal provisions applicable to detention at police. For example, some UPF officers were convinced that the 48-hour rule only applied to working days, and that hours spent in detention over weekends did not count. There was also an assumption from a police participant that there was an exception to the 48-hour rule when it came to capital offence cases, as these take more time to investigate. These are misconceptions which do not align with the law, and highlight the need for increased sensitization on the current legal provisions.

6.3. THE JUDICIARY

Key informant interviews with judicial officers demonstrated that they understand and appreciate their role and the legal provisions in the criminal justice system, especially during pre-trial detention. As stated by one judicial officer:

“The most important role of the judiciary in the criminal justice system is to guarantee the protection of the rights of persons during trial. This includes the duty to guarantee trials in the shortest time possible to ensure that trials are fairly conducted with all parties given an opportunity to prepare for and present their cases. The mandate of the judiciary is derived from the Constitution of the Republic of Uganda, which grants the judiciary the mandate to hear, determine cases expeditiously and deliver judgments in a timely manner and also carry out or promote alternative dispute resolution such as reconciliation as per Article 126. The judiciary has endeavoured to deliver on this and sensitize the public about other avenues of dispute resolution outside litigation, such as plea bargaining.”

During another key informant interview, a judicial officer also highlighted the role of the judiciary is also significant when it comes to releasing individuals who have overstayed in detention or suffered other human rights violations, whether through issuing a writ of habeas corpus, an order of unconditional release under the Human Rights Enforcement Act (HREA)[1] or the release of accused persons on bail.

Overall, the judicial officers interviewed had a good appreciation of the applicability of the legal provisions relating to pre-trial detention. They however criticized the possibility of implementing these provisions in practice as illustrated by this comment by a Senior Judicial Officer during a key informant interview:

“The right to be presented in Court after 48 hours in police detention is a good law, aimed at the protection of the right to liberty of a suspect under arrest and detention by the Police. However, in my view, experience in Uganda has shown that this rule is impracticable because of several challenges, including the limited number of advocates, a high population in police custody, and few not properly geographically located, and inadequately equipped and skilled police units in Uganda”

Another senior judicial officer criticised the rule on mandatory release, stating:

“The right to mandatory release after 60 days or 180 days for offenders on remand is the ideal position protecting the human rights of persons on remand. However, the rule needs to take cognizance of the fact that all cases are not similar in complexity which at times affects the quality and speed of investigations before a matter is fully presented to the Court for hearing.”

The judicial officers also had a firm grasp of the law relating to freedom from torture and any inhuman and degrading treatment. However, judicial officers agreed that there is no uniform definition of the word “torture”, which can be physical or psychological. In the Ugandan criminal system, the focus is on the physical aspects of torture. As stated by a judicial officer:

³⁴Human Rights (Enforcement) Act, 2019, s. 15

“At what point should the law be concerned? At what level does a situation or aspect become torture? These questions arise because there are many grey areas that may affect a finding of the Court as to whether a certain situation that affected an individual can be held to be torture. For example, in a case tried by one of the judges, an accused said that he was kept in a filthy cell for long hours and days that when he got a chance to get out, he couldn’t stand the thought of getting back into it, so he made a ‘confession’ in regards to committing an offence. Therefore, the question for the Court in this scenario was whether the accused is being held in such conditions affected his free will. The test is a very subjective test. The circumstances of each case have to be considered objectively.”

As a result of the legal provisions relating to torture, Courts have held over time that any evidence obtained through any illegal or extra-judicial means is inadmissible in evidence. However, several respondents believe that the law against torture and inhumane and degrading treatment exists mainly in theory and not in practice in the Ugandan criminal justice system. According to them, some officers will justify torture by alleging that some suspects are “hard”, hence the need for the use of force during arrests. This contravenes all the legal provisions that Uganda is subject to, including principle 6 of the General Assembly Resolution 43/173[35].

Judicial officers were also prompted to discuss some of the structural challenges they face in protecting procedural and constitutional rights. The challenges they identified included:

- **Understaffing and high caseload leading to backlog:** The understaffing of judicial officers, especially Magistrates and High Court judges, has led to a case backlog in the judicial system. For example, in one of the districts covered by this survey, there was only one Grade I Magistrate, who does not have the jurisdiction to handle capital offences. As a result, some capital offenders had not been committed for over five years.
- **Scarcity of High Court sessions:** Delays are particularly significant when it comes to capital offenders, who can only be tried by the High Court. As the High Court deals with cases in sessions rather than on a rolling basis, the lack of regular sessions in certain districts may lead to significant delays and backlog. Moreover, the new Bail Guidelines make it almost impossible for magistrates to release capital offenders on bail. Capital offenders must await High Court sessions to be able to access bail, which significantly impairs their access to this right.
- **Poor supply of or logistical challenges for JLOS actors:** For example, the inspectorate of court offices is often not sufficiently funded to conduct its mandate adequately.
- **Issue of the role of the assessors.** The role of the assessor in providing an opinion to the judge is often no longer relevant. The role of the assessor should be to guide the court where it needs guidance, but their presence should not be mandatory and their absence should not be grounds for nullifying a court decision.

³⁵The Resolution provides that “no circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment”.

- **Attitudes towards bond or bail :** Due to the gravity of some offences, judicial officers are sometimes reluctant to give bail because of the sensitivity of cases or the severity of the charges. This is particularly true for capital offenders. Such attitudes are also reinforced by comments from power-holders in Uganda about the appropriateness of bail. For instance, the Former Inspector General of Police blamed the prevalence of serious crime in Uganda on the 48-hour rule^[1]. The President has also previously criticized Court decisions granting bail to murder suspects.^[37]
- **Issues with regards to witness or victim participation:** Witnesses and victims may face challenges in coming to court to provide testimony, which can affect and delay the course of a trial. These include challenges with transport costs, which are covered for High Court proceedings but not for cases heard in Magistrates' Courts. It is particularly difficult to secure attendance of witnesses when those are passer-by's and have not been personally affected by the case. Limited witness protection may also induce fear to come to Court. Language issues were also noted, particularly in Lamwo, where many refugees do not speak any English.
- **Abuse of legal procedure:** Some Magistrates fail to fully appreciate the need to comply with procedures. For example, juveniles are sometimes tried in open Court in spite of the requirement that their matters should be handled in a child-friendly way with privacy.
- **Committal process:** During the validation workshop for this survey, a member of the judiciary highlighted the committal process as an additional barrier to speedy trial, under which capital cases must first be presented to the Magistrates Court for committal to the High Court. According to him, this process is outdated and no longer serves a meaningful purpose, while contributing to significant backlogs within the justice system.

6.4. Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions (ODPP) is the legal representative of the Government in all criminal cases. Prosecutors and staff attorneys are the representatives of the ODPP in the different courts around the country. The role of the Office of the Director of Public Prosecutions is as prescribed under Article 120 of the Constitution of the Republic of Uganda, 1995, and includes (i) to direct the police to investigate any information of a criminal nature (ii) to institute criminal proceedings in any court with competent jurisdiction (iii) to take over and continue criminal proceedings (iv) where necessary, to discontinue proceedings at any stage before judgment is delivered.

Interactions with the officials from ODPP show that they have a good appreciation of their role in upholding legal provisions under pre-trial detention. According to one of the key informant interviews with a Resident State Attorney, after the police complete investigations, they are expected to send a file to the state attorney, who then reads the file to confirm that all evidence required to take the accused person to Court is available. Once sufficient evidence is found in the file, the charge is sanctioned by the resident state attorney and taken to court, and the accused is then taken to court for plea-taking before the hearing starts.

³⁶The Observer, Kayihura rejects 48-hour suspect rule, 2015. Accessible at: <https://www.observer.ug/news-headlines/37290-kayihura-rejects-48-hour-suspects-rule> (Accessed on 23rd October, 2023)

³⁷ ChimpReports, I'll not Accept Bail, Bond for Murder Suspects, says Museveni, 2021. Accessible at: <https://chimpreports.com/ill-not-accept-bail-bond-for-murder-suspects-says-museveni/> (Accessed on 23rd October, 2023)

Nevertheless, there are capacity and knowledge gaps that hinder efficiency in the execution of the mandate of the office of the ODPP. Interviews with duty bearers show that some State Attorneys do not exercise enough oversight on the actions of investigating officers. During a key informant interview, a judicial officer provided the below example:

“I tried a case in Gulu where an innocent man was remanded for nine years on a file that had no evidence implicating him. The trial of the case never disclosed any evidence against him. The police officer who investigated the matter stated that the accused was added to the file because he was a troublesome man and the Officer-in-Charge of the police station directed that he should be added to teach him a lesson. By the time the accused was remanded, he was a young man in his 20s and by the time he was released, he was in his 30s.”

Regarding the prohibition of torture, the officers interacted with showed an understanding of the need to protect this right as it affects the sanctity of the criminal justice process. Evidence collected using illegal means or any form of torture is not admissible in Court and can lead to the discharge of an accused from any charge, as mentioned during one of the key informant interviews with a state attorney:

“The reason the right or freedom against torture exists is to protect the sanctity or integrity of human existence both physically and psychologically. No human being wants his or her autonomy violated or dehumanized as such, the human body is inviolable and sacred in nature, and any slightest touch without consent may amount to torture”.

Therefore, whereas the state attorneys are well knowledgeable of the rights and laws under pre-trial detention, there may be concerns by other actors regarding their capacity to dispense their roles in a manner that protects the procedural and constitutional rights of detainees.

As a major stakeholder within the criminal justice system, the ODPP also faces challenges of understaffing. For example, there is no state attorney in Lamwo, which relies on the State Attorney in Kitgum to handle all the criminal matters arising from the District. This issue of understaffing was further highlighted by the officers from ODPP who took part in the validation workshop for this survey.

6.5. Uganda Prisons Service and Remand Homes

The role of the Uganda Prisons Service (UPS) is derived from Article 215 of the Constitution. The mandate is generally to ensure the safe custody of prisoners, their welfare, reformation, and rehabilitation. The prison also ensures that those incarcerated have their rights protected and promoted.

The prison officers interviewed during this research demonstrated awareness of their roles and duties regarding the protection of the rights of persons under pre-trial detention. Some of the roles and duties mentioned by key informants included:

- (1) Raising awareness of prisoners regarding their rights
- (2) Ensuring that all prisoners remanded are received and held in safe custody
- (3) Allowing access to lawyers, paralegals, and families three days a week
- (4) Ensuring that prisoners are produced in courts of law as and when directed, and that they are released upon the direction of the court
- (5) Ensuring clean detention conditions for prisoners despite the challenge of congestion

A major issue faced by the UPS is overcrowding. For example, by the time of this survey, Arua prison had six wardens and a population of 1,150 (586 convicts, 562 remand), when it was built to accommodate 270 inmates[1]. In Acholi, Gulu main prison is the only prison serving the whole of the region, especially for capital offenders. The prison was established for a capacity of 300 inmates but it currently has over 1000 prisoners. This congestion is a breeding ground for the spread of infections and diseases due to poor sanitation and hygiene.

Overcrowding was higher during COVID-19 when the courts of law were not working at full capacity. The current practice is to ensure that persons on remand spend as minimal time as possible under incarceration. As stated by one UPS officer interviewed: *“When an inmate makes two months without any court appearance, I generate a list of such prisoners and forward it to the relevant magistrate, who then links with the prosecutor to obtain their files from the police to prepare for hearings.”*

Despite those efforts, data from the Uganda Prisons Service shows that the occupancy of Uganda prisons was at 367.4% in July 2023, with a total of 76,272 prisoners[39]. In 2018, Uganda’s prisons were rated as the sixth most overcrowded in the world.[40]

During the validation workshop where the results of this survey were presented, a member of UPS acknowledged the importance of mandatory bail and stated that prison officials actively ensure that the courts are informed about mandatory bail reports through their monthly and quarterly reports. He noted that inmates are aware of their rights but face financial constraints and limited access to legal aid service providers. Another member of UPS mentioned that they regularly send reports to the appropriate authorities to facilitate the tracking of inmates’ files, except in cases where inmates are transferred to other prisons.

³⁸ Monitor, Inmates in West Nile Spend Nights Standing, 2022. Accessible at: <https://www.monitor.co.ug/uganda/news/national/inmates-in-west-nile-spend-nights-standing-3854688> (Accessed on 23rd October, 2023)

³⁹ Uganda Prisons Service, Monthly statistics summary, July 2023. Accessible at: <https://prisons.go.ug/sites/default/files/July%20%202023%20Report.pdf> (Accessed on 23rd October, 2023)

⁴⁰ Forbes, The World’s Most Overcrowded Prison Systems (Infographic). Accessible at: <https://www.forbes.com/sites/niallmccarthy/2018/01/26/the-worlds-most-overcrowded-prison-systems-infographic/?sh=542ecc421372> (Accessed on 23rd October, 2023)

The problem of overcrowding is also present in remand homes. Most police stations do not have separate cells for children, and they are thus kept in a remand home, which is an institution where juvenile offenders are incarcerated during their trial and serve their sentence. An official in charge of a remand home interviewed for this survey stated that the primary role of a remand home is to ensure safe custody of juveniles/children on remand and to provide rehabilitation of children on remand. In Uganda, remand homes are under the supervision and administration of the Ministry of Gender, Labour and Social Development. There are few remand homes considering the number of juvenile offenders. In 2021, there was a slight increase in the number of juvenile offenders, from 1,220 in 2020, to 1,346 in 2021 including 60 girls.^[41]

The Officer-in-charge of a remand home interviewed for this study noted that the six months mandatory bail limit specific to juveniles is not being fully respected, as there are many children that have spent over one year in the remand home. One of the challenges leading to such overstay in remand homes is the slow pace of investigations by the police.

Beyond overcrowding, other challenges mentioned by UPS and remand home key informants were:

- **Inadequate funds and logistics :** For example, Gulu prisons face challenges transporting prisoners to court because they do not have their own means of transport. As such, the prison also has to organize transport to far-off courts like Kitgum court or to the hospital. Due to the inadequate means, prisoners sometimes do not attend court sessions or fail to access quality medical services.
- **Lack of oversight by state attorneys on the sanctioning of juvenile files:** In remand homes, congestion is high. Most of the juveniles in detention are charged with petty offences such as that of common nuisance^[2]. Their files are sanctioned by state attorneys as the first action, without recourse to other remedial action. The law relating to processing cases of juveniles should be relaxed, especially in relation to minor offences. The practice of remanding children puts them at risk, especially for those with mental illness or chronic illnesses.
- **General gaps in the juvenile justice system.** Gaps for juveniles include the lack of adequate capacity by legal aid service providers to represent juveniles and the over-remanding of children without due consideration of other options. There is currently limited use of child-friendly approaches in arresting and detaining juveniles. There is a need for capacity building for stakeholders involved in the juvenile justice system to improve their legal knowledge and build their capacity to provide child-friendly services in the criminal justice system.

⁴¹ Monitor, Gov't Asked to Establish more Remand Homes for Juvenile Offenders, 2022, Accessible at: <https://www.monitor.co.ug/uganda/news/national/gov-t-asked-to-establish-more-remand-homes-for-juvenile-offenders-4000652> (Accessed on 23rd October, 2023)

⁴² Penal Code Act, Article 160(1) and (2)

6.6. Local Councils and cultural leaders.

The Constitution recognizes the role of culture in the protection of fundamental rights and freedoms of Ugandans. In the National Objectives and Directive Principles of State Policy, Principle XXIV states that “cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution may be developed and incorporated in aspects of Ugandan life”.

As demonstrated by findings presented in this report, cultural leaders and LC chairpersons play a critical role in many Ugandan communities, even when it comes to access to justice. They are usually the first point of contact in communities when any breach of peace occurs and are often required to handle them. Their role is mainly centred on alternative dispute resolution, rather than on litigation. Interaction with these duty bearers reveals that they are aware of their roles and often diligently execute them. This is especially the case in areas that have strong cultural values. In key informant interviews, cultural and local leaders illustrated their roles as follows:

- Providing alternative means of dispute resolution and justice for petty offences such as minor theft.
- Supporting police in the arresting of persons that breach the law in communities.
- Settling minor disputes in communities, for ex., disputes between neighbours or family.
- Connecting communities with the nearest police stations when their services are needed, for example in reporting incidents of murder, robbery, etc.
- Supporting accused persons in procedural requirements of applications for bail. LCs, for ex., write introductory letters to courts in support of persons who want to stand as sureties for their loved ones who have been produced in court for plea taking or are on remand.
- Coordinating and supporting security community meetings in their jurisdictions so that duty bearers like police officers can sensitize communities on legal aspects and procedures.

However, LC chairpersons and cultural leaders have been criticized for overstepping their mandate in the administration of justice. One FGD participant in Arua noted: *“Local Council leaders tend to demand exorbitant sums of money before they issue letters of support to persons who intend to stand surety for their colleagues or relatives.”* Another one in Kampala commented: *“The LCs do not organize or hold regular public meetings to support the public with the much-needed information that will continue to dispel ignorance about the justice system.”*

The main challenge faced by local and cultural courts in their work is their limited linkage and integration with more formal criminal justice institutions. In most parts of Uganda, cultural institutions are trusted by their community, mainly because they understand the peculiarity of the local cultural norms and often promote reconciliation and peaceful co-existence after a dispute. This sometimes creates friction between the formal and informal justice systems, as the latter is sometimes seen as interfering in the administration of justice. Yet, findings confirmed the impossibility of ignoring the crucial role that local and cultural systems play in communities. It is paramount that this role is defined with an appropriate framework, so that local and cultural systems can fulfil their role while ensuring respect for the rule of law. In particular, capacity building of local and cultural leaders on pre-trial procedural and constitutional rights is key to ensure that they operate under a principle of due process.

6.7. Advocates, Paralegals and Legal Aid Service Providers (LASPs)

The role of advocates and paralegals in a criminal justice system is deduced from the laws that govern the criminal justice system. These include the Constitution, the Police Act cap 303, the Magistrates Court Act Cap 16, the Trial on Indictments Act Cap 23, and the Criminal Procedure Code Act Cap 116. They are the champions of justice, as they are the ones who bring cases to court and fight for the rights of accused persons in accordance with legal standards. Paralegals, in particular, are the first port of call for most persons detained, especially in rural areas where services of advocates may be scarce and costly.

Discussions with the paralegals and lawyers show that they understand and have good knowledge of the rights and legal provisions that protect the rights of pre-trial detainees. As stated by one of the advocates interviewed for this study, “Advocates as defence counsel have the role of representing an accused person or suspect in all criminal proceedings right from investigations level at police to the court hearings. The advocate’s role is to ensure that all rights provided by the law to an accused person or suspect are upheld. For capital offences, where an accused person is unable to afford the services of a lawyer, a court-appointed public defender is agreed.”

During a key informant interview, one judicial officer further explained that the role of advocates is to enable the pre-trial detainee to access his or her constitutional rights by providing linkages to families, other services such as medical assistance, and by advocating for and ensuring speedy and fair trials and investigations. They also ensure that the state does not deny detainees their constitutional rights by ensuring that they are charged within 48 hours and detained in gazetted areas, among other safeguards.

As added by another advocate during a key informant interview, paralegals are also important in that they provide lower-cost legal advisory and representation services to suspects and accused persons at courts and police stations. The services here include contacting lawyers and relatives for persons detained, facilitating the release of suspects on police bond, and drafting applications for release on bail, discharge of accused persons or dismissal of cases if have been delayed in court.

Advocates and paralegals may face challenges in their interaction with duty bearers such as police officers, who may hold negative perceptions of them, impeding their work. The paralegals surveyed noted that their workload can sometimes be overwhelming, considering that they operate on a pro bono basis with a shoe-string budget. A judicial officer noted during a key informant interview:

“For a human rights defender in this category to be able to perform and execute their work effectively, it’s important to have a passion for the efficient functioning of the criminal justice system. Such passion is often seen in the zealous provision of pro bono services. This is especially so because there are not so many opportunities in the Ugandan criminal justice to represent rich or wealthy clients. Most of the suspects, accused persons or even victims are poor persons or come from indigent backgrounds. Without passion for the work or a desire to see the system work efficiently and effectively, it is easy to get demotivated.”

The motivation to continue working overtime with limited benefits is sometimes low. Few accept to take up opportunities in remote areas, yet there is a high number of clients who need support. Overall, most legal aid service providers are urban-based and do not carry out regular outreach in the communities. Communities like those in Lamwo district have very few advocates and legal aid service providers (LASPs).

The other limitation relates to the necessary reliance by LASPs on donor funding. As recent developments in Uganda have shown, this is not sustainable, as demonstrated by the closure of the Democratic Governance Facility (DGF), which forced many LASPs to close offices. This highlights the need for legal aid service provision to be taken up by the state as a matter of national importance. As noted by a legal aid service provider, indigent and economically vulnerable persons face disproportionate challenges in accessing justice:

“Today, it is close to impossible for one to be granted bail without paying money, even when the law states that bail application is a right and is free of charge. This means that poor detainees will most likely not be granted bail or even a police bond. Advocates are also money-minded and have failed to be honest. Many poor victims and suspects never get fair representation in courts because all advocates want money. The quest for justice is now one between those who have money versus those without.”

There is currently a very limited obligation on the government to provide legal aid. It does not cover pre-trial detention, nor does it cover all categories of indigent or vulnerable persons. During a baseline study published by ASF in 2022, findings showed that most detainees tend to come from low socio-economic backgrounds, which makes them particularly helpless in the face of rights violations if they do not have access to legal aid⁴³. The National Legal Aid Bill, currently under review by Parliament, seeks to create a framework to put into law the government’s obligation to provide legal aid to indigent or vulnerable persons. The Bill should be expedited to ensure that representation is available to capital and non-capital offenders, starting from the time of their arrest.

⁴³ ASF, Protecting constitutional and procedural rights of pre-trial detainees through access to justice in Uganda. Baseline Report, 2022. Accessible at: https://asf.be/wp-content/uploads/2023/01/ASF_Baseline-survey-Protecting-constitutional-and-procedural-rights-of-pre-trial-detainees-through-access-to-justice-in-Uganda_2023.pdf

7. CONCLUSION AND RECOMMENDATIONS

Through the knowledge, attitudes and practices of communities and people in pre-trial detention, and through the perspectives of duty bearers, this report has shown that there are still significant challenges in promoting access to justice in Uganda, particularly when it comes to procedural and constitutional rights. Based on the findings, ASF makes the following recommendations.

General recommendations:

To the Government of Uganda:

1. Improve coordination between criminal justice institutions (police, prisons, judiciary, ODPP) through regular funding of District Chain-linked Committee (DCC) and Regional Chain-linked Committee (RCC) meetings, to ensure that checks and balances are functioning and that institutions work together to solve systemic issues.
2. Ensure continuous training of duty bearers on human rights protection within the context of their duties.
3. Ensure that duty bearers found in breach of their duties are held accountable, in particular through the implementation of the Human Rights Enforcement Act 2019.
4. Maintain efforts to eradicate corruption, particularly within the Uganda Police Force.
5. Engage and empower cultural and local leaders in supporting the administration of alternative dispute resolution, sensitizing communities about criminal justice and individual rights, providing support to individuals in contact with the criminal justice system, and referring cases to police when necessary.
6. Employ more interpreters in the police, prison and court services to facilitate effective communication between the accused persons and criminal justice stakeholders. This is particularly crucial in areas where foreign languages are used, such as in refugee-hosting districts.

To Parliament:

1. Consider amendment of the Trial on Indictments Act and the Magistrates Courts Act to repeal the requirement for committal proceedings or expand the scope of jurisdiction of Magistrates Court in offences triable by the High Court to include powers to evaluate evidence and hear applications arising in such cases.
2. Expedite the passing of the Legal Aid Bill to ensure free legal representation for the most vulnerable and indigent persons.

Specific recommendations:

To the Uganda Police Force:

1. Enforce standards of arrest and detention, including the need for reasonable grounds to arrest a suspect and the rule to produce a suspect in court within 48 hours.
2. Strengthen investigative capacities of police officers to ensure sufficient evidence collection before making an arrest, to minimize the risk of prolonged detention.
3. Ensure that officers who violate the constitutional and procedural rights of suspects (including standards of arrest) or solicit bribes are held accountable.
4. Increase oversight towards the adequate treatment of juveniles, including their separation from adults in detention and ensure the presence of parents or guardians during arrest and trial processes.
5. Intensify awareness raising and community outreach to improve communities' understanding and appreciation of the role of police through community policing initiatives like regular community engagements, dialogues, and educational programs that promote mutual understanding and trust.

To the Office of the Director of Public Prosecutions

1. Promote a culture of expeditious and professional investigations by emphasizing the responsibility of state attorneys to provide checks and balances for police behaviour, including by refusing to sanction files where there is insufficient evidence of the suspect's guilt and/or where the suspect's non-derogable rights were violated.

To the Judiciary

1. Promote the role of judicial officers in rooting out bad practices and delayed proceedings by striking with nullity all cases which involve a violation of the accused's non-derogable rights or order the discharge of the accused on bail when the time limit for mandatory bail has passed.
2. Provide refresher trainings to judicial officers on promoting, protecting and guaranteeing constitutional and procedural rights.

To the Uganda Prisons Service

1. Promote regular updates to courts of cases of prisoners who have overstayed on remand beyond mandatory bail period.

To Legal Aid Service Providers

1. Maintain and scale up legal aid activities, including in the most difficult areas by providing incentives for advocates to work there or through mobile clinics.
2. Train more community-based paralegals and equip them with key technical knowledge and skills to support suspects and accused persons, especially in hard-to-reach areas.

8.ANNEX

This section presents the general characteristics of the respondents that participated in the structured survey, such as location, gender, age, education, marital status, and disability status. The socio-demographics are critical in understanding and contextualizing findings.

8.1 COMMUNITY MEMBERS

TABLE 2: SOCIAL DEMOGRAPHICS OF COMMUNITY MEMBERS

Background Characteristics	Male		Female		Total	
	#	%	#	%	#	%
District						
Kampala	44	44	57	56	101	25
Arua	52	51	50	49	102	25
Gulu	53	53	47	47	100	25
Lamwo	40	39	62	61	102	25
Age Group						
Youth (16-35 Years)	129	45	155	55	284	70
Non-Youth (Above 36 Years)	60	50	61	50	121	30
Nationality						
Ugandan	170	49	179	51	349	86
Non-Ugandan	19	34	37	66	56	14
Highest Education level						
No formal education	7	23	24	77	31	8
Incomplete primary	24	39	37	61	61	15
Complete primary (certificate)	15	54	13	46	28	7
Incomplete O level	22	47	25	53	47	12
Complete O level (certificate)	36	49	37	51	73	18
Incomplete A level	20	69	9	31	29	7
Complete A level (Certificate)	29	53	26	47	55	14
Vocational education	15	37	26	63	41	10
University graduate	19	54	16	46	35	9
Other	2	40	3	60	5	1
Marital Status						
Never married	86	58	62	42	148	37
Married/staying together	84	45	102	55	186	46
Divorced/separated	16	38	26	62	42	10
Widowed	3	10	26	90	29	7
Disability status:						
PWD	22	46	26	54	48	12
Non-PWD	167	47	190	53	357	88
Form of Disability						
Physical Handicap	11	46	13	54	24	50
Visual Impairment	10	50	10	50	20	42
Auditory impairment	0	0	3	100	3	6
Mental impairment	1	100	0	0	1	2
Total	189	47	216	53	405	100

8.2. POLICE DETAINEES

TABLE 3: SOCIAL DEMOGRAPHIC CHARACTERISTICS OF POLICE DETAINEES

Background Characteristics	Male		Female		Total	
	#	%	#	%	#	%
District						
Kampala	29	78	8	22	37	39
Arua	7	37	12	63	19	20
Gulu	12	60	8	40	20	21
Lamwo	20	100	0	0	20	21
Age Group						
Youth (16-35 Years)	56	68	27	33	83	87
Non-Youth (Above 36 Years)	12	93	1	8	13	14
Highest Education Level						
No formal education	3	50	3	50	6	6
Incomplete primary	15	88	2	12	17	18
Complete primary (certificate)	6	60	4	40	10	10
Incomplete O level	17	63	10	37	27	28
Complete O level (certificate)	11	100	0	0	11	12
Incomplete A level	1	33	2	67	3	3
Complete A level (Certificate)	7	78	2	22	9	9
Vocational education	5	83	1	17	6	6
University graduate	2	40	3	60	5	5
Other	1	50	1	50	2	2
Marital Status						
Never married	30	68	14	32	44	46
Married/staying together	32	78	9	22	41	43
Divorced/separated	6	60	4	40	10	11
Widowed	0	0	1	100	1	1
Disability status						
Background Characteristics	Male		Female		Total	
	#	%	#	%	#	%
PWD	5	83	1	17	6	6
Non-PWD	5	6	27	94	90	94
Total	68	71	28	29	96	100

8.3. PRISON INMATES

TABLE 4: SOCIO-DEMOGRAPHIC CHARACTERISTICS OF PRISON INMATES

Background Characteristics	Male		Female		Total	
	#	%	#	%	#	%
District						
Kampala	0	0	0	0	0	0
Arua	21	96	1	5	22	41
Gulu	12	100	0	0	12	22
Lamwo	14	70	6	30	20	37
Age Group						
Youth (16-35 Years)	32	89	4	11	36	67
Non-Youth (Above 36 Years)	15	83	3	17	18	33
Highest Education Level						
No formal education	2	100	0	0	2	7
Incomplete primary	15	71	6	29	21	68
Complete primary (certificate)	4	100	0	0	4	13
Incomplete O level	11	92	1	8	12	39
Complete O level (certificate)	5	100	0	0	5	16
Incomplete A level	0	0	0	0	0	0
Complete A level (Certificate)	3	100	0	0	3	10
Vocational education	3	100	0	0	3	10
University graduate	4	100	0	0	4	13
Other	0	0	0	0	3	10
Marital Status						
Never married	17	90	2	11	19	35
Married/staying together	22	88	3	12	25	46
Divorced/separated	7	78	2	22	9	17
Widowed	0	0	1	100	1	2
Disability status:						
PWD	5	100	0	0	5	9
Non-PWD	42	86	7	14	49	91
Total	47	87	7	13	54	100

8.4. YOUNG PEOPLE (REMAND HOMES)

TABLE 5: SOCIAL DEMOGRAPHIC CHARACTERISTICS OF YOUNG PEOPLE (REMAND HOMES)

Background Characteristics	Male		Female		Total	
	#	%	#	%	#	%
District						
Kampala	11	61	7	39	18	62
Gulu	6	55	5	46	11	38
Age Group						
15 Years and Below	5	63	3	38	8	28
Above 15 years	12	57	9	43	21	73
Level of education						
Incomplete primary	13	77	4	24	17	59
Complete primary (certificate)	1	25	3	75	4	14
Incomplete O level	2	33	4	67	6	21
Complete O level (certificate)	1	50	1	50	2	7
Total	17	58.6	12	41.4	29	100

DETAINERS

RIGHTS


WANTER

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



Help bring about a fairer world
by supporting justice
and the defence of human rights

