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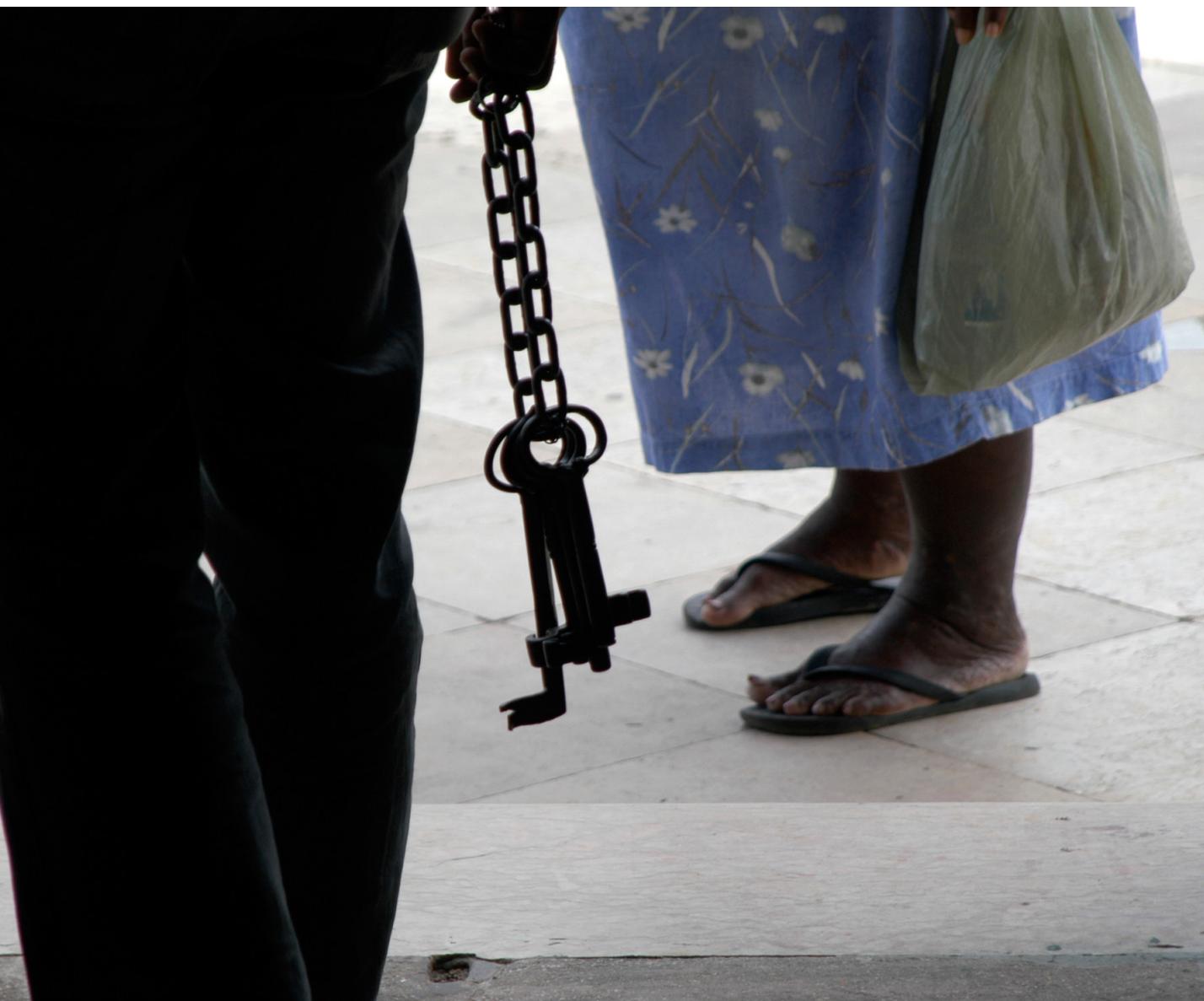
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# The Socio-Economic Impact of Pre-Trial Detention in Kenya, Mozambique and Zambia



Lukas Muntingh and Jean Redpath

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# The Socio-Economic Impact of Pre-Trial Detention in Kenya, Mozambique and Zambia

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The research partners are:

- Overall co-ordination: Civil Society Prison Reform Initiative (CSPRI) and the Dullah Omar Institute, University of the Western Cape;
- Kenya: Independent Medico Legal Unit (IMLU);
- Mozambique: *Liga dos Dereitos Humanos* (LDH); and *Liga dos Direitos Humanos* (LDH) and *Centro de Direitos Humanos* (CDH)
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# Executive summary

In many countries people accused of crimes are held in detention before trial. The law permits this detention usually in order to guarantee the appearance of the accused at trial. This project seeks to confirm and quantify the socio-economic impact of such pre-trial detention on detainees, their families, and associated households, in the main urban centres of Kenya, Mozambique and Zambia.

The project was informed by an understanding of how socio-economic rights intersect with fair trial rights. The nature of the obligations on states, as set out in instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), are such that states should 'respect', 'protect' and 'promote' these socio-economic rights. The duty to respect entails an obligation not to interfere with the resources of individuals; their freedom to find a job; nor their freedom to take necessary action; and to use their resources to satisfy needs. Fair trial rights require inter alia non-arbitrary arrests; that the decision to detain is undertaken by a judicial officer; and that trial or release occurs within a reasonable time. In short, persons awaiting trial should not as a general rule be detained in custody. Socio-economic rights intersecting with fair trial rights, essentially means that criminal procedural laws and practices must be designed and implemented in such a way as to ensure that the impact of interference with socio-economic rights on all persons, is minimised. Thus detention of an accused should only occur when absolutely necessary and for the shortest possible duration.

This project sought to understand and quantify how the decision to detain an accused person affects socio-economic rights, that is, the resources of individuals, including individuals other than those being detained. Empirical evidence was obtained from interviews with detainees and affected household members, identified through their visits to people detained, or traced from people who are detained. Additional information was obtained from registers in the relevant places of detention, and from prior pre-trial audits.

The places of detention selected for the study provided insight into pre-trial detention trends and the impact on the greater urban areas of Nairobi, Maputo, and Lusaka. The project found that while there are significant commonalities observed between the three urban centres, there are also notable unique trends in socio-economic impact in each country.

Common to all three sites was evidence to support the contention that the decision to detain an accused person before trial, almost invariably, interferes with the resources of individuals, including individuals other than those being detained. The impact is felt by families and other households associated with the detainee, and where the detainee is female, the impact on children in particular, can be severe. Impact is generally immediate, but may have enduring negative consequences from which a household struggles to recover. Depending on a household's vulnerability and resources, it will experience the impact of detention to

a greater or lesser degree. The research points to a complex set of factors that interact to either intensify or ameliorate the socio-economic impact of pre-trial detention. These include the level of poverty of the household; the extent of prior reliance on the detainees' income or other contributions to the household; the number of dependents; the gender of the detainee; the number and age of children in the household; the duration and location of the detention relative to the household; and the costs associated with the detention itself, which include providing food during police detention or attempting to secure legal representation. Families, friends and acquaintances also bring a considerable range of essential items to detainees which the state ought to provide. In effect, it is the poor who are subsidising imprisonment.

In each of the three countries, which are the focus of this report, namely Kenya, Mozambique and Zambia, infringements of both fair trial and socio-economic rights could be identified. In all three countries there is evidence to suggest that the failure to adhere to fair trial rights exacerbates the socio-economic impact. Lengthy periods of detention running into years in Zambia, infringes the right to a fair trial without unreasonable delay; unaffordable bail in Kenya, infringes the right to equality before the law; in Mozambique, not being taken to court to apply for bail, infringes the right to challenge one's detention. In each case the infringement may have led to a detainee remaining in detention longer than they may otherwise have done, thus increasing the socio-economic impact felt by families and associated households.

In Nairobi, Kenya, a pattern emerged where detainees were highly likely to be migrant workers, who are single or married with multiple dependents, living and working away from the family in the greater urban area, in order to be able to provide an income to those in rural areas. Available information suggests they are unlikely to be recidivists, and likely to be held on theft charges. Detainees are highly likely to spend some months in detention. Amongst female detainees, the pattern was predominantly of migrant domestic workers earning around or less than the minimum wage, also supporting dependants elsewhere, arrested for offences conceivably related to their former employment. Interviews with associated household members confirm the impact of the loss of the detainees' care and financial support, and the stress and depression occasioned by their arrest. Often assets were sold, money was borrowed, and income was lost. A significant proportion of detainees were held on unaffordable bail, which was an additional source of stress for respondents in associated households.

In Maputo, Mozambique, detainees tended to reside with their families and were integral to their families' emotional, social and economic well-being. The majority of detainees are of prime income-earning age, have basic education, and live with their families. Their families are not wealthy, and have incomes which are highly reliant on the income and non-monetary support formerly generated by the detainees. Women were again reasonably likely to engage in domestic work, and to be held on child-related offences. Many detainees were responsible for the entire household income: among men, more than two-thirds contributed the entire

household income, while among women more than 40% contributed the entire household income. The continued incarceration of the detainee, in the majority of instances, more than halves the family's income, and places additional economic and social strain on the family, including the cost and burden of visiting the detainee over extended periods.

In Lusaka, Zambia, instances of exceptionally long durations of detention were observed; with one in every ten detainees interviewed having been in custody for four years or longer. In many of these instances families had ceased to visit the detainees. The median duration of detention for those detainees linked to respondents not recently visited was 270 days, compared to 60 days for those who were visited by their families and friends. The median travel costs for a single visit represented almost one-sixth of median household income. Detainees were more likely than the Zambia average to be married, and tended to have slightly larger households than the Zambian average. Almost all were economically active and had education levels in line with the Zambian population, and were highly likely to speak a minority ethnic language. More than half of households were entirely reliant on the detainee's former contribution for total household income. More than half had to sell an asset; and a third had to borrow money as a result of the detention.

While respect for fair trial rights may ameliorate socio-economic impact there is a need to recognise that even when fair trial rights are respected, there may be an additional need to take into account socio-economic impacts, in the way in which laws are made and implemented. Whether or not a country is signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), states should be aware of the ways in which state policies and practices may be aggravating and entrenching poverty, and are thus counter-developmental.

The vast majority of pre-trial detainees are generally similar to most other people in their country, and tend to be integrally involved in supporting their families, whether financially or emotionally, or in other ways, and enjoy the respect of society. Their absence has a measurable impact, frequently more than halving incomes, or depleting savings. It often means plunging families into debt and forcing the sale of assets. While some may be guilty of crimes, fair trial rights require that their cases be heard without undue delay, and that they are presumed innocent until they are tried and convicted, or acquitted.

The evidence in this study suggests that the criminal procedural system metes out a 'punishment' in the form of a socio-economic impact on detainees and their families, before conviction, and regardless of guilt or innocence.

Respect for socio-economic rights by states and awareness of poverty impacts, would mean that criminal, and criminal procedural laws, and practices, are designed and implemented in such a way as to ensure that socio-economic impact on all persons is minimised. This may place an obligation on states to decriminalise trivial offences; to ensure that alternative methods of securing attendance at trial are available; to ensure individuals are tried within

a reasonable time; and beyond simple compliance with fair trial rights, to reconsider the appropriateness of pre-trial detention in the light of inevitable and severe impacts, which cause disproportionate harm to detainees and affected households.

# Chapter 1 :

## Introduction to the report

In many countries, persons accused of crimes are held in detention before trial. The law permits this detention before trial usually in order to guarantee the appearance of the accused at trial. That imprisonment while awaiting trial may have significantly negative consequences for the families and households of those imprisoned, particularly those who are poor and marginalised. This has been succinctly summarised by the UN Special Rapporteur on Extreme Poverty and Human Rights in a recent report:

The economic and social costs of detention and incarceration can be devastating for persons living in poverty. Detention and incarceration can lead to loss of income and employment and often temporary or permanent withdrawal of social benefits. Their families, particularly their children, are also directly affected. Therefore, criminal justice systems predicated on detention and incarceration, even for minor non-violent crimes, can themselves represent a significant obstacle to access to justice for persons living in poverty. Those who are poor and vulnerable are likely to leave detention disproportionately financially, physically, and personally, disadvantaged.<sup>1</sup>

This project seeks to confirm and quantify the socio-economic impact of pre-trial detention on detainees, their families and associated households in the main urban centres of Kenya, Mozambique and Zambia. The aim is to provide empirical evidence of who is detained; the households affected by that detention; and the nature and extent of the impact of that detention. It is intended that the evidence will inform states, donors, and development agencies, of the ways in which, and the extent to which, pre-trial detention practices have a social and economic impact, particularly on the poor and marginalised.

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<sup>1</sup> A/67/278 para 50.

## Socio-economic rights and fair trial rights

The project was informed by the framework for socio-economic rights, as set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>2</sup> The rights enumerated in the ICESCR include:

- The equal right of men and women to pursue economic, social and cultural rights (art 3);
- The right to work and the duty of the state to take measures to enable people to access gainful employment (art 6);
- The right to just conditions of employment (art 7);
- The right to social security (art 9);
- The duty of the state to provide the widest possible protection to the family (art 10);
- The right to an adequate standard of living and to be free from hunger (art 11);
- The right to the enjoyment of the highest attainable standard of physical and mental health (art 12); and
- The right to education (art 13).

The nature of the obligations on states set out by the ICESCR is not that states must ensure that every person has employment, social security, and the like, but rather that states should 'respect', 'protect' and 'promote' these socio-economic rights. The duty to 'respect' entails an obligation not to interfere with the resources of individuals; their freedom to find a job; or their freedom to take necessary action to use their resources to satisfy needs.

This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedural and criminal laws. This project seeks to demonstrate, the decision to detain an accused person before trial almost invariably interferes with the resources of individuals, including individuals other than those being detained. Respect for socio-economic rights by states in this context would mean that criminal procedural laws and practices are designed and implemented in such a way as to ensure that the impact of interference with socio-economic rights on all persons is minimised, by ensuring that detention of an accused only occurs when absolutely necessary and for the shortest possible duration.

Indeed some would argue that simply ensuring fair trial rights are adhered to would ensure greater respect for socio-economic rights. The right to a fair trial is a peremptory norm of international customary law<sup>3</sup> and enshrined in article 14 of the International Covenant on

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<sup>2</sup> Kenya and Zambia have ratified the ICESCR but Mozambique has not.

<sup>3</sup> A peremptory norm is a fundamental principle from which no derogation is permitted. UN Human Rights Committee, *General Comment 29, States of Emergency (article 4)*, CCPR/C/21/Rev.1/Add.11 (2001), and UN

Civil and Political Rights (ICCPR). Articles 9, 10 and 15 of the ICCPR inform the content of a fair trial rights and establish that:

- Arrested or detained persons must be brought promptly before a judicial officer and be entitled to trial within a reasonable time or to release;
- It must not be the general rule that persons awaiting trial are detained in custody, and release may be subject to guarantees to appear for trial;
- There must be a fair and public hearing by an independent and impartial tribunal;
- There must be equality before the courts and tribunals;
- There must not be arbitrary detention;
- There must be restriction of the use of incommunicado detention;
- There must be access for lawyers, doctors and family; and
- There is independent internal and external oversight.<sup>4</sup>

Violations of the right to a fair trial are likely to exacerbate the socio-economic impact on detainees and their associated households. On the other hand, while strict adherence to fair trial rights may work to limit the negative socio-economic impact of pre-trial detention, some impact is likely to occur even when fair trial rights have been observed. There is thus an argument that there is a duty to take into account socio-economic rights beyond adherence to fair trial rights. In at least one jurisdiction in Africa it has been held that when sentencing the primary caregiver of children, the impact on children's rights to care must be taken into account.<sup>5</sup> By extension, it could be argued that when detaining an accused before trial, or deciding to extend the detention of an accused who has already been detained for some time, the socio-economic impact on children and dependents must be taken into account. Laws which provide for non-bailable offences, for example, do not adequately permit such socio-economic impacts to be taken into account. This report seeks to describe, based on empirical evidence, those impacts in order to encourage criminal and criminal procedural law reform aimed at limiting the use of pre-trial detention.

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Human Rights Committee, *General Comment 32: Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32 (23 August 2007), [54].

<sup>4</sup> UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, 3 July 2001, [34]. Articles 6 and 7 of the AChHPR reflect ICCPR safeguards, and the AChPR has provided further guidance on the content of the right to fair treatment in the Resolution on the Right to Recourse and Fair Trial (Res.4(XI) 92) and the Principles and Guidelines on Rights to a Fair Trial and Legal Assistance in Africa (See also, *Rights International v Nigeria*, African Commission on Human and Peoples Rights, Communication no. 215/98, [29]). See also, *Rights International v Nigeria*, African Commission on Human and Peoples Rights, Communication no. 215/98, [29].

<sup>5</sup> *S v M* (CCT 53/06) [2007] ZACC 18.

## Women and pre-trial detention

In most countries men form the overwhelming majority of pre-trial detainees. Yet the socio-economic impact of detention of an economically-active man is likely to fall on dependents and households, who are frequently comprised predominantly of women. This report seeks to demonstrate the extent to which this may be true.

At the same time, the direct impact of pre-trial detention on detained women, and on detained women's households and dependents, is understudied. In the light of a growing female detainee population, international law has developed specific rules for women.<sup>6</sup> Some recent research has touched on the detention of women, but not from the perspective of broader socio-economic impact.<sup>7</sup> The earlier study undertaken by Open Society Justice Initiative (OSJI) and United Nations Development Programme (UNDP) in West Africa, for example, tantalisingly noted that the ratio of women to men admitted to Prison Centres in Ghana over the period 2000-2004, varied widely from 1:6 to 1:20, according to a report of the Ghana Statistical Service. This may point to inconsistency in patterns of arrests of women over time. A more recent review of the literature on women in pre-trial detention, noted that there is a dearth of reliable and recent research on women in pre-

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<sup>6</sup> The Bangkok Rules were approved in 2010 in light of a growing female prison population worldwide and recognition of the lack of specific attention to the needs and rights of female prisoners in the Standard Minimum Rules for the Treatment of Prisoners (UNSMR) and the United Nations Standard Minimum Rules for Non-custodial Measures (also known as the Tokyo Rules). Meant to be used in conjunction with the Tokyo Rules, they represent the global goals of justice for female prisoners. Included in the Bangkok Rules are rules related to admission procedures (including rules related to family contact, legal advice, and the receipt of information on prison rules and the prison regime, and provisions related to caretaking arrangements for children), personal hygiene, health-care, safety and security, contact with the outside world, prison staff, classification of prisoners, prison regime, prison visits, reintegration upon release, minority needs and non-custodial measures. Among the specific rights that are established are the right to “facilities and materials required to meet women’s specific hygiene needs,” including sanitary towels (free of charge) and a regular supply of water (Rule 5); health screening, including mental health and screening related to sexual abuse and other forms of violence (Rule 6); immediate access to specialised psychological support for a woman who experienced sexual abuse or another form of violence before or during detention (Rule 7); gender-specific health care upon request (except where urgent intervention is required) (Rule 10); “individualised, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes” for women with mental health care needs (Rule 12); access to specialised substance abuse treatment programmes that take into account prior victimisation and other special needs (Rule 15); the development of alternative screening methods that will replace strip searches and invasive body searches (Rule 20); the right to not have disciplinary actions that prohibit family contact, especially with children (Rule 23); the right not to have restraints used during childbirth (Rule 24); encouragement and facilitation of family contact, including measures to “counterbalance disadvantages” faced by women incarcerated far from home (Rule 26); open contact during visits between mothers and children (Rule 28); and gender appropriate programming and services (Rule 42).

<sup>7</sup> See Lorizzo, T (2011) *From rule of law towards human rights-based approaches to criminal justice reform in Mozambique - The case of pre-trial detention*, Unpublished Masters Dissertation, University of Cape Town. Open Society Justice Initiative (2011) *The socio-economic impact of pre-trial detention*, New York: Open Society Justice Initiative. Open Society Justice Initiative (2011) *Pre-trial Detention and Health: Unintended Consequences, Deadly Results*, New York: Open Society Justice Initiative.

trial detention in Africa.<sup>8</sup> This project sought to capture the experience of sufficiently large numbers of female detainees in order to enhance the understanding of the detention of women, and the broader impact of their detention on associated families and households.

## Pre-trial detention and people with disabilities

People with disabilities are poorly documented in prisons research. Pre-trial facilities or sections have a particular role to play in the screening, treatment plans, and in sentencing considerations for people with disabilities. This project sought to understand the nature and extent of disabilities in pre-trial populations, and within their associated households.

## Methodology

The methodology comprised gathering and analysing data from (a) official records; (b) individuals awaiting trial in prisons; (c) households associated with persons awaiting trial; and (d) previous studies, in particular, prior audits of the criminal justice system in the respective countries.

The aim is to establish or quantify, inter alia:

- The demographic profile of pre-trial detainees;
- The loss of primary sources of income for households;
- Unanticipated expenses incurred by households (prison visits/mauling/subsistence items for detainees);
- Financial support, child care, and shelter burdens, on extended family occasioned by the detention;
- The burden of a parent's imprisonment experienced by children;
- Psychological and social impact on detainees and their dependants;
- Disrupted or reduced employment opportunities;
- Diversion of family activities to a focus on detention and visitation;
- Loss of family assets arising from the detention;
- Social isolation and community aggression, as a result of a family member being imprisoned;
- Exposure of pre-trial detainees to communicable or preventable diseases and ill-health; and
- The disruption of detainee's health.

<sup>8</sup> Ackerman, M. (2014) *Women in Pre-trial detention in Africa*, Bellville, Community Law Centre (PPJA – CSPRI).

The methodology envisaged for this study benefitted from the experience of similar studies conducted in West Africa<sup>9</sup>, which relied on interviewing detainees and tracing their families for interviews. The West Africa study was ultimately forced to rely almost entirely on the evidence obtained from detainee interviews, due to the difficulty experienced in tracing relatives and dependents of detainees. The current study sought to increase the number of interviews with families and households by targeting visitors of the detainees. It is submitted that this form of triangulation enhanced the validity of the findings.

To determine whether the sample of visitors needed to be supplemented by other interviews with affected non-visiting households, it was necessary to determine the extent to which detainees are visited. A sample of detainees was drawn from the admission registers and the extent to which detainees are visited was identified. If visiting was found to occur regularly with most or all detainees, an interview sample targeting visitors only was considered to be reasonably representative of detainees and affected households (this was the case in Mozambique). Where a significant number of detainees were found to be 'not-visited', then a separate sample and process of tracing relatives or connected households, who no longer visit, or who never visited, was undertaken, in order to attempt to ensure the sample also represents households and detainees who are not visited (this was the case in Kenya and Zambia).

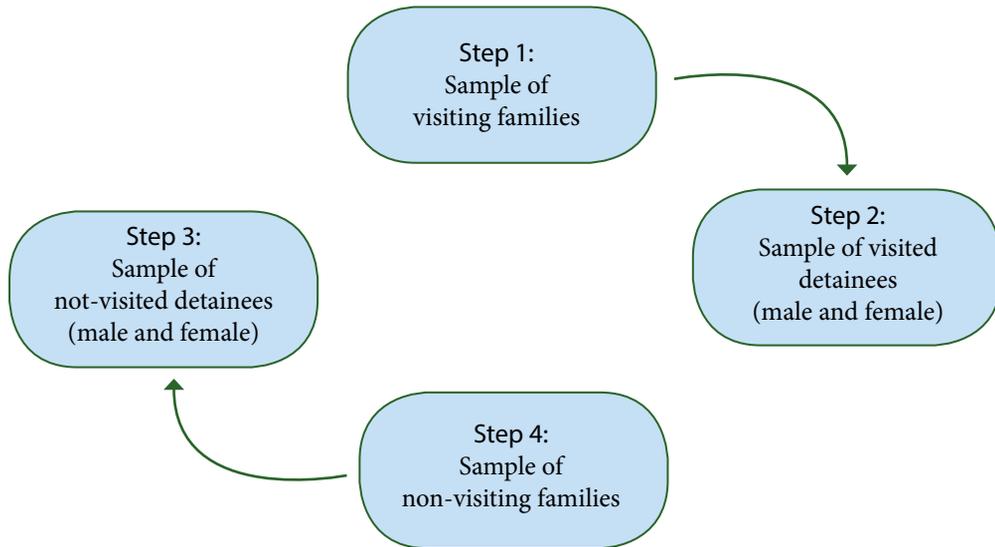
For visitor interviews, it was intended that the detainee being visited, by an interviewed visitor, would also be interviewed, and the data linked. Significant difficulties in this regard were experienced. Difficulties with linking may have been because of intervening releases from detention; transfers; insufficient information supplied by the visitor; or insufficient information recorded on the questionnaires to permit the linking. In all three countries an insufficient number of detainees could be directly linked to their visitors. Consequently in order to represent visited detainees, a random sample was drawn from the registers of detainees who had recently been visited.

In prisons where it was established that a significant minority of detainees failed to receive visits, a random sample of detainees from admission registers (the detainee register sample), was undertaken. This was done in Kenya and Zambia. Amongst those sampled, only the 'not-visited' detainees and families/households of detainees were traced, with the target number being determined by the ratio of 'visited' to 'not-visited' detainees. The project design is presented in Figure 1.1.

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<sup>9</sup> UNDP-OSI Country Studies: The Socioeconomic Impact of Pretrial Detention available at [http://www.undp.org/content/undp/en/home/librarypage/democratic\\_governance/access\\_to\\_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/](http://www.undp.org/content/undp/en/home/librarypage/democratic_governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/).

Figure 1.1: Project Design



### Visitor interview selection process

In order to randomise visitor interviewees as much as possible, visitors were approached on different days of the week and different hours of the day during times when visiting is permitted, over a period of weeks. (Some prisons allocate different visiting times for different sections of the prison, which was sometimes determined by seriousness of offence.) The extent to which this process resulted in a truly representative sample of visitors is unclear, as is the extent to which refusals to be interviewed may have demonstrated common trends. However, there is no reason to believe the process did not result in a representative sample of visitors.

### Detainee interview selection process

Prisons in Africa generally have a sequential handwritten register with the names of persons admitted on remand to the prison, recorded in chronological order. From the register, fieldworkers were instructed to draw a randomised sample of 80 people, going back two years. The questionnaire was then administered amongst the 80 selected (targeting a total of 30 interviews), who are still in detention. This sample was divided into 'visited' and 'not visited'. If all detainees are visited, then the sample did not include a 'not-visited' component. If the process yielded fewer than the target number, fieldworkers were instructed to re-iterate the sampling until the target was reached.

Selection was made based on admissions, rather than current occupation profiles, because occupation (or a snapshot view) tends to over-represent longer-term detainees. This research

sought to generalise about all those detained pre-trial, including those detained for short periods of time.

### Traced person interview selection process

The ratio of detainees who have been visited to those not visited by family/household members was determined through the sampling above. If a significant proportion of detainees were not recently visited, then an interview sample of 'not-visited' detainees was carried out. These detainees provided details of the households, who were then traced for traced person interviews.

### Female detainees

The process was intended to be replicated in prisons holding female detainees. However, some of the prisons selected had fewer than 30 female detainees at the time of conducting the fieldwork. Consequently all detainees were interviewed and attempts made to interview their households, whether through visitors or through tracing them. A total of 325 interviews were conducted as presented in Table 1.

Table 1: Interviews carried out

	Kenya			Mozambique			Zambia		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Visited detainees	58	2	60	39	30	69	79	20	99
Not-visited detainees	45	30	75	0	0	0	39	10	49
<b>Total detainees</b>	103	32	135	39	30	69	118	30	148
Visitors	58	0	58	39	30	69	70	22	92
Traced persons	40	20	60	0	0	0	38	8	46
<b>Total households</b>	98	20	118	39	30	69	108	30	138

Because significantly different trends were found from country to country, the data was analysed per country, and reported on in separate chapters in this report.

### Register data

Demographic and detention duration data was drawn from registers, or derived from pre-existing pre-trial audits. This provided the admissions profiles for the detainees, using a reliable source of information, particularly in relation to the duration of detention. Where additional information was available regarding the composition of the pre-trial population at the time of data collection, this information was also recorded.

## Work Plan

The project design envisaged the following broad stages for each country:

- Scoping;
- Questionnaire design;
- Training and piloting;
- Sampling, detainee data collection and questionnaire administration;
- Additional impact questionnaire administration;
- Collation and conversion of data;
- Generation of tables;
- Analysis and draft report;
- Internal discussion; and
- Final report, advocacy and dissemination.

## General notes

Undertaking a project of this nature in three countries, each with its own unique features, is complex. Two of the countries are Anglophone (Zambia and Kenya), and one (Mozambique), is Lusophone. Moreover, socio-economically and demographically, the countries are very different. Each also has its own traditions and practices in law enforcement. All three countries have in recent times undergone democratic reforms, and this has placed significant pressures on their governments to facilitate broad-based reform. In short, very little could be assumed to be the same across the three countries. As much as the plan was to utilise the same methodology and data collection tools across the three countries, it was inevitable that adjustments had to be made to the local contexts. The Kenya leg of the study benefitted from two prior iterations of questionnaire design, training, and data-capturing, while the Zambia leg suffered from being the first iteration. These adjustments were made following consultations with in-country stakeholders; and were thus motivated by the realities on the ground.

## Technical notes on the report

Various population measures require description in this report, such as durations of detention among the detention population, household income, age, and the like. The average is often not the best measure of duration, income, etc. because outliers (i.e. instances of very long duration of detention or high income), increase the average, such that it is thus not an accurate reflection of the central tendency of the data. The median is a better measure of central tendency when discussing the duration of detention, incomes and to a lesser extent, ages. The median is the value lying at the midpoint of a frequency distribution of observed values, such that there is an equal probability of another value falling above or below it.

Throughout this report the minimum, maximum, median, as well as 25th percentile (the value such that 25 percent fall below the value), and the 75th percentile (the value such that 75 percent fall below the value), are quoted in relation to durations of detention, incomes, and other measures, in order to provide a complete picture of the population which is being described.

The report describes the findings in each of the countries in separate chapters, given that some readers may be more interested in specific countries. Basic information on socio-economic rights and fair trial rights are provided in each chapter. The repetition of certain texts is thus done purposefully, for the benefit of readers. Each chapter also provides a country profile to orientate readers who are not familiar with certain basic socio-economic and prison system information of that country.

In the report monetary amounts are given in the local currency as well as US\$, based on the prevailing exchange rate at the end of 2014, when the data was analysed. This is given as a basic indicator for readers not familiar with the value of the local currency.

The last chapter of the report attempts to pull together the findings from a rights perspective, even though it is noted that there are substantially different trends in each country.

# Chapter 2

## The Socio-economic Impact of Pre-trial Detention in Nairobi, Kenya

### Acknowledgements

The support and co-operation of the Kenya Prison Service is acknowledged and appreciated.

### Summary

The socio-economic rights embodied in international conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), imply that states must 'respect', 'protect' and 'promote' socio-economic rights. The duty to 'respect' entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action, and to use their resources to satisfy needs.

This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedural and criminal laws, particularly when people are deprived of their liberty. Respect for socio-economic rights by states in the context of pre-trial detention means that criminal procedural laws and practices must be designed and implemented in such a way as to ensure that the impact of interference with socio-economic rights on all persons is minimised, by ensuring that detention of an accused only occurs when absolutely necessary and for the shortest possible duration.

This chapter provides some insight into who is detained, and the impact of that pre-trial detention as experienced by detainees, and affected households, in and around the commercial centre of Nairobi. The findings in this chapter demonstrate that the decision to detain an accused person before trial in Kenya almost invariably interferes with the resources of individuals, including individuals other than those being detained. The findings also suggests that the detention of accused persons is not occurring only when absolutely necessary, nor for the shortest possible duration.

The research reveals that male detainees are highly likely to be income-earning migrants with children, and supporting up to 7 persons not living with them. Available information suggests they are unlikely to be recidivists and likely to be held on theft charges. Detainees

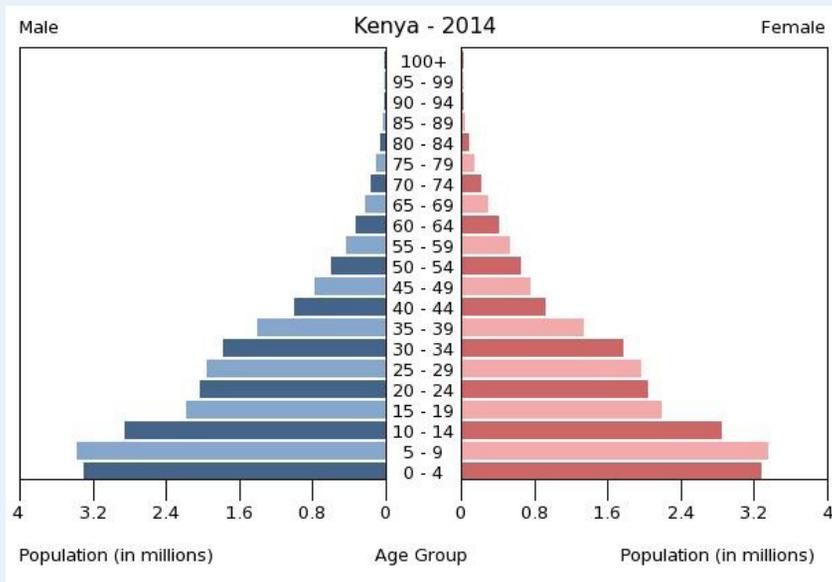
are highly likely to spend some months in detention. Female detainees are highly likely to be 'house-help' facing 'theft by servant' charges, child neglect or kidnapping charges, who are earning less than the minimum wage at the time of arrest and supporting up to 7 persons not living with them. At the time of arrest, 1 in 8 were HIV positive; and none were visited in the last two weeks. The gendered power dynamics which may have resulted in their incarceration are strongly suggested by this data.

Interviews with associated household members confirm the impact of the loss of the detainees' care and financial support and the stress and depression occasioned by their arrest to affected households. The extent of ill-health among detainees increased while in detention, and a significant proportion of detainees were assaulted while detained.

## Profile of Kenya

### KENYA<sup>10</sup> COUNTRY PROFILE POPULATION AND SOCIETY

<b>Population</b>	45,925,301
<b>Ethnic Groups</b>	Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Kisii 6%, Meru 6%, other African 15%, non-African (Asian, European, and Arab) 1%
<b>Languages</b>	English (official), Kiswahili (official), numerous indigenous languages
<b>Age structure</b>	



<sup>10</sup> All information from the CIA World Fact Book unless otherwise indicated. <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>

<b>Dependency ratios<sup>11</sup></b>	Total dependency ratio: 80.9% Youth dependency ratio: 75.8% Elderly dependency ratio: 5.1% Potential support ratio: 19.7% (2015 est.)
<b>Urbanization</b>	Urban population: 25.6% of total population (2015) Rate of urbanization: 4.34% annual rate of change (2010-15 est.)
<b>Major urban areas - population</b>	Nairobi (capital) 3.915 million; Mombasa 1.104 million (2015)
<b>Life expectancy at birth</b>	Total population: 63.77 years Male: 62.3 years Female: 65.26 years (2015 est.) Country comparison to the world: 181
<b>Education expenditures</b>	6.6% of GDP (2010) Country comparison to the world: 28
<b>Mean years of schooling<sup>12</sup></b>	6.27
<b>School life expectancy (primary to tertiary education)</b>	Total: 11 years Male: 11 years Female: 11 years (2009)
<b>Human Development Index<sup>13</sup></b>	0.535

11 Dependency ratios are a measure of the age structure of a population. They relate the number of individuals that are likely to be economically “dependent” on the support of others. Dependency ratios contrast the ratio of youths (ages 0-14) and the elderly (ages 65+) to the number of those in the working-age group (ages 15-64). Changes in the dependency ratio provide an indication of potential social support requirements resulting from changes in population age structures. As fertility levels decline, the dependency ratio initially falls because the proportion of youths decreases while the proportion of the population of working age increases. As fertility levels continue to decline, dependency ratios eventually increase because the proportion of the population of working age starts to decline and the proportion of elderly persons continues to increase.

*Total dependency ratio* - The total dependency ratio is the ratio of combined youth population (ages 0-14) and elderly population (ages 65+) per 100 people of working age (ages 15-64). A high total dependency ratio indicates that the working-age population and the overall economy face a greater burden to support and provide social services for youth and elderly persons, who are often economically dependent.

*Youth dependency ratio* - The youth dependency ratio is the ratio of the youth population (ages 0-14) per 100 people of working age (ages 15-64). A high youth dependency ratio indicates that a greater investment needs to be made in schooling and other services for children.

*Elderly dependency ratio* - The elderly dependency ratio is the ratio of the elderly population (ages 65+) per 100 people of working age (ages 15-64). Increases in the elderly dependency ratio put added pressure on governments to fund pensions and healthcare.

*Potential support ratio* - The potential support ratio is the number of working-age people (ages 15-64) per one elderly person (ages 65+). As a population ages, the potential support ratio tends to fall, meaning there are fewer potential workers to support the elderly.

12 <http://hdr.undp.org/en/countries/profiles/KEN>

13 <http://hdr.undp.org/en/countries/profiles/KEN>

## ECONOMY

Kenya is the economic and transport hub of East Africa. Kenya's real GDP growth has averaged around 5% for the past several years. According to recently rebased national statistics, Kenya's GDP for 2013 was \$55.3 billion, placing Kenya among the low middle income countries with per capita income of \$1,300. Agriculture remains the backbone of the Kenyan economy, contributing 25% of GDP. About 80% of Kenya's population of roughly 42 million works at least part-time in the agricultural sector, including livestock and pastoral activities. Over 75% of agricultural output is from small-scale, rain-fed farming, or livestock production. While Kenya has a growing entrepreneurial middle class, faster growth and poverty reduction is hampered by corruption and by reliance upon several primary goods whose prices have remained low. Inadequate infrastructure threatens Kenya's long-term position as the largest East African economy, although the Kenyatta administration has prioritised infrastructure development. International financial lenders and donors remain important to Kenya's economic growth and development, but Kenya has also successfully raised capital in the global bond market. Kenya issued its first sovereign bond offering in mid-2014, generating US\$2 billion at 6% interest. The funds are slated to be used for infrastructure projects. Nairobi has contracted with a Chinese company to begin construction of a new standard gauge railway, but the project allegedly has been beset by corruption and fraud. Unemployment is high at around 40%. The country has chronic budget deficits; and is in the process of devolving some state revenues and responsibilities to the counties. Inflationary pressures and sharp currency depreciation peaked in early 2012, but have since abated, following low global food and fuel prices and monetary interventions by the Central Bank. Recent terrorism in Kenya and the surrounding region threatens Kenya's important tourism industry.

<b>GDP (purchasing power parity)</b>	\$132.4 billion (2014 est.) \$125.8 billion (2013 est.) \$118.9 billion (2012 est.) note: data are in 2014 US dollars
<b>GDP - real growth rate</b>	5.3% (2014 est.) 5.7% (2013 est.) 4.5% (2012 est.)
<b>GDP - per capita (PPP)</b>	\$3,100 (2014 est.) \$2,900 (2013 est.) \$2,800 (2012 est.) note: data are in 2014 US dollars
<b>GDP - composition, by end use</b>	Household consumption: 81.1% Government consumption: 14% Investment in fixed capital: 20.5% Investment in inventories: -0.5% Exports of goods and services: 16.9% Imports of goods and services: -32.1% (2014 est.)
<b>Unemployment rate</b>	40% (2013 est.) 40% (2001 est.)

<b>Population below poverty line (below US\$ 1.25 per day)</b>	43.4% (2012 est.)
<b>Household income or consumption by percentage share</b>	Lowest 10%: 1.8% Highest 10%: 37.8% (2005)
<b>Public debt</b>	58.9% of GDP (2014 est.) 55.6% of GDP (2013 est.)

#### PRISON POPULATION <sup>14</sup>

<b>Prison population total</b>	54 154 at April 2015
<b>Prison population rate (per 100,000 of national population)</b>	119
<b>Pre-trial detainees/remand prisoners (percentage of prison population)</b>	40.4% (April 2015)
<b>Female prisoners (percentage of prison population)</b>	5.3% (October 2012)
<b>Number of establishments/institutions</b>	108 (2013)
<b>Official capacity of prison system</b>	26 757 (April 2015)
<b>Occupancy level (based on official capacity)</b>	202.4% (April 2015)

## Methodology

### Interviews

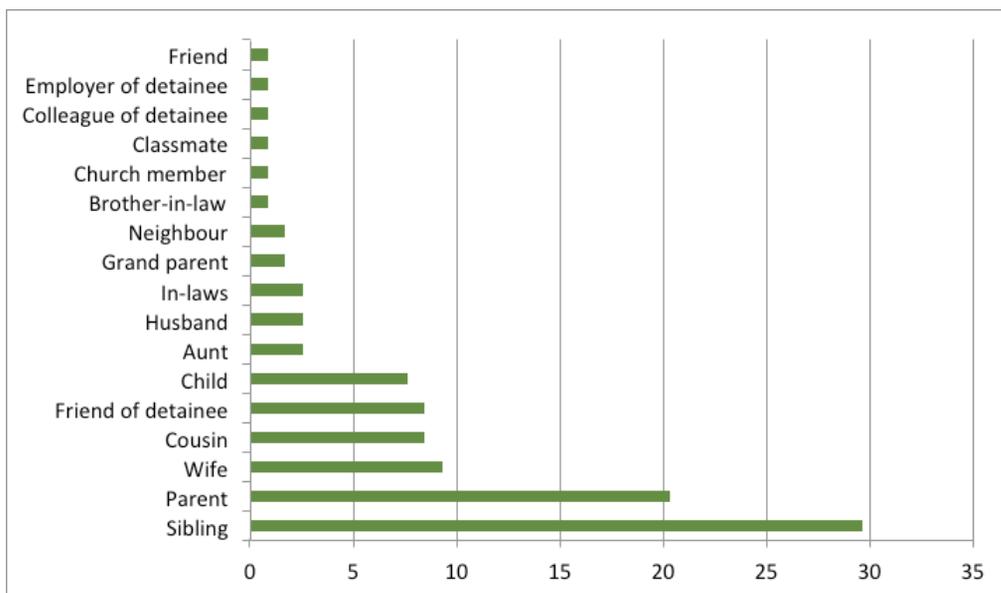
The methodology of selecting interviewees was as outlined in Chapter 1. Interviews were held with 103 male detainees and 32 female detainees.<sup>15</sup> Interviews were held with 118 visitors and traced persons, of which 98 were linked to male detainees and 20 were with respondents linked to female detainees. Some 41% of visitor and traced person interviews were with respondents who were traced, and 60% were with persons who were visiting a

<sup>14</sup> World Prison Briefs <http://www.prisonstudies.org/country/kenya>.

<sup>15</sup> There were 58 visited male detainees and 45 not-visited male detainees among the detainee interviews. Only two of the 32 female detainees were visited.

detainee. Some 85% of these respondents were family members of the detainee, while 15% were not.<sup>16</sup>

Figure 2. 1: Relationship of visitor-traced person respondents to detainee



Visitor-traced person respondents ranged in age from 17 to 74 years, with the median age being 36 years, which is some nine years older than the median age of detainees.<sup>17</sup> Some 58% of these respondents were female and 42% male.

### Register data

From the remand admission registers at the two men’s prisons, a random sample of 183 entries representing 2 642 admissions, over two years, was drawn.<sup>18</sup> This provided a profile of detainee admissions, generally against which to compare the interview profile, and in order to calculate duration of detention using official data sources. At Langata Women’s Prison, data was drawn from registers which related to the 30 detainees who were interviewed. This prison had 2 126 admissions over the last two years.

16 The most common relationship was sibling (30%) followed by parent (20%), and wife (9%).

17 The 25th percentile was 30 and the 75th percentile was 45.

18 For male detainees a random sample was drawn from the prison remand registers Nairobi Remand and Allocation Prison, and Thika Main Prison. There are three registers at Nairobi Remand: the Capital (Homicide) Remand Register; the Capital (Robbery) Remand Register; and the Ordinary Remand Register. A sample was drawn from each of these registers. Thika is an industrial town approximately 40 kilometres northeast of Nairobi. At Thika Main Prison there was only one remand register.

## Findings

The findings here are based on the interviews with both detainees, as well as with visitors and traced persons, and also refer to data collected from registers.

### Socio-economic profile of detainees

The socio-economic profile of detainees which emerges from the data is that detainees are poorer working-class, frequently migrant citizens of Nairobi, who are responsible for supporting many dependents.

#### The median age of detainees is older than 25 years

In line with findings from elsewhere in Africa, the median age of detainees is somewhat older than is often assumed, with the median age being closer to 30 years than to 20 years. The implication of the older age range is that detainees of this age are more likely to be economically active and hold familial or other responsibilities. The ages of interviewed detainees were representative of detainee admissions in general.<sup>19</sup>

Table 2.1: Age profile of detainees

	Minimum	Median	Maximum
<b>Male</b>	14	28	51
<b>Female</b>	18	27	75

#### Detainees are likely to be school-educated to Standard 8

It is often assumed that detainees may be less educated than the ordinary person. In Kenya after eight years' of schooling the Kenya Certificate of Primary Education (KCPE) is awarded.<sup>20</sup> This was the most common level of education among male detainees, 47% of men interviewed had this level of education; 33% of female detainees had achieved Standard 8; with 33% achieving more than Standard 8.<sup>21</sup> The figure for male detainees is

<sup>19</sup> The primary purpose of the register sample was to check whether the detainees interviewed are reasonably representative of detainees in general. In relation to both age and charges faced by detainees, there was no difference in the trends found for the interviewed detainees and the register sample. Age could only be determined from the register entries in 42% of cases. Among those for which age was recorded, the age ranged from 15 to 63 years, with the median age being 28 years. Among female detainees, the ages ranged from 18 to 71 years, with the median being age 27 years.

<sup>20</sup> Occupation was recorded in the register for 97% of female detainees. Occupation was recorded in the register for 25% of male detainees. Occupation was recorded in the register for 97% of female detainees.

<sup>21</sup> The education achieved was recorded for only 24% of male detainees in the samples. Among these, the most commonly achieved level of education, for 47% of those for whom education was recorded, was Standard 8. By contrast, for female detainees, education was recorded for 97%.

in line with most data indicating that only around half of Kenyans proceed from primary to secondary school. However, the data for female detainees suggests they may be slightly more educated than Kenyan women are generally. The slightly higher level of education of female detainees is in line with their reasonably high likelihood of employment, and the fact that most of these women are breadwinners (see below).

### **Female detainees are likely to be employed mostly as house-help or waitresses**

In line with their level of education, among male detainees, most common employment designations noted in the remand register were businessman, garbage collector, conductor, hawker, farmer, student, mechanic, and welder.<sup>22</sup> Among female detainees, more than half (53%) were recorded in the register as 'house help' and 7% as waitresses; other designations were farmer, food vendor, 'business lady', Mpesa-vendor<sup>23</sup>, and housewife.<sup>24</sup> Domestic workers in Kenya are particularly powerless and vulnerable. Their position is reflected in the following extract:

Vulnerability of domestic workers in Kenya is evident in the numerous documented accounts that show for instance that their remuneration tends to be among the lowest in the labour market, and they tend to be informally engaged. Furthermore domestic workers are vulnerable to abusive treatment, discrimination, and unfair working conditions. Such abusive practices tend to be aggravated by their general isolation from other workers, socio-cultural barriers (e.g. language, class and religion) that prevent them from engaging and negotiating with their employers and serious difficulties in finding alternative jobs due to their lower-than-average levels of formal education.<sup>25</sup>

### **Detainees were mostly formally employed or had small businesses**

All male and female detainees interviewed said they were economically active. Some 48% of male detainees indicated they had some form of formal salaried employment as their source of income; 26% indicated small businesses providing some sort of service; 18% indicated a sales business; 8% indicated subsistence farming; and some 5% indicated manufacture or repair, such as welding or stone-cutting. None said they engaged in begging. The majority of female detainees (53%) said their income came from domestic work ('house help', 'cleaning', 'chores', 'maid', 'caring for children'); 19% had small-scale sales businesses; 6% were waitresses; 6% were employees in small businesses; and 6% owned small businesses. None said they were engaged in begging.

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22 Occupation was recorded in the register for 97% of female detainees. Occupation was recorded in the register for only 25% of male detainees.

23 A mobile phone-based money transfer and micro-lending scheme.

24 Some 13% said they were unemployed.

25 Agaya, B. & Asunzam M. (2013) *Report of a Baseline Survey of Women Domestic Workers in Mukuru Informal Settlement - Nairobi Kenya*, OXFAM. <https://library.prospect.org.uk/id/2013/01310?display=preferred>

### Most detainees were earning an income at the time of arrest

Most detainees were earning an income at the time of their arrest. Some 90% of male and all female detainees indicated their income. Earnings of female detainees showed less of a range than the earnings of men, with some male detainees earning very little or very much.

Income figures should be compared to the monthly GDP per capita of US\$ 258 and the minimum wage in Kenya. The minimum wage for domestic help in cities in Kenya was KSh 9 780 (US\$ 108) per month in 2013.<sup>26</sup> Some research estimates that 43.4% of Kenya's population live on less than US\$1.25 per day (2012 est.), although this may be more prevalent in rural areas.

The median for men was KSh 7 200 (US\$ 80;) and for women KSh 10 000 (US\$110). Minimum wages for domestic help in cities in Kenya was KSh 9 780 (US\$ 108) per month in 2013.<sup>27</sup> All female detainees earned more than the poverty level of US\$1 per day; and half of female detainees earned at least the minimum wage for domestic work. Less than half of men earned the minimum domestic wage. These findings suggest that although detainees are poor, their loss of earnings would be significant to households being supported by them.

Table 2.2: Earnings of detainees at the time of arrest

	Minimum	25th percentile	Median	75th percentile	Maximum
Male detainees KSh	300	4 500	7 200	15 000	150 000
Male detainees US\$	3	50	80	167	1682
Female detainees KSh	8 000	8 000	10 000	10 000	14 000
Female detainees US\$	8	89	111	111	154

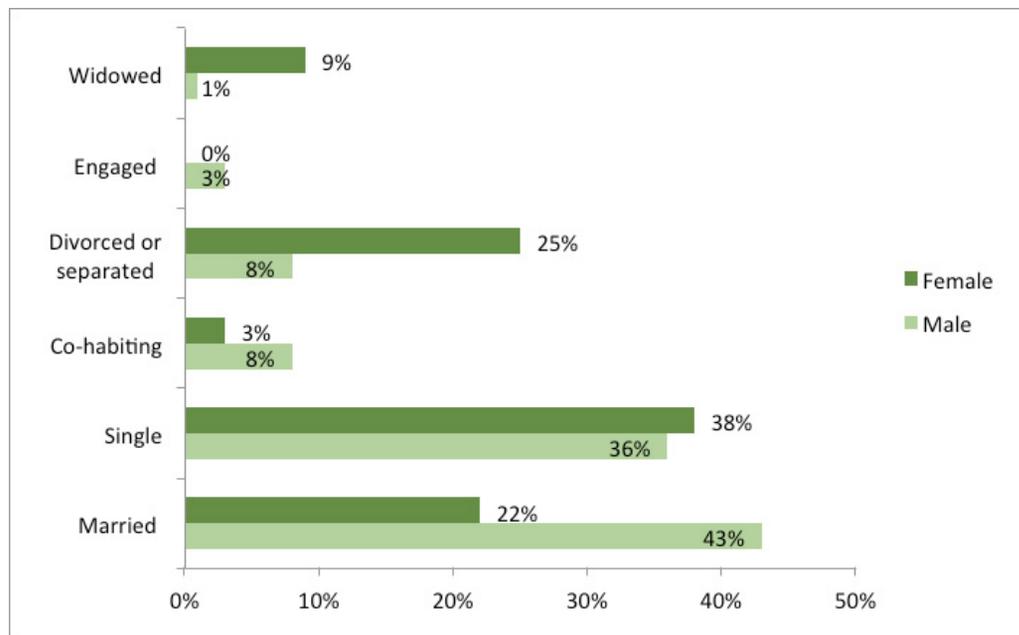
26 Mywage.org <http://www.mywage.org/kenya/home/salary/minimum-wage>

27 Mywage.org <http://www.mywage.org/kenya/home/salary/minimum-wage>

### Most male detainees are married while most female detainees are not

It is frequently theorised that a lack of partners or children may make people more susceptible to being detained pre-trial. Male detainees were, in line with Kenyan trends, more likely than not, to be married, co-habiting, or engaged. The findings do, however, suggest that younger male detainees under 35 years of age may be less likely to be married than other Kenyan men of similar ages, but older detainees are equally likely to be married as older Kenyan men.<sup>28</sup>

Figure 2.2: Marital status of detainees



A very different picture emerges in relation to female detainees, who were much more likely to be single compared to Kenyan national trends – divorced, widowed, or single, comprised 70%. This is in sharp contrast to Kenyan women generally, among whom the vast majority, 70%, who will be married at age 30-34 years.<sup>29</sup> This high tendency to be single among detainees is probably related to their breadwinner status, which in turn may have made them more at risk of detention.

<sup>28</sup> 20% of men aged 20-24 years are married compared to 15% of detainees; 57% of those aged 25-29 years are married compared to 48% of detainees; and 80% of those aged 30-34 years, compared to 42% of detainees; however 78% of detainees older than 34 years were married; which is in line with the general married profile among Kenyan men of this age-group. See Government of Kenya with United Nations Population Fund Kenya Country Office, Kenya Population Situation Analysis, July 2013, p 157, available at < <http://countryoffice.unfpa.org/kenya/drive/FINALPSAREPORT.pdf> >

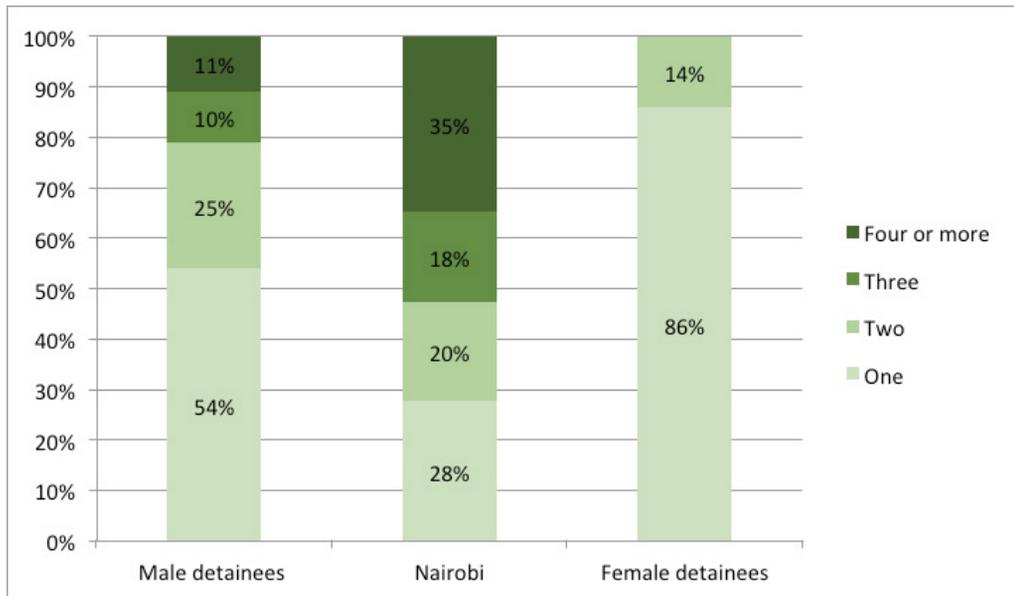
<sup>29</sup> Government of Kenya with United Nations Population Fund Kenya Country Office, Kenya Population Situation Analysis, July 2013, p 158, available at < <http://countryoffice.unfpa.org/kenya/drive/FINALPSAREPORT.pdf> >

Polygyny seems to be less common among detainees than Kenyan national trends suggest. Of male detainees who said they were married, only 2% had more than one spouse compared to Kenya as a whole, in which 13% of women are reported to be in a polygymous union<sup>30</sup> (the percentage was not reported for men). This suggests polygyny is not common amongst detainees in Nairobi. None of the female detainees indicated more than one husband.

### The vast majority of pre-trial detainees had children and additional dependants

The majority of male detainees, and all female detainees, had their own children as well as other dependents. Some 78% of male detainees either had their own children or had other dependents; some 60% had their own biological children, while 61% had other dependents or children other than their own biological children.

Figure 2. 3: Children and other dependents of detainees



All (100%), of female detainees had either a child of their own or another dependant. Some 81% of female detainees said they had their own children, with 9% having 5 or more children.<sup>31</sup> Some 72% of the female detainees interviewed said they had dependents other than their own children. The implication of this profile is that in the overwhelming proportion of cases, children are directly and indirectly affected as a result of the detention.

30 Government of Kenya with United Nations Population Fund Kenya Country Office, Kenya Population Situation Analysis, July 2013, p 158, available at < <http://countryoffice.unfpa.org/kenya/drive/FINALPSAREPORT.pdf>

31 Some 31% had one child; 13% had two children; 13% had three children; 16% had four children; and 9% had five or more children.

### One in eight male detainees had a disability

The purpose of the UN Convention on the Rights of Persons with Disabilities, articulated in Article 1, is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” Persons with disabilities are defined in Article 3 as those “who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

Article 14 of the Convention provides that “States shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.” ‘Reasonable accommodation’ means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

Some 12% (1 in 8) of male detainees interviewed indicated they have some form of disability, which is somewhat higher than the generally accepted proportion worldwide of 10%.<sup>32</sup> Of these, a quarter appeared to relate to loss of function in the limbs. This has implications for the prison system accommodation. Few prisons make any accommodation for people with disabilities. Only 3% of women indicated they had a disability.

### Female detainees are of minority ethnic affiliation

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), is a United Nations convention which commits state parties to the elimination of racial discrimination and the promotion of understanding among all races. ‘Racial discrimination’, is defined as “...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Kenya has 42 ethnic groups. Persons of Kikuyu ethnic affiliation are the most populous in Kenya and account for 22% of Kenyans, and are mostly concentrated in the centre of the country where the prisons in the sample were located. The Luhya is the second largest ethnic group, originally concentrated in the western part of Kenya. Kenya has a history of ethnic-related conflict and corruption, and the country and its individuals struggle not only to reconcile past human rights violations along ethnic lines, but also to address present ethnic-

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<sup>32</sup> *Convention on the rights of persons with disabilities - Some Facts about Persons with Disabilities* <http://www.un.org/disabilities/convention/facts.shtml>

based conflicts, and implement preventative measures for the future.<sup>33</sup>

Over or under-representation of any group among detainees in comparison with the ethnic composition of the general population, could be suggestive of patterns of discrimination in law enforcement. However, in this study, it was difficult to determine whether detainees in the sample over or under-represent any particular group, not least because the ethnic composition of the precise catchment area of the prisons concerned cannot precisely be determined. Further complicating matters, only 47% of male detainees ethnic affiliation was recorded. In line with the broader population, the most numerous group amongst male detainees for which ethnic affiliation was recorded, were Kikuyu (61%), while 14% were Kamba, 9% were Luo, and 4% were Samburu.

By contrast, all female detainees had ethnic affiliation recorded, and only 20% of female detainees were Kikuyu. The largest group was of Luhya, which comprised 37% of female detainees. Other designations were Kamba at 13%, Luo and Meru both at 10%, Kisii 6% and Embu 3%. The high proportion of Luhya among female detainees suggests that patterns of (unconscious or conscious) discrimination may be working together with gendered power dynamics leading to the pre-trial detention of these women.

## Households affected by the detention

The project design sought to understand the socio-economic impact of pre-trial detention primarily through the lens of the household. This strategy underestimated the extent to which pre-trial detainees in greater Nairobi would be migrants (rural- urban migrants) living in urban households comprised only of themselves, with dependants not living in the same household – despite the fact that the majority were married and had children. Fortunately questions were also asked regarding those whom detainees supported financially at the time of their arrest. Consequently these latter questions provided more insight as to the impact on other family members of the arrest and continued detention of the detainee, than the questions relating to households. The interviews with visitors and traced persons also provided additional insights into additional households affected by the detention of the detainee.

### Detainees households were small urban households

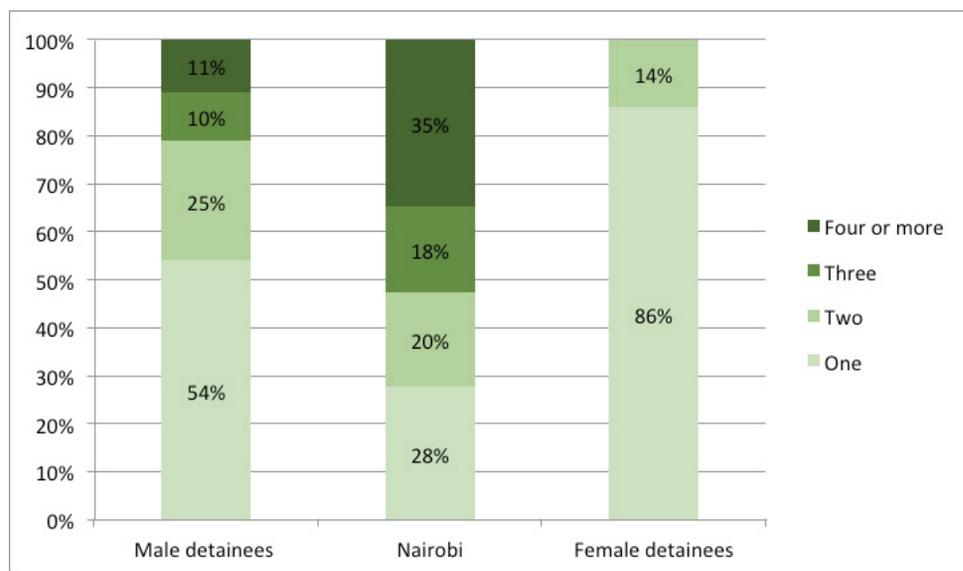
The interviewed detainees were more likely to live in smaller urban households than is common in Nairobi, which may be due to the housing of family in rural households (see Figure 2.4).<sup>34</sup> As much as 54% of male detainees said their household comprised of only one

33 *Submission from African Rights Monitor to the Committee on the Elimination of All Forms of Racial Discrimination*, 8 August – 2 September 2011, Geneva [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/KEN/INT\\_CERD\\_NGO\\_KEN\\_79\\_9398\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/KEN/INT_CERD_NGO_KEN_79_9398_E.pdf)

34 Government of Kenya with United Nations Population Fund Kenya Country Office, Kenya Population Situation Analysis, July 2013, p 162, available at <<http://countryoffice.unfpa.org/kenya/drive/FINALPSAREPORT.pdf>>

person, even though only 39% said their marital status was single. This suggests that some male detainees who lived alone have wives, partners or dependants who do not live with them. This is suggestive of patterns of internal migration common in Kenya in which “to reduce household expenses, a husband may return his wife and all or some of the children to the village while he remains in town.”<sup>35</sup> A large proportion (86%) of female detainees said they lived in a household comprising only themselves. Given the high proportion of female detainees who had their own children and other dependants, this is suggestive of the increasing trend in Kenya toward internal female migration for the purposes of employment as a ‘family survival strategy’.<sup>36</sup> Some 90% of female detainees were earning an income at the time of their arrest. Such migration increasingly occurs with children of the migrant remaining “in the village” with grandparents or other carers.<sup>37</sup> Only 14% of female detainees, all of whom said they had only one child, lived in a household comprising two persons. None lived in larger households. If the urban migration of female detainees is indeed a family survival strategy, their detention is likely to affect survival of the family.

Figure 2.4: Household size, pre-trial detainees compared to Nairobi



35 Government of Kenya with United Nations Population Fund Kenya Country Office, Kenya Population Situation Analysis, July 2013, p 207, available at <<http://countryoffice.unfpa.org/kenya/drive/FINALPSAREPORT.pdf>>

36 Adepoju, A. “Changing Configurations of Migration in Africa” available at <<http://www.migrationpolicy.org/article/changing-configurations-migration-africa>>

37 See Beguy and Cotton, “The Effects of Mother’s Migration on Family Dynamics and Child Residence: Experiences from the Informal Settlements of Nairobi, Kenya” available at <http://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CEUQFjAF&url=http%3A%2F%2Fpaa2013.princeton.edu>

### **Affected households extend beyond detainees' households**

In line with the findings from the detainee interviews, most of the visitors and traced persons (51%) said their detainee did not live with them permanently. This was the case for a similarly large proportion even if the respondent was a family member of the detainee (47% of family-detainees did not live with the family-member respondent).<sup>38</sup> Some 18% of detainees, all male, lived with respondents, who were not family members either permanently, (6%) or occasionally (12%). This is consistent with detainees being migrants and/or living in households separate from family.

### **Detainees were usually household heads of own urban households**

Given that most detainees lived in households of one, the detainees interviewed were highly likely to say they were the head of the household (81%). Considering only households with two or more people, 72% of male detainees indicated they were the head of the household, while some 6% identified their parent as the household head. By contrast some 63% of female detainees indicated they were the head of their household – a smaller percentage than those who lived alone. This suggests that women did not consider themselves as household head even if they lived alone. This could be the case where women are employed domestically and live alone in premises annexed to their employer's. Indeed some 16% indicated their employer as household head and 6% indicated their husband.

### **Half of male detainees and most female detainees supported visitor-traced person households**

Some 50% of visitors and traced person respondents said their detainee made a regular financial contribution to their households prior to detention. This rose to 55% in relation to family respondents and was 35% for non-family respondents. Some 70% of respondents linked to female detainees said the detainee contributed to their household. Support was correlated with living in the household. Some 24% of those detainees who 'never' lived in the visitor-traced person respondent household nevertheless contributed to the household, 70% of those who 'occasionally' lived in the household and 93% of those who lived in the respondent household permanently supported the household.

### **Most detainees said they contributed cash to their households**

Recall that income figures should be compared to the monthly GDP per capita of US\$ 258 and the minimum wage in Kenya. The minimum wage for domestic help in cities in Kenya were KSh 9 780 (US\$ 108) per month in 2013.<sup>39</sup> Some 43.4% of Kenya's population live on less than US\$ 1.25 per day.

<sup>38</sup> Some 23% said the detainee lived there occasionally (25% among family only); while 24% said the detainee lived there permanently (27% family only).

<sup>39</sup> Mywage.org, <http://www.mywage.org/kenya/home/salary/minimum-wage>

Most detainees (95%) said they provided cash to their own households, and few were able to indicate the contribution of any household member other than themselves. The amount of cash detainees said they contributed, ranged from KSh 1 500 (US\$ 17) to more than KSh 60 000 (US\$ 673) per month. This compares to the income range of KSh 300 (US\$ 3) and KSh 150 000 (US\$ 1 682), which suggests it is only those with very low incomes who do not contribute. In households of more than one person (46% of households), the second household member identified by detainees was highly likely (95%) to be indicated as an adult woman. Only 9% of detainees were able to identify the cash contribution of the second person in their household, which ranged from KSh 500 (US\$ 6) to KSh 12 000 (US\$ 135) per month. In those 10% of detainee households with three persons, the third person was most commonly a child or young adult. Only 1% of detainee households identified a third person as contributing to the household income. Fourth and fifth household members were also identified as children. These findings suggest that detainee households would be bereft of their main source of income on detention of the detainee.

### Detainees supported dependents at the time of arrest

Most detainees indicated that they financially supported at least one other person. Detainees supported between one and seven dependants. Female detainees (94%) were more likely than male detainees (86%) to have financial dependents, and to have more than one financial dependent (65% compared to 54% among men). The median number of dependents for both male and female detainees was two. The patterns of financial dependency indicated many detainees supporting parents, siblings, and grandparents. Some 86% of male detainees supported at least one other person. 'Wife' was the primary financial dependant for only around a third.<sup>40</sup> The second financial dependent was likely to be a mother or sibling.<sup>41</sup> Some 25% had at least a third financial dependant; 14% had at least a fourth financial dependant; 5% had a fifth; 4% had a sixth; and 2% had a seventh.

A total of 94% of female detainees said they supported at least one other person.<sup>42</sup> Half of female detainees were supporting three or more dependents. A total of 65% had at least a second financial dependant, almost half of which were daughters.<sup>43</sup> A total of 50% had at least a third financial dependant;<sup>44</sup> and 37% had a fourth.<sup>45</sup> A total of 16% a fifth, 3% a sixth, and 3% a seventh dependent.

Percentages do, however, not tell the full story. However, based on these percentages, one

40 Amongst all male, first dependent was wife 30%, mother 22%, brother 8%, sister 4%, son 4%, grandmother 3%, girlfriend 3%.

41 Amongst all, second dependent was mother 10%, sister 9%, brother 6%, daughter 6%, son 5%, wife, 4%.

42 Amongst all, the primary dependant was son 25%, mother 22%, daughter 13%, sister 6% and aunt 6%.

43 Amongst all female, 2nd dependent daughter 28%, sister 13%.

44 Amongst all female, 3rd dependent daughter 22%, son 9%.

45 Amongst all female, 4th dependent daughter 16%, mother 9%.

can estimate the actual number of dependents affected, as shown in Table 2.3 below, which presents the actual numbers per 100 male and female detainees. It shows that on average 2.29 dependents are affected for every one detainee (both genders), and interestingly, it is 2.68 for female detainees compared to 1.9 for male detainees. In April 2015 there were 21 800 prisoners awaiting trial (both genders), and using the 2.29 ratio of dependents per detainee, it means that just below 50 000 dependents were affected by their detention.

Table 2.3: Number of dependents affected by the detentions

	Female	Number of dependents affected	Male	Number of dependents affected	Total
<b>None</b>	6%	0	14%	0	0
<b>One</b>	29%	29	32%	32	61
<b>Two</b>	15%	30	29%	58	88
<b>Three</b>	13%	39	11%	33	72
<b>Four</b>	21%	84	9%	36	120
<b>Five</b>	13%	65	1%	5	70
<b>Six</b>	0%	0	2%	12	12
<b>Seven</b>	3%	21	2%	14	35
<b>TOTAL</b>		268		190	458

### Visitor-traced person households likely to be supported by detainees

Some 50% of visitors and traced persons interviewed said the detainee made a financial contribution to their household. This rose to 55% in relation to respondents who were family members of the detainee and was 35% for non-family respondents. Some 70% of those linked to female detainees said the detainee contributed to respondent households. Support was correlated with living in the household. However, some 24% of those detainees who 'never' lived in the respondent household, nevertheless contributed to the household; and 70% of those who 'occasionally' lived in the household; and 93% of those who lived in the respondent household permanently, supported the household.

### Most visitor-traced person respondents said detainees contributed majority of income

Some 75% of visitor-traced person respondents provided a description of the cash income of their households. Although households had up to nine persons, respondents identified between one and four of these household members contributing to the respondent household cash income. The median total household income was KSh 9 000 (US\$ 99) per month – less than the minimum domestic worker wage. Among the 50% who said detainees contributed, the

median percentage detainee contribution in comparison to total household income was 67%, and the most common value was 100%. This suggests that loss of detainee earnings would have a significant impact on household finances for these households – these households would now have to get by with less than a third of their normal income. Indeed the most common situation was for detainee contributions to constitute the entire household income.

Table 2.4: Detainees contribution to households

	Minimum	25th percentile	Median	75th percentile	Maximum
Detainees' contribution according to respondents KSh	600	3 500	6 000	10 000	40 000
Total respondent household income KSh	1 200	5 000	9 000	14 800	74 000
Detainees' contribution according to respondents US\$	7	39	66	110	440
Total respondent household income US\$	13	55	99	163	814

### Most detainees also contributed in other ways

Some 56% of visitor-traced person respondents said the detainee contributed in other ways to their household. This was 70% in relation to female detainees and 52% in relation to male detainees. Thus some 70% of detainees were contributing to the respondent household either by cash or in other ways or both. This was as high as 85% in relation to female detainees. Visitor-traced persons respondents were asked to describe the other ways in which the detainee contributed to the household. Almost all the respondents said that the 'other ways' the detainee contributed was that they cared for children. Around 10% said they cleaned the house, another 10% said they did repairs and maintenance to the house and another 6% said they cared for crops / livestock. In describing these other ways detainees contributed to the household, respondents also reported specific things such as *he contributes thought-wise* or *he does errands for his father* and *we were doing business together in order to support my children*. Thus, in addition to the financial impact, the non-financial impacts constitute heavy burdens on these households and the falling away of this support has a multiplier effect on children, agricultural production, general housework, and the like.

### Detainees confirm multiple roles in child care

In line with the findings in the paragraph above, some 63% of male detainees and 88% of female detainees said they contributed to child care “in the household” at the time of their arrest. All those with their own children said they contributed to the care of children “in the household”, while 75% of those with other dependants said they cared for children. However, those who said they lived in a household comprised of only themselves were in fact 58% of those who said they cared for the children “in the household”. When asked about the nature of the childcare, the type of care described frequently referred to financial support, particularly among female detainees. This is consistent with a scenario where the children live “in the village” of another household with other relatives. Another scenario is one in which the children live nearby and are visited, but do not live with the detainee.<sup>46</sup> Among male detainees, financial support was also referred to, but reference was equally made to walking to school, feeding, doing washing, bathing, and supervising homework.

### More than one in ten of affected households had disability in the household

Some 11% of visitor-traced respondents said their household was home to a person with a disability. This rises to 13% among family members of detainees. Of households with disabilities, 90% were not receiving any kind of support for the disability. The remainder received what was described as ‘medical’ and ‘support-group’ support. The disabilities were described as follows: epilepsy (2), born without hands/limbs (1), not walking or using walking stick (5), blind (1), and stroke (2).

## Economic impact of detention

The rights contained in the ICESCR include:

- The equal right of men and women to pursue economic, social and cultural rights (art 3);
- The right to work and the duty of the state to take measures to enable people to access gainful employment (art 6);
- The right to just conditions of employment (art 7);
- The right to social security (art 9);
- The duty of the state to provide the widest possible protection to the family (art 10);
- The right to an adequate standard of living and to be free from hunger (art 11);
- The right to the enjoyment of the highest attainable standard of physical and mental

<sup>46</sup> A further possible explanation for the extent to which detainees apparently living alone contribute to child care, may be that reference was being made to the care of children through a contract of employment, as a large proportion indicated their work being of a domestic nature.

- health (art 12); and
- The right to education (art 13).

The nature of the obligations on states set out by the ICESCR is not that states must ensure that every person has employment and social security, but rather that states should ‘respect’, ‘protect’, and ‘promote’, these socio-economic rights. The duty to ‘respect’ entails an obligation not to interfere with the resources of individuals; their freedom to find a job; or their freedom to take necessary action to use their resources to satisfy needs. This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedural and criminal laws. As the demographic profile and profile of affected households above demonstrates, the decision to detain an accused person before trial almost invariably interferes with the resources of individuals and their ability to pursue the betterment of their own situation. Moreover, individuals other than those being detained, are also adversely affected. While the state has the right to detain a suspect in the interests of justice, it should be equally aware of the adverse consequences of detention, and even more so when such detention is for a prolonged period of time. In this section the nature of that interference is explored in more detail.

### Loss of income as a result of the detention

Affected households have their right to an adequate standard of living, and this should not be impacted on negatively, through the loss of the detainees’ income. Given the support to visitor-traced person households by detainees, as described above, it is unsurprising that some 75% of visitor-traced person respondents said they had lost income as a result of the detention. Some 23% of respondents described the way in which they missed the income that the detainee used to contribute, for example, *She used to support us by sending some cash every month but now she is in custody*. Some of the respondents indicated that the detainee was the sole breadwinner, *Since he was the one providing for us and he is not around it is very difficult to survive*. Many of these visitor-traced persons mentioned that the money the detainee contributed was for food and school fees.

Not only is it the loss of the detainees’ income, but also of income foregone by the members of the affected households in the time taken to visit the detainee; time which they may have spent on income earning activities. Visitors and traced persons pointed out that while they were spending time and money visiting the detainee, they were not able to spend time on their income generating activities. *Today I am here and cannot operate my business. The same for the days we are in court, I will lose my job*.

### Additional expenses incurred by visiting

In addition to now bearing the burden of household and children or dependent’s expenses alone, a third of respondents also specifically mentioned the additional costs associated with having the detainee in custody, in particular, the costs of visiting. Many of these mentioned the expenses of visiting the detainee as, for example: *I have to sacrifice in order to see him*.

*While he was in Kamiti (15 km northeast from Nairobi Central), I had to use a lot of money in order to see him.* I have to dig into my savings to cater for the expenses of the visits. Some 82% of visitor-traced person respondents said that additional expenses had been caused by the detainee's detention. Visiting costs formed a large proportion of these costs.

### Travelling costs

The most common amount mentioned for travels costs was KSh200 (US\$ 2.21).

Table 2.5: Travel costs of respondents visiting detainees

	Minimum	25th percentile	Median	75th percentile	90th percentile	Maximum
Travel costs among respondents who visited KSh	40	150	250	800	2 200	8 000
Travel costs among respondents who visited US\$	0.44	1.65	2.75	8.80	24.20	88.01

None of those who had visited a female detainee listed the cost at less than KSh200 (US\$ 2.21). For as much as 40% of those who had visited a female detainee, the cost was more than KSh2 200 (US\$ 15). This suggests that visiting of female detainees was seriously affected by travel costs. In terms of distance to visit, the range was from 1km to 1 200km. The median distance was 40km. Some 10% travelled more than 450km. In terms of travel time, the range was from 10 minutes to 48 hours, with the median being 1.5 hours. Some 10% took 6 hours or more. Of those who had visited, 86% took a bus in order to do so. Frequency of visits ranged from six times a week to once every two months. The most common frequency of visits was approximately once a week, implying that these travel costs are frequently incurred. In short, visiting a detainee is expensive, and even more so if it is a female detainee.

### Visits while in police detention more common for men than women

Detainees confirmed the extent of visiting. Male detainees were more likely (55%), than female detainees (28%), to have been visited in police detention, and to be visited mostly by women.<sup>47</sup> Detainees mentioned between one and four visitors. A total of 97% of female detainees reported only one visitor at the police cells.<sup>48</sup> The reason given by detainees for the

47 Mothers (19%), wives (15%), friends (14%), brothers (10%), sisters (9%), friends (6%), and fathers (5%), were most frequently mentioned as visitors to male detainees in police cells.

48 Mothers (9%), sisters (9%), with 3% each: boyfriend, brother, employer, and neighbour, visited female detainees.

visits in police cells were most commonly, *To check on me or to see how I am faring*, with many visitors reported as wanting to know why the detainee had been detained: *She wanted to understand why I was arrested and to find out why I was held in police cells and discover what charges were referred on me.*

Many detainees said that their visitors had brought food, and cash and other necessities, To bring basic needs such as soap. *Another reason was that visitors wanted to see how they could help with getting them out of detention: She wanted to bail me out.* Another detainee reported the visitor: *Wanted to assist in settling a dispute with the accused [and] complainant, but he later disappeared and has never turned up to visit.*

Many detainees simply referred to the fact of their relationship prompted their visitors to visit, as in, *He is my brother. She was my friend. I am her son and she should visit me.*

### Most male detainees were visited repeatedly while on remand

Some 67% of male detainees and 31% of female detainees reported being visited while on remand in prison. Male detainees tended to have more visitors than female detainees. Male detainees reported between one and five different visitors, while female detainees reported between one and three different visitors.<sup>49</sup> Visitors brought clothes (5%); sheets (1%); blankets (1%); soap (23%); toilet paper (20%); toothpaste (11%) lotion (2%); washing powder (1%); at the last visit. Only 13% said visitors brought cash. The most common cash amount brought at each visit was KSh200 (US\$ 2.20). Some 54% of detainees said they were able to buy things in prison, such as bread, milk, soap, toilet paper, slippers, and a toothbrush. Some 30% thought prices in prison are higher than items outside prison.

### Clothing and consumables brought on visits

The detainees' reports regarding clothing and consumables brought were confirmed by visitor-traced person interviewees. Some 10% had brought clothes for the detainee on a previous visit, items were worth between KSh 150 (US\$ 1.66) and KSh 8 000 (US\$ 89), median KSh 600 (US\$ 6.64). Some 3%, had in addition, brought underwear costing KSh 150 (US\$ 1.66) – KSh 400 (US\$ 4.43). Some 30% had brought soap and 23% toothpaste; 29% toilet paper; 11% lotion; 5% washing powder; and 3% medication. The cost of these items ranged between KSh 25 (US\$ 0.28) and KSh 3000 (US\$ 33).<sup>50</sup>

### Cash brought on visits

Some 34% said they brought cash for the detainee for purchasing items in prison. Some 40% of those respondents visiting female detainees brought cash. The amount brought for this purpose ranged between KSh 100 (US\$ 1.11) and KSh 800 (US\$ 8.85), median and mode is KSh 300 (US\$ 3.32). Some brought cash at every visit; some had only done so once. Some 3% said they had brought cash for bribes. The amounts brought for bribes were KSh

<sup>49</sup> Friends 21%, mothers 18%, brothers 18%, wives 17%, sisters 12%, were most commonly mentioned as visitors.

<sup>50</sup> Questions regarding shaving accoutrements were not permitted.

100 (US\$ 1.11); KSh 300 (US\$ 3.32); KSh 3 500 (US\$ 38); and KSh 20 000 (US\$ 221). These bribe amounts were only brought once.

### Additional expenses not incurred through visits

#### Cost of legal advice

Some 7% referred to the cost associated with legal assistance obtained. This cost was reported to be from KSh 3 000 (US\$ 33) per court hearing; to KSh 80 000 (US\$ 885) in total. The median cost was KSh 5 000 (US\$ 55).

#### Other costs

Other visitor traced persons reported that they lost income through providing the detainee with some money for small necessities while they are in custody, *I sent her via Mpesa every week at least KSh 400 (US\$ 4.43), so yes, I have experienced a great loss of income.*

Five respondents mentioned expenses relating to providing for the detainees' children or elderly parents while they were in custody: *Since the mother is sick and cannot walk, I came to see her and also spent money on the items, which is expensive.*

#### Debt created by the detention

Given the loss of income and additional expenses, it is unsurprising that 39% of respondents said they had been forced to borrow money from at least one lender in order to cover lost income and the additional expenses caused by detention, with the median amount borrowed being a third of the respondent household monthly income. Money was mostly borrowed from friends (14%); relatives (10%); and Chama's, which are informal financial co-operators (9%). Only 3% borrowed from a bank or shylock.<sup>51</sup>

Table 2.6: Amounts borrowed to cover costs, KSh

	Minimum	25th percentile	Median	75th percentile	Maximum
Amounts borrowed to cover additional costs KSh	400	1 500	3 000	10 000	100 000
Amounts borrowed to cover additional costs US\$	4.40	16.50	33.00	110.01	1100.11

The borrowed money was being paid back monthly, in amounts ranging from KSh 100

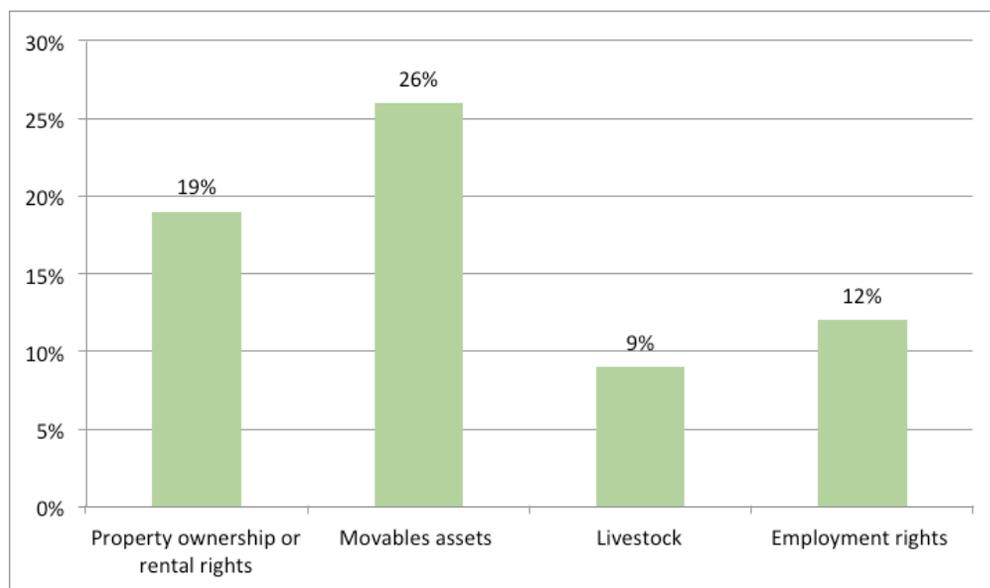
<sup>51</sup> A shylock is a loan shark in Kenya and provides loans outside the banking system, charging exorbitant interest rates ('Loan sharks rip off desperate Kenyans' *Business Today News*, 23 September 2015, <http://www.businesstoday.co.ke/news/money-and-markets/1420461522/loan-sharks-rip-desperate-kenyans>)

(US\$ 1.11) to KSh 30 000 (US\$ 332) per month. For 65% of respondents who borrowed money, the amount to be paid back equalled the amount borrowed. However, for 35% more than the amount borrowed was expected. This ranged from 10% more than the amount borrowed, to 90% more than the amount borrowed. For 25% of borrowers, 30% more than what was borrowed, had to be paid back. Some 2% of respondents were borrowing from two different lenders, and 1% from three lenders.

### Impact on detainee assets caused by the detention

The detainees interviewed were unlikely to indicate they had major assets, but the assets which detainees did have, they said were negatively affected or lost as a result of their detention.

Figure 2.5 Detainees' assets



### Immovable assets and property rights

In relation to immovable assets, 81% listed nothing. Some 4% referred to land or family land. The issue of the forms of land ownership and tenure in Kenya is highly contested, despite recent reforms in relation to land ownership, and the nature of this land 'ownership', is unclear, as is evident in this quotation: *Since I was arrested my children moved back to the village and my property has been taken by [the] landlord.* Some 5% referred to rented houses as 'assets', recognising the right to rent the property as an asset. At least one detainee said he was forced to sell his land, another said he was *in the process of selling his land, to get money for bail* and yet another spoke of vandalism: *My wife went away when she learnt of*

*my arrest and my house was vandalised.* Other kinds of impact included rent or wages no longer being paid, and land no longer being used. In the words of one detainee: *Nothing is being done on that farm.* Overall, two thirds of those who said they owned or rented property said there had been an impact.

### Movables

With regard to movable assets, 74% did not list owning anything. Some 7% referred to electronic devices such as phones, televisions, fridges, DVD machines, and laptops. Many who previously had phones, complained that these were exchanged or lost during the process of arrest, as explained by one detainee: *(The) Officer told me I didn't record my phone (on the property register) during my arrest, yet I did.* Others simply reported that their phones had gone missing, *Phone got lost. I used to call my mother with that phone.*

One detainee mentioned a motor vehicle, one a bicycle, and one a motorcycle, each of which had been sold to cover additional expenses and loss of income. As one said of his motorcycle: *I had to give it to my brother to use it to get money for my family in my absence.*

### Livestock

Some 9% of detainees mentioned owning livestock such as pigs, chickens, cows and goats. These were affected by their detention as is reflected in this quotation: *I asked my wife to sell (the pigs) because she could not care for them when I was arrested.* The price of livestock appears to vary greatly in Kenya. For example, the price of a pig can range from KSh 4 500 (US\$ 50) to KSh 16 800 (US\$ 185) depending on weight and demand.<sup>52</sup>

### Rights

Most (88%) did not list any types of rights held by them. Some 12% referred to employment rights. Most had either lost their jobs or feared that they may do: *My employer had to look for someone else to operate that vehicle after my arrest. I don't know if he will employ me again because it was casual work.*

### Impact on visitor-traced person household assets

This impact on assets was echoed in the interviews with visitors and traced persons. Some 22% said they had been forced to sell at least one type of asset as a result of the losses caused by the detention. Up to three different types of items were sold. Some 10% sold two types of items and 1% sold three different types of items. When asked to describe the sales, many respondents indicated they were forced to sell livestock with seven respondents reporting selling goats; three sold the chickens; and two sold cows. Electronic goods were

<sup>52</sup> 'Nyeri livestock farmer reaps dividends from pig rearing' Business Daily, 23 September 2015, <http://www.businessdailyafrica.com/Nyeri-livestock-farmer-reaps-dividends-from-pig-rearing-/-/1248928/1618362/-/xs6fxbz/-/index.html>, 'How to start a business in Kenya with just one pig' One, 26 March 2014, <http://www.one.org/us/2014/03/26/how-to-start-a-business-in-kenya-with-just-one-pig/>

also sold; with four selling their TVs; two selling their DVD players; three selling their radios; and one a Nokia cell phone. Five respondents had had to sell means of transport; with three bicycles and two motorcycles being sold. Other assets that were sold included: farm outputs e.g. maize; furniture; a gas cooker; iron sheets; land; material (fabric); my shop stock; seats; trees (timber); and a suit. In half the instances the items were sold for less than the respondents wished to sell them. The difference between asking and selling price in these instances ranged from KSh 150 (US\$ 1.66) to KSh 50 000 (US\$ 553), the median being KSh 3 000 (US\$ 33). In other words the sale resulted in realising less than the item was worth.

## Social impact of detention

### Less food, less safety, and greater household burden as a result of the detention

Detention negatively affected households' right to an adequate standard of living and adequate food (Article 11, ICESCR). This was more pronounced in relation to female detainees. Among visitor-traced person respondents linked to female detainees, 65% said they had less food, compared to 35% among those linked with male detainees. Some 30% of all respondents said the burden of household work had risen as a result of the detention. Among respondents linked to female detainees, 60% said the burden had increased, compared to 24% among those linked with male detainees. Some 13% said their household safety had been affected. Among respondents linked to female detainees, 20% said household safety was reduced, compared to 11% among those linked to male detainees.

### Most detainees cared for children who were affected by their detention

The widest possible protection and assistance should be accorded to the family according to Article 10 of the ICESCR. Families, especially the children, were negatively affected by the detention. Some 96% of those who cared for children (59% of all detainees) said that the children are affected by their continued detention. Detainees were asked to describe the way in which the children were affected and many of the qualitative descriptions from male detainees pointed to their awareness of the psychological effects on children and the loss of relationship, as these quotes below reflect.

- *She misses my company.*
- *I used to bring him snacks from work but since [I] am not around he is so much lonely.*
- *They lack joy with my absence.*
- *She is worried of my whereabouts.*

Female detainees described how they and their children were and are affected by their continued detention. Just the fact of not being with their children was noted many times:

*The baby was taken away by his father thus separating from me, which has greatly affected me psychologically.* The issue of not being able to provide motherly care was also mentioned by many of the female detainees, as this quote describes: *Because the children are young and are in school. I am not able to provide the necessary support to them from food to daily basic needs since I was arrested.* The impact on children of the trauma and stigmatisation of their mother going into custody are also mentioned in three of the qualitative responses: *The big (first born) disappeared on the day of my arrest due to shock and he's not been found since then. There is no-one to care for him.* And: *Because I have not made a call home to inform [them] that [I] am in prison, I am not sure how they will receive the news.*

Frequently, detainees reported that they do not know what has happened to their children: *No one knows where they are. Only the small one was taken by my sister. The rest we don't know about them. [The] Landlord closed my house and the children left.*

Two reported that their children were with them on remand; one noting that this had affected her son's health: *I live with my son here (in the prison). He got infected with TB and he is not well fed.*

### **Some one in five of affected household had children relocate as a result of the detention**

The impact on children was also confirmed by visitor-traced person respondents. Some 20% of those who had children in the household said that the children in the household were forced to relocate as a result of the detention. Some 11% of those with children said the children's behaviour had been adversely affected by the detention, and a similar percentage said the children missed school, while 4% of those with children said the children had problems at school as a result of the detention, and 3% said the children dropped out of school. The detention thus interfered with the right of these children to education (Article 13, ICESCR).

### **Many detainees concerned about impact on children's schooling**

Indeed in the minds of the detainees, the right to education of their children was clearly also affected by the detention (Article 13, ICESCR). The inability to continue to provide money for school fees; walk children to school; and otherwise to support their education; as well as the worry this caused, was frequently mentioned by detainees in their interviews: The children are affected psychologically. *Especially Sylvia, who is in Form 3, is fearing the next term she may not get school fees since I am the uncle who is the one who was paying.* Another detainee said: *The children have been affected, they are asking for their mother and school is almost opening and I don't know how they will go to school.* School fees in Kenya have ostensibly been abolished, however, schools continue to charge fees for hidden costs

and enrolment in private schools has increased to 12% of all enrolments.<sup>53</sup> Total real cost in hidden charges at public schools have been estimated at US\$ 350 per year<sup>54</sup>, amounting to one quarter of the minimum domestic worker wage.

One male detainee reported: *I used to do homework with him every day, but since I am away he is really not feeling well.* Another was concerned that: *Their performance in school has gone down and they are affected health-wise.* Walking children to school is a particularly important role for men in Kenya. A 2012 UNICEF report estimates as many as 10% of girls and 5% of boys experienced at least one episode of sexual violence in the previous 12 months.<sup>55</sup> Further, the report notes that almost half of the girls, who suffered sexual abuse in the year prior to the survey, were molested while travelling on foot, frequently to school. Like the men, women noted the impact of their being in custody on the schooling of their children: *Though she does not know that I have been detained, she asks where I am and she has had to quit school.* This was often directly related to the payment of fees: *I take care of my sister's kid and my sister is HIV+ and I have to take care of them all. My children have been affected also by schooling since I was the one paying school fees.* As well as this detainee, another two referred to children under their care in extended family networks: *My sister who is 13 years and was a KCPE56 candidate had to drop out of school.*

### Impact of detention on social standing varied among detainees

Most detainees perceived they had good social standing prior to their detention.<sup>57</sup> A minority said this standing was negatively affected. Surprisingly, 23% of detainees said they were respected better than before by the community, after their detention; 52% said the same as before; and 10% said worse than before. Amongst those who said the community reacted better than before to them, were a large proportion of those who were charged with murder. This could suggest either increased 'respect', in the sense of respect for the detainee's physical prowess; or 'respect' in the sense that the murder or other crime was considered in the eyes of the community to be justifiable. Male and female respondents were equally likely to say 'respect' increased after their detention. A further possibility in relation to this finding speaks to the perceived legitimacy of the criminal justice system, as very few saw the detention resulting in diminished social standing. This finding deserves further investigation.

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53 The Economist, 22 February 2014.

54 The Economist, 22 February 2014.

55 UNICEF, The State of the World's Children 2012: Children in an Urban World, available at <[http://www.unicef.org/iran/SOWC\\_2012-Main\\_Report\\_EN\\_13Mar2012.pdf](http://www.unicef.org/iran/SOWC_2012-Main_Report_EN_13Mar2012.pdf)>

56 Kenya Certificate of Primary Education (KCPE) is a certificate awarded to students after completing the approved eight-year course in primary education in Kenya.

57 The majority of detainees (50%) said they were respected in the same way as anyone else prior to their arrest, while 39% said they were well-respected. Some 10% did not answer the question; and a further 2% said they were not respected prior to their current detention.

### Key relationships negatively affected for some detainees

While detainees thought their social standing in the broader community was not markedly affected, just under half (45%) of detainees said that as a result of their detention their relationship with a key family member, friend or workplace person had 'deteriorated greatly'. Some 11% said this in relation to their parents; 8% in relation to their siblings; 7% their children; 7% grandparent; 7% aunt; 18% friends; 19% their employer; 4% employees; and 5% colleagues.

### Some marriages negatively affected, especially for female detainees

Adverse impact on marriages due to detention appeared to be more marked for women than for men. For 43% of married male detainees there was a negative effect on the relationship. Some 28% of married male detainees said their relationship with their wife deteriorated greatly, and a further 15% referred to a slight deterioration. For 72% of married female detainees there was a negative effect. Some 43% of married female detainees said their relationship with their husband 'deteriorated greatly' and a further 29% said it 'deteriorated slightly' as a result of the detention. This is suggestive of gendered relationship dynamics in which women are more likely than men to continue to support their spouses in difficult circumstances.

### Impact on visitor-traced person relationships as a result of detention

Almost a quarter (22%) of visitor-traced persons interviewed said their relationship with their family had been negatively affected by the detention of the detainee. The most common reason was because they: *Now associate us with crime; and They keep saying my girl is a thief*. Some 13% said the relationship with neighbours had been affected, making comments such as: *They no longer respect us; and They insult me as being a mother of a drug addict*. Some 7% said relationship with friends had been affected, that friendship has deteriorated, and a similar percentage pointed to a deterioration of relationships in the community generally; and 11% said their relationship with an employer had been affected. In this regard, respondents made comments such as: *They have changed, they don't trust me anymore and they discriminate [against] me*.

### A third of visitor-traced persons said they were depressed as a result of detention

Some 33% of visitor-traced person respondents said they had become depressed as a result of the detention of the detainee; and 25% said they were stressed. Some 40% were either depressed or stressed or both. Many said the stress came from not having the support and income of the detainee: *Stress, because I keep thinking about him and keep wondering how the case will go. He is my first born - he is supposed to be a breadwinner and head of house since I am a single mother*. Another respondent noted: *Stressed - I cannot concentrate even with work since [I] am worried about his status, financial effects and losses*.

### Psychologically affected

When asked to comment generally on negative effects, more feelings were elicited from

visitor-traced persons, with 80% saying they have been negatively affected. The phrases '*psychologically affected*', and '*don't have any peace*', appeared in interviewees' responses repeatedly, for example: *As my only son [I] am so much affected psychologically, and: Psychological effect - not able to concentrate in class and psychologically I am affected.*

### Uncertainty

Many of the visitor-traced person respondents said that the uncertainty around the detention was particularly stressful: *It is better to know you have a brother dead than having him alive but don't know where he is.* Uncertainty was also high with regard to a possible release date: *I am so much stressed because I do not know when it will be over and him to be released.* Uncertainty featured again around how to find money to support the release of the detainee: *I keep thinking about my nephew. I think of where money will come [from] so that we can help in their case. Whenever they appear in court and the case is adjourned I go home feeling so bad.* Another respondent said: *I am very worried of her and do not sleep at all. I do not know where I will get the money to free her.*

### Over-thinking

Respondents also reported that since the detainee had been in custody, their minds were constantly on them and the case, and that they spent a huge amount of time mulling about it all. One respondent said: *I have been psychologically affected because I keep thinking about him and I know him well - he is not a bad person, nor a criminal.* Another said: *I am confused. My mind is not normal [in] thinking about her all the time.* Sometimes this thinking concerned the respondent's views around whether their detainee was innocent: *Thinking about him all the time. He is suffering and I know he did not do it.* Another respondent said: *[I] believe he was wrongly arrested. I have sleepless nights and suffer anxiety.*

### Poor sleep and physical problems

Many of the respondents pointed to sleeping and physical problems they were now experiencing as a result of the custody: *I am completely stressed and I can't even sleep. I have high blood pressure because of the issue.* Another respondent said: *It has affected me psychologically and physically - I do not sleep as before and my body is weak.* A third said: *Even got sick as a result of the stress.* And another said: *I have been very sickly ever since she was arrested. I have deep stress and I keep having constant headaches.*

### Sense of loss

Responses also showed a sense of loss: *I miss my brother.* Detainees were deeply missed by the respondents interviewed as reflected in this quote: *He was my cousin and we shared a lot - now that he is locked up I feel sad and lonely.* Another said: *My heart is paining.*

Some 86% of respondent said they received no support during this time. None of the respondents felt they were in any way 'better off' as a result of the detention of the detainee, suggesting detainees were not serial problem-causers with whom their families had lost

patience, but rather part of their kinship or social network. Some 97% of respondents said they were worse off as a result of the detention. All of the respondents said they would be very happy if the detainee could be released: *I pray for his release.*

## Health impact of detention

*“The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”*

(Article 12, ICESCR)

This provision of the ICESCR obligates states to ensure that health care facilities, goods and services are available in sufficient quantity, are physically and economically accessible, are ethically and culturally acceptable, and are of a medically appropriate quality, for everyone.<sup>58</sup> The right to health is fundamental to the physical and mental well-being of all individuals and is a necessary condition for the exercise of other human rights.<sup>59</sup> International human rights law clearly affirms that detainees retain fundamental rights and freedoms guaranteed under human rights law, “subject to the restrictions that are unavoidable in a closed environment.”<sup>60</sup> At the very least, prisoners are entitled to a standard of health care, the same as that available in the general community, without discrimination.<sup>61</sup> Indeed states may have to ensure a *higher* standard of care than is available to people outside of prison, because in prison, most material conditions of incarceration are directly attributable to the state, and inmates have been deprived of their liberty and means of self-protection, giving rise to a positive duty of care, to include effective methods of screening, prevention, and treatment of life-threatening diseases.<sup>62</sup> In short, detainees should not leave prison in a worse state of health than when they arrived. The evidence in this report suggests detainees’ health deteriorated during their

58 General Comment No. 14 of Committee of ESCR, 2000, para 12.

59 General Comment No.14 (2000) The Right to the Highest Attainable Standard of Health, (Article 12 of the International Covenant of Economic, Social and Cultural Rights). UN Committee on Economic, Social and Cultural Rights, 2000. para 1.

60 UN Committee on Human Rights, General Comment No. 21, Article 10, Humane Treatment of Prisoners Deprived of their Liberty, UN Doc. HRI/Gen/1/Rev.1 at 33 (1994), para. 3.

61 Basic Principles for the Treatment of Prisoners, UN General Assembly Resolution 45/111 (1990); WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Articles A (4) and C (ii); the Body of Principles for the Protection of All Persons Under any form of Detention or Imprisonment, UN General Assembly Resolution 43/173 (1988). Although these instruments are not legally binding in and of themselves, they provide authoritative guidance to states on the interpretation of relevant treaty obligations.

62 See, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, CPT/IN/E 2002, para. 31; WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Articles A (4) and C (ii); the Body of Principles for the Protection of All Persons Under any form of Detention or Imprisonment, UN General Assembly Resolution 43/173 (1988); UNAIDS International Guidelines on HIV/AIDS and Human Rights, (2006), Article 21(e); UNODC, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for Effective National Response (2006).

detention, and although some received treatment, this was limited in nature and not always effective. In addition, given that nearly all detainees will sooner or later be released, the ill-health experienced in prison, especially in relation to communicable diseases, whether due to poor health care services, or poor conditions of detention, creates significant risks to the community in general and specifically to the households to which that prisoner may return.

### Health impacts on female detainees

Some 75% of female detainees were either ill at arrest or became ill in prison, or both.

#### High prevalence of illness among female detainees at the time of arrest

It is of some concern that a high proportion of detainees said they were ill at the time of their arrest: some 41% of female detainees said they were ill at the time of their arrest. As many as 13% of female detainees said they were HIV positive at the time of their arrest. This is almost double the HIV prevalence for women aged 15 - 64 years in Kenya, recently reported on at 6.9% in the *Journal of Acquired Immune Deficiency Syndromes*.<sup>63</sup> This has implications for prevention of transmission among other detainees. Other illnesses referred to by female detainees at the time of their arrest included stomach ulcers (10%); chest infections and chest problems (6%); dizziness (3%); tonsils (3%); asthma (3%); ear infection (3%); and allergies (3%). Some 6% received medical assistance at the police station, and 50% at the prison.

#### High prevalence of illness among female detainees since imprisonment

Some 56% of female detainees said they became ill while in the prison. Of those who were not ill at arrest, 47% subsequently became ill. Of those who were ill at arrest, 69% had additional illnesses while in prison. Illnesses mentioned were diarrhoea and vomiting (15%); chest pains and pneumonia (12%); malaria (9%); skin diseases (6%); toothache (6%); weakness and headache (6%); backache (3%); and eye problems (3%). This shows a severe impact on prisoners' health even when detained for a relatively short period. However, some 66% of female detainee said they received some form of treatment. Some 28% of female detainees said they received effective treatment; and 25% said treatment was not effective. Those who were HIV positive said they received Panadol (paracetamol), creams and malaria drugs. Half of the HIV positive prisoners said the treatment they received was helpful. Half of HIV positive prisoners were seen by a nurse and half by a doctor.

<sup>63</sup> Kimanga D O et al. Prevalence and incidence of HIV infection, trends, and risk factors among persons aged 15-64 years in Kenya: results from a nationally representative study. *J Acquir Immune Defic Syndr*, online edition. DOI: 10.1097/QAI.000000000000124, 2014. Reported on at <http://www.aidsmap.com/HIV-prevalence-and-incidence-fall-in-Kenya/page/2827600/>. However, 13% is close to the prevalence reported for the 35 to 39 age group for women (12.3%) in the same journal. The journal also noted that half of HIV infections reported in the prevalence figures were initially undiagnosed. This suggests that HIV prevalence among female detainees may be higher than 13%.

## Health impacts on male detainees

More than three quarters of male detainees fell ill after their arrest.

### Some one in five male detainees were ill at the time of arrest

Some 21% of male detainees said they were ill at the time of their arrest. Illnesses mentioned were chest complaints (6%); cold and coughs (2%); ulcers (2%); epilepsy (2%); allergies (1%); asthma (1%); cancer (1%); diabetes (1%); broken arm (1%); bruises and cuts (1%); HIV positive (1%); and malaria (1%). Some 10% received medical assistance at the police station; and 14% at the prison. The HIV prevalence of only 1% among male detainees is markedly lower than the HIV prevalence for men aged 15 - 64 in Kenya, recently reported on at 4.4% in the *Journal of Acquired Immune Deficiency Syndromes*, even taking into account that half of infections found in the study were undiagnosed.<sup>64</sup> This could suggest that male detainees are less willing to share their HIV positive status than female detainees, or are less likely to have had it diagnosed than men in Kenya generally.

### High prevalence of illness among male detainees after arrest

Some 77% of male detainees said they subsequently fell ill while in prison, reporting a wide range of physical ailments and underscoring the manifestly adverse health impacts of imprisonment, especially under poor conditions. Illnesses were malaria (17%); skin disease, rashes, 'spores' (17%); chest complaints or pneumonia (13%); cold or flu or coughs (7%); typhoid (3%); diarrhoea (3%); tuberculosis (3%); eye problems (3%); ulcers (3%); fainted or falling down (2%); headache (2%); spine and neck pains (2%); epilepsy (1%); joint pains (2%); cancer (1%); toothache (1%); high blood pressure (1%); asthma (1%); and allergy (1%). Some 52% of male detainees said they received treatment in prison. Some 39% (52% of those who said they fell ill at prison), said the treatment they were given, helped.

## Assault in detention

The African Charter for Human and Peoples' Rights (ACHPR) prohibits torture in Article 5. Torture is defined in Article 1 of the Convention against Torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a

64 Kimanga D.O. et al. Prevalence and incidence of HIV infection, trends, and risk factors among persons aged 15-64 years in Kenya: results from a nationally representative study. *J Acquir Immune Defic Syndr*, online edition. DOI: 10.1097/QAI.000000000000124, 2014. Reported on at <<http://www.aidsmap.com/HIV-prevalence-and-incidence-fall-in-Kenya/page/2827600/>>

public official or other person acting in an official capacity.<sup>65</sup>

The right not to be subjected to torture and other ill-treatment is a non-derogable right; no one may be subjected to torture and other ill-treatment under any circumstance, including during times of war or public emergency. The prohibition of torture and other ill-treatment is also a rule of international customary law: it is regarded as absolute and universally accepted that even states which have not ratified any of the international treaties that explicitly prohibit torture and other ill-treatment, may not use torture.

Pre-trial detainees are at risk of torture because the incentives and opportunities for torture are most prevalent during the investigation stage of the criminal justice process. Pre-trial detainees are entirely in the power of detaining authorities, who often perceive torture and other forms of ill-treatment as the easiest and fastest way to obtain information, extract a confession, or mete out punishment. There are extremely few circumstances where the use of force by an official on a detainee would be justified, for example, in a situation of self-defence or in protection of others, or where a detainee was posing a danger to others. The United Nations Standard Minimum Rules for Treatment Prisoners (UNSMR) explicitly outlaws corporal punishment for disciplinary offences.

Thus it is of some concern that amongst those interviewed, some 16% of male detainees and 3% of female detainees said they had been assaulted whilst in detention, with the majority of those being assaulted indicating that a prison official or warder was responsible for the assault. Among male detainees, 18% of those assaulted said the assault was carried out by a fellow detainee; 1% said an 'officer'; and the remainder, 80%, said prison officials or warders had assaulted them. Detainees said the reasons for the assaults were as follows:

- *Asking for medical assistance.*
- *Being in the wrong place.*
- *For no reason (N = 4).*
- *He wanted me to give him money.*
- *He was calling names (for roll call) and I did not hear him.*
- *Pay something for you to sleep or food.*
- *Scuffle between police and convicts.*
- *Scuffles in the cells.*
- *They were searching for illegal phones.*

Amongst those who were assaulted, only 19% reported the assault. Reports were made either to a doctor, a judge or to a senior official. Detainees said the result of this was 'nothing' or 'don't know'. Only 3% of female detainees reported an assault by either police or prison officials. None reported the assaults.

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<sup>65</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1).

## Experience of the criminal justice system

The right to a fair trial is a peremptory norm of international customary law<sup>66</sup> and enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR). Articles 9, 10 and 15 of the ICCPR inform the content of 'a fair trial' rights, and establish that:

- Arrested or detained persons must be brought promptly before a judicial officer;
- Arrested and detained persons are entitled to trial within a reasonable time or to release;
- It must not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial;
- Trial must occur without undue delay;
- There must be a fair and public hearing by an independent and impartial tribunal;
- There must be equality before the courts and tribunals;
- There must not be arbitrary detention;
- There must be restriction of the use of incommunicado detention;
- There is access for lawyers, doctors and family; and
- There is independent internal and external oversight.<sup>67</sup>

## Arrest and police detention

The International Covenant on Civil and Political Rights (ICCPR) provides in Article 9(1) that everyone has the right to liberty and security of person, which means no-one shall be subjected to arbitrary arrest or detention, and that no one shall be deprived of his liberty, except on such grounds, and in accordance with, such procedure as are established by law.

Our analysis of the intersection of social and economic rights together with the right not to be arbitrarily detained suggests pre-trial detention should only occur when absolutely necessary. This is echoed in provision 10(b) of the Luanda Guidelines, which state 'Pre-trial' detention is a measure of last resort and should only be used where necessary and where

<sup>66</sup> A peremptory norm is a fundamental principle from which no derogation is permitted. UN Human Rights Committee, *General Comment 29, States of Emergency (article 4)*, CCPR/C/21/Rev.1/Add.11 (2001), and UN Human Rights Committee, *General Comment 32: Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32 (23 August 2007), [54].

<sup>67</sup> UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, 3 July 2001, [34]. Articles 6 and 7 of the ACHPR reflect ICCPR safeguards, and the ACHPR has provided further guidance on the content of the right to fair treatment in the Resolution on the Right to Recourse and Fair Trial (Res.4 (XI) 92) and the Principles and Guidelines on Rights to a Fair Trial and Legal Assistance in Africa (see also, *Rights International v Nigeria*, African Commission on Human and Peoples Rights, Communication no. 215/98, [29]).

no other alternatives are available. Article 9(3) of the ICCPR also provides that it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Whether pre-trial detention is absolutely necessary is difficult to determine based on the nature of the charge. Nevertheless a charge such as theft is suggestive of potentially alternative methods of bringing an accused to trial. Indeed theft was the most common charge for both men and women. Furthermore, the fact that most detainees were not recidivists also suggests the possibility of alternatives to pre-trial detention.

### **Theft is the most common charge**

The majority, 86%, of detainees interviewed were charged on a single charge. The most common primary charges were theft (24%); robbery with violence (10%); murder (8%); defilement (4%); and obtaining money by cheating (4%). These trends are generally in line with the admissions profile.<sup>68</sup> Among female detainees, some 56% were held on theft charges, with 43% being 'theft by servant'. Some 17% of female detainees were detained on charges associated with children or the care of children (i.e. kidnapping, failing to protect a child, child-stealing, and child neglect). Other offences were assault, fraud and narcotics-related offences.

### **Most detainees are not recidivists**

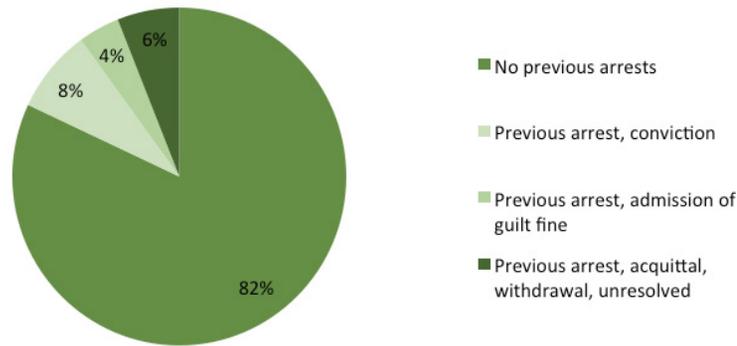
The fact that most detainees did not have previous arrests, suggests there was no criminal history on the basis of which to deny bail. The majority of detainees, 82%, indicated that they had not been previously arrested, with only 18% indicating a previous arrest.<sup>69</sup> Among women, only 6% indicated a previous arrest, mainly assault and theft. The previous arrest charges were frequently related to alcohol, i.e drunk and disorderly; possession of illegal brew; possession of drugs; or theft.

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<sup>68</sup> The offence with which the detainee was charged was recorded in 98% of entries sampled. The most common offences were theft of various kinds (23%) and robbery with violence (9%). This is in line with the offence profile of the interviewed prisoners.

<sup>69</sup> Some 10% had a previous arrest resulting in pre-trial detention in a prison. Some 8% were previously convicted, 4% paid an admission of guilt fine, while 6% resulted in acquittal, withdrawal, or had not yet resolved. Of the 18% of previous arrests, almost all (97%) had occurred more than a year ago.

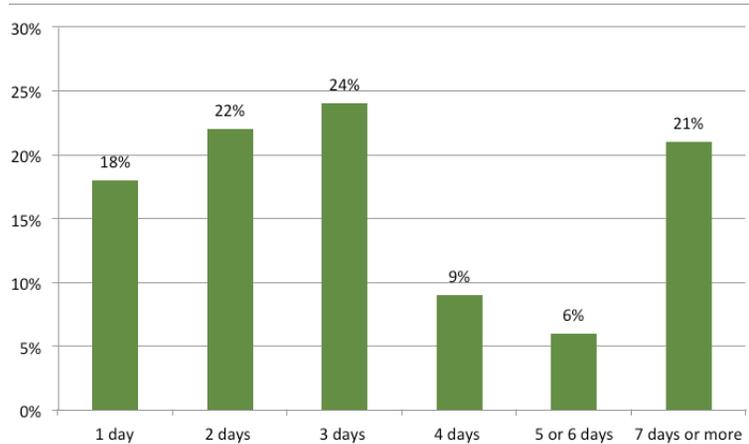
Figure 2.6: Previous arrests of pre-trial detainees in Nairobi



### Most detainees spent three days or more in police cells

The ICCPR requires detainees to be brought promptly before court, and the Luanda Guidelines (Guideline 18) provide that police detention shall not exceed 48 hours. After arrest, a significant proportion of detainees were either not brought promptly to court to be transferred to prison on remand, or continued to be held in police cells after going to court. Detainees indicated their time in police cells ranged from 1 to 180 days, with a median of three days.<sup>70</sup> Some 21%, one in five, spent seven or more days in police custody. Most (79%), said they were held at only one police station; while 18% were held at two police stations; and 3% at three or more. Conditions in police cells are not conducive to prolonged detention and it is of some concern that one in five detainees were held for seven or more days in police custody.

Figure 2.7: Time spent in police cells



<sup>70</sup> All of the female detainees were initially detained in police cells. Some 48% of male detainees did not answer the question, while 62% said they were detained in police cells.

### Most visitor-traced persons had been informed about the detention

The Luanda Guidelines (Guideline 7) require that arrested persons be given the opportunity, without undue delay, access to the means to notify relatives (or a third person of the arrested person's choice) of the arrest and the place where he or she is kept in custody. Some 98% of visitor-traced person respondents had been informed of the detention of their detainee, but some only after a significant delay. Almost half, 48%, of respondents had been informed by telephone about the detention of the detainee. Some 32% were told in person, while 10% saw it happen. Some 2%, all family members, did not know what had happened to the detainee until the interview for this report occurred. In relation to when they were informed, some 57% said they were informed the same day or immediately of the arrest; 23% the day after the arrest; and the remaining 20% a longer time period, with 3 days being the most common time period mentioned in this longer category, but with some only being informed weeks or months later. Most, 96%, had only been detained in one prison, and thus the issue of notifying relatives of transfer did not arise.

### Most detainees had no idea how much longer they would be detained

The majority of detainees, 58%, had no idea how much longer they could expect to be detained in prison, one wrote: *I am not sure because nobody is ready to sign for me the free bond*. The uncertainty was higher among visitor-traced person respondents, with 90% having no idea how much longer the detainee might have to endure custody.

## Legal assistance

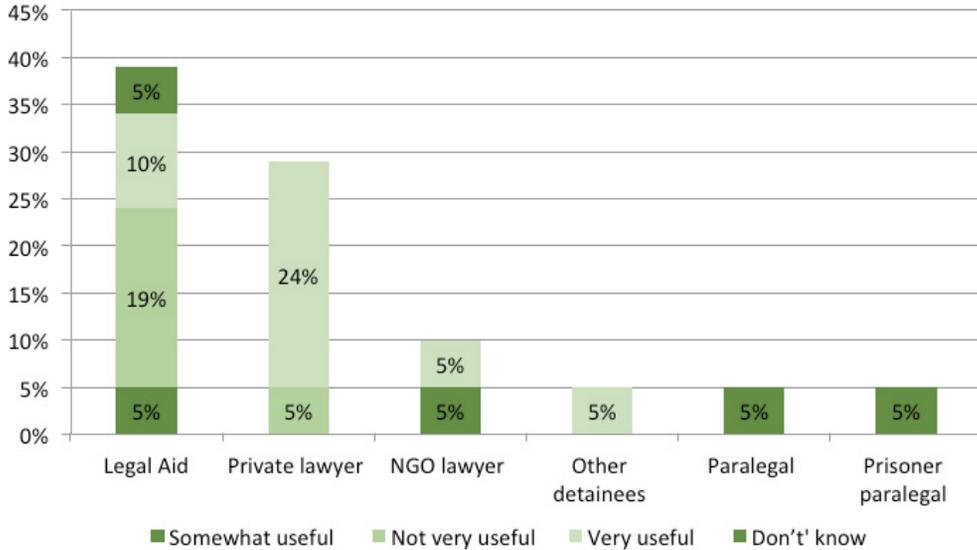
The ICCPR sets out specific obligations of states to provide state-funded counsel for indigent persons. Article 14(3) (d) of the ICCPR requires that an accused offender is entitled “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it”. States are required to provide legal aid only where “the interests of justice so require”. The Luanda Guidelines (guideline 4(d)), provide that detained persons should have access to legal assistance of their choice, and if they cannot afford this, to legal assistance at state expense.

### The vast majority received no legal assistance

Female detainees were much less likely to have received legal assistance – only 6% compared to 19% of male detainees. This may be because of the difference in charges. Almost half, 48%, of those who received legal services, were charged with murder – this is because the seriousness of the charge is a factor in determining whether the interests of justice require the provision of legal services. Those who did receive assistance, were asked to say whether various legal services providers were very useful, somewhat useful, or not very useful. Considering only responses from those who received legal assistance, it emerges that detainees were most likely to have received assistance from Legal Aid (39% of those who

received assistance); or from private lawyers (29% of those who received assistance).

Figure 2.8: Type of legal assistance and rating, among detainees who received legal assistance



### NGOs most likely to be considered useful but infrequently used

More than 80% who had private lawyers said they were very useful, compared to only 38% of those who had Legal Aid lawyers expressing satisfaction. However, 18% who used private lawyers were very unhappy. Smaller numbers made use of other sources such as paralegals and NGOs, yet they were generally happy with the service.

### Where payment necessary, legal assistance was expensive

Some 5% of all detainees, and 33% of those receiving assistance, said payment had been made or would be made for the legal assistance. Just less than half did not know how much would be paid. Only four detainees, 3%, could mention figures: KSh 20 000 (US\$ 223), KSh 70 000 (US\$ 780) and two mentioning KSh 300 000 (US\$ 3,337). The smallest of these figures is equal to around three months of the median income and the highest around 40 months. These detainees paying large sums were charged with robbery with violence, murder, and impersonation offences.

### The decision to detain pre-trial

The ICCPR provides that it must not be the general rule that persons awaiting trial are detained, but release may be subject to guarantees to appear for trial. Although detainees had appeared in court, the majority more than three times, many remained in detention.

More than half could not afford the bail amounts set and remained in custody, detained despite residing at a fixed address in a permanent structure.

### **Most detainees said they could not afford bail**

Not only does the setting of unaffordable bail amounts result in detainees continuing to be detained for extended durations, it also results in additional burdens on affected households. This may eventually lead to the sale of household assets in order to meet the bail requirements, as detailed in the section on economic impacts. While bail may eventually be redeemed, the losses occasioned by the emergency sale of assets at lower than usual prices, may never be recovered.

### **Female detainees highly likely detained on unaffordable bail**

Women were far more likely than men to say they were detained on unaffordable bail with 97% listing an unaffordable bail amount, compared to 54% of male detainees who said they were detained on unaffordable bail. One detainee responded: *I do not know how long it will take the bond demand is too high KSh 1 million (US\$ 11 123)*. Bail amounts for female detainees varied from KSh 7 000 (US\$ 77) to KSh 2 million (US\$ 22 150). Common amounts for women were KSh 20 000 (US\$ 221), KSh 30 000 (US\$ 332), and KSh 100 000 (US\$ 1 108), with 13% on each. The KSh 2 million (US\$ 22 150) was set in relation to an alleged theft of jewellery from an employer. This employee-detainee earned KSh 8 000 (US\$ 89) at the time of arrest, less than the minimum wage. Recall that female detainees were highly likely to be detained on allegations of theft by servant. Such detainees are likely also to lose their employment as a result of the allegation.

### **Half of male detainees detained on unaffordable bail**

Some 4% of male detainees said they were detained on unaffordable bail. Unaffordable bail amounts alluded to by male detainees ranged from KSh 7 000 (US\$ 77) to KSh 4 million (US\$ 44 300) cash bail; and KSh 5 million (US\$ 55 370) bond. The most frequently mentioned amount (the mode) was KSh 200 000 (US\$ 2 215), which applied to 11% of detainees and 17% of those who said they were still in detention because of the bail amount, which is equal to around 27 times median income. The next most common amount was KSh 100 000 (US\$ 1 107) which applied to 10% of detainees; and 15% of those who could not afford bail.

### **Detainees tended to live in permanent structures and at fixed addresses**

Lack of a fixed abode is frequently cited as a reason to deny bail. Before their detention, some 96% of male detainees lived at a fixed address. All of the women lived at a fixed address. Some 39% of detainees lived in a semi-permanent structure and 24% lived in apartments or flats, while 7% lived in a brick building. Some 6% lived in a shack in an informal settlement and 6%

lived in a 'homestead'.<sup>71</sup> The trends as to types of structure were similar between the genders.

### Most detainees had already appeared at least twice in court

The median number of court appearances for detainees was two. Some 3% of detainees said they had not yet been to court. Some 30% of detainees said they had appeared once in court; 18% twice; 8% three times; 12% four times; 4% five times; 2% six times; 6% seven times; and 2% eight times. Some 10% said they had been so many times they could not count how many times it had been. Some 3% claimed that although they had been to court more than once, they had not yet appeared before a magistrate. Some 90% of detainees said they had already appeared before a magistrate.

### Offers of bribes uncommon but more affordable than bail

Bribes were more likely to be offered to those denied bail. When asked whether a bribe had been solicited, some 10% of detainees said they were offered a bribe; 5% did not answer the question; and 85% said they were not offered a bribe. There was no difference by gender. Amongst those offered bribes, detainees said the bribes were offered by fellow detainees (30%); police officials (30%); state legal aid lawyers (30%); and prison officials (10%). Bribe amounts ranged between KSh 2000 (US\$ 22) and KSh 50 000 (US\$ 553), which generally suggest much lower amounts than bail amounts. Those who did not mention an unaffordable bail amount were more likely (13%) than those with unaffordable bail amounts (8%), to be offered a bribe or to fail to answer the question (15% versus 0%). This suggests bribes are more likely to be offered to those denied bail than to those detained on unaffordable bail. Most, 77%, of those who were offered a bribe said they were unable to afford it. Of those who were offered a bribe, 38% said they would consider making use of the bribe. Amongst those who had not been offered a bribe, 16% said they would consider a bribe if it were offered to them. Some 30% of those offered a bribe, had already paid it. The amounts paid ranged from KSh 8000 (US\$ 89) to KSh 50000 (US\$ 553); these amounts exceed a months' median income. Three quarters of these said the amount was not affordable for them. The charges in relation to which the bribes were paid, were murder and forgery.

## Duration of pre-trial detention

Article 14 of the ICCPR provides that trial must occur without undue delay, and article 9 provides that detained persons are entitled to trial or release within a reasonable time. In its jurisprudence the United Nations Human Rights Committee, the body responsible for monitoring compliance by states party to the ICCPR, has made it clear that detention which

<sup>71</sup> The traditional Kenyan homestead is typically made up of many mud huts built close together and occupied by many generations of the same family living together. It is unclear whether this is what is being referred to when respondents indicated 'homestead'.

may initially be legal, may become 'arbitrary', if it is unduly prolonged or not subject to periodic review.<sup>72</sup> The durations of detention recorded suggest that half of those still detained in prison are likely to have been detained for four months or more, while a quarter will have endured 204 days (almost 7 months), or more. After such lengths of time the socio-economic impacts on family are likely to have been compounded. The findings here suggest that only a minority of detainees are tried or released within 30 days.

A sample of register entries was used to determine the length of pre-trial detention for male detainees, in order to avoid criticism that detainees are exaggerating the duration of their detention. The findings are in relation to all male detainees admitted over the last two years, and not just the male detainees interviewed. In relation to female detainees, the data was recorded from register entries, but related only to the detainees interviewed.

### Pre-trial detention exceeds seven months for 25% of male detainees

The register sample contained only persons who had been admitted to prison in the last two years. In other words the sampling could not capture those who have been detained for more than two years. Some 68% of those admitted in the last two years had not yet been released at the time the data was collected. The median duration of detention of those admitted in the last two years, but not yet released, was 122 days (four months). The duration of remand detention from the date of admission to the date of data collection amongst those not yet released, varied from 1 day to 450 days, with a median of 122 days (four months), a 25th percentile of 50 days and a 75th percentile of 204 days. In other words the durations of detention recorded suggest that half of those still detained in prison are likely to have been detained for four months or more, while a quarter will have endured 204 days (almost seven months) or more. This suggests that a significant minority of persons will endure significantly lengthy durations of detention. Recall that the sample could not capture those admitted prior to the last two years.

### A minority released within 30 days

Some 32% of the male detainee register sample had been released at the time the data

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72 Alfred de Zayas "The examination of individual complaints by the United Nations Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights", in G. Alfredsson et al. (eds), *International Human Rights Monitoring Mechanisms*, MartinusNijhof Publishers, The Hague, 2001, pp. 67-121. Also A. de Zayas, "Desarrollo jurisprudencial del Comité de Derechos Humanos", in Carlos Jiménez Piernas (ed.), *Iniciación a la Práctica en Derecho Internacional*, Marcial Pons, Madrid, 2003, pp. 215-277. See in particular case No.305/1988 (*Van Alphen v. The Netherlands*) UN Doc. A/45/40, Vol. 2, Annex IX, Sect. M, para. 5.8: "The drafting history of Article 9, paragraph 1, confirms that 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances." Manfred Nowak, *U.N. Covenant on Civil and Political Rights. Commentary*, N.P. Engel, Kehl, Strasbourg, 1993, pp. 172 ff.

was collected, and the median duration for these detainees was 30 days.<sup>73</sup> This means half of the 32% already released were released within 30 days. This suggests that the criminal justice system in Nairobi has over the two year period been able to try or release only 16% of detainees within 30 days. However, the duration from admission date to the date of release for the 32% released, varied from 1 day to 321 days, with a median duration of 30 days, a 25th percentile of three days, and a 75th percentile of 48 days.

Table 2.7: Duration of detention for male detainees

Male detainees (days in detention)	Minimum	25 <sup>th</sup>	Median	75 <sup>th</sup>	Maximum
Admitted in last two years and not yet released	1 day	50 days	122 days	204 days	450 days
Admitted and released in last two years	1 day	3 days	30 days	48 days	321 days

### Pre-trial detention exceeds two months for most female detainees interviewed

For female detainees interviewed, the duration of remand detention from the date of admissions to the date of data collection varied from 1 to 589 days. The median was 66 days (two months), a 25th percentile of 29 days and a 75th percentile of 118 days (four months).

## Conclusion

Pre-trial in Nairobi, Kenya, has a clear and onerous socio-economic impact. Compliance with fair trial rights reduces the socio-economic impact on affected households. The findings underscore the need for pre-trial detention to be a measure of last resort and for the shortest possible duration. Decisions to detain or to continue to detain an accused person outside of fair trial norms have a broader impact which infringes upon the rights of persons other than the detained person, frequently penalising those who are already poor and marginalised. In this regard children and women bear an unfair burden.

<sup>73</sup> For 80% of these released detainees, dates for admission and release were available.

## Chapter 3

# The Socio-economic Impact of Pre-trial Detention in Maputo, Mozambique

### Acknowledgements

The support and co-operation of the Mozambique Penitentiary National Service (*Serviço Nacional Penitenciário, SERNAP*) is acknowledged and appreciated.

### Summary

The socio-economic rights embodied in international conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), imply that states must ‘respect’, ‘protect’ and ‘promote’ socio-economic rights. The duty to ‘respect’ entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action, and to use their resources to satisfy needs. The right to a fair trial is a peremptory norm and is set out in the International Covenant on Civil and Political Rights (ICCPR).

The duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedure and criminal laws. Respect for socio-economic rights by states in the context of pre-trial detention, means that criminal procedural laws and practices must be designed and implemented in such a way as to ensure that the impact of interference with socio-economic rights on all persons, is minimised, by ensuring that detention of an accused only occurs when absolutely necessary and for the shortest possible duration.

This chapter provides some insight into who is detained; and the impact of pre-trial detention, as experienced by detainees and affected households, in and around the capital and commercial centre of Maputo. The findings in this chapter demonstrate that the decision to detain an accused person before trial in Mozambique, almost invariably interferes with the resources of individuals, including individuals other than those being detained. The findings also suggests that the detention of accused persons is not occurring only when absolutely necessary, nor for the shortest possible duration.

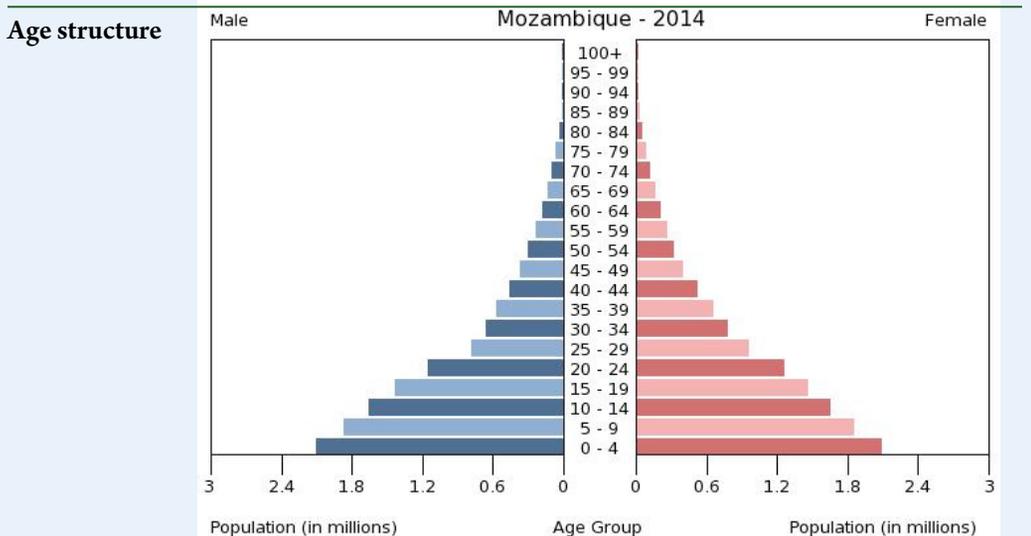
The evidence suggests that the majority of pre-trial detainees in Maputo are not marginalised individuals estranged from their families, but are rather part of, and integral to, their families' emotional, social and economic well-being. Their families are not wealthy and have incomes which are highly likely to be reliant on the income and non-monetary support formerly generated by the pre-trial detainees. The continued incarceration of the detainee, in many instances, more than halves the family income and places additional economic and social strain on the family, including the cost and burden of visiting the detainee over extended periods.

While the majority of pre-trial detainees receive medical attention and tend not to suffer widespread physical assault while in detention, their health is likely to deteriorate during detention. The impact observed in this report is representative of detainees who spend more than two months in detention. Audit data suggests that more than half of those admitted to pre-trial detention in Maputo are likely to spend more than two months in detention.

## Profile of Mozambique

### MOZAMBIQUE<sup>74</sup> POPULATION AND SOCIETY

<b>Population</b>	25,303,113
<b>Ethnic Groups</b>	African 99.66% (Makhuwa, Tsonga, Lomwe, Sena, and others), Europeans 0.06%, Euro-Africans 0.2%, Indians 0.08%
<b>Languages</b>	Emakhuwa 25.3%, Portuguese (official) 10.7%, Xichangana 10.3%, Cisena 7.5%, Elomwe 7%, Echuwabo 5.1%, other Mozambican languages 30.1%, other 4% (1997 census)



<sup>74</sup> All information from the CIA World Fact Book unless otherwise indicated <https://www.cia.gov/library/publications/the-world-factbook/geos/mz.html>

<b>Dependency ratios<sup>75</sup></b>	Total dependency ratio: 94.8% Youth dependency ratio: 88.2% Elderly dependency ratio: 6.5% Potential support ratio: 15.3% (2015 est.)
<b>Urbanization</b>	Urban population: 32.2% of total population (2015) Rate of urbanization: 3.27% annual rate of change (2010-15 est.)
<b>Major urban areas - population</b>	Maputo (capital) 1.187 million; Matola 937,000 (2015)
<b>Life expectancy at birth</b>	Total population: 52.94 years Male: 52.18 years Female: 53.72 years (2015 est.) Country comparison to the world: 214
<b>Education expenditures</b>	5% of GDP (2006)
<b>Mean years of schooling<sup>76</sup></b>	3.25
<b>School life expectancy (primary to tertiary education):</b>	Total: 9 years Male: 10 years Female: 9 years (2013)
<b>Human Development Index<sup>77</sup></b>	0.393

<sup>75</sup> Dependency ratios are a measure of the age structure of a population. They relate the number of individuals that are likely to be economically 'dependent' on the support of others. Dependency ratios contrast the ratio of youths (ages 0-14) and the elderly (ages 65+) to the number of those in the working-age group (ages 15-64). Changes in the dependency ratio provide an indication of potential social support requirements resulting from changes in population age structures. As fertility levels decline, the dependency ratio initially falls because the proportion of youths decreases while the proportion of the population of working age increases. As fertility levels continue to decline, dependency ratios eventually increase because the proportion of the population of working age starts to decline and the proportion of elderly persons continues to increase.

Total dependency ratio - The total dependency ratio is the ratio of combined youth population (ages 0-14) and elderly population (ages 65+) per 100 people of working age (ages 15-64). A high total dependency ratio indicates that the working-age population and the overall economy face a greater burden to support and provide social services for youth and elderly persons, who are often economically dependent.

Youth dependency ratio - The youth dependency ratio is the ratio of the youth population (ages 0-14) per 100 people of working age (ages 15-64). A high youth dependency ratio indicates that a greater investment needs to be made in schooling and other services for children.

Elderly dependency ratio - The elderly dependency ratio is the ratio of the elderly population (ages 65+) per 100 people of working age (ages 15-64). Increases in the elderly dependency ratio put added pressure on governments to fund pensions and healthcare.

Potential support ratio - The potential support ratio is the number of working-age people (ages 15-64) per one elderly person (ages 65+). As a population ages, the potential support ratio tends to fall, meaning there are fewer potential workers to support the elderly.

<sup>76</sup> United Nations Development Programme, Human Development Reports, <http://hdr.undp.org/en/countries/profiles/MOZ> Accessed 21 October 2015.

<sup>77</sup> United Nations Development Programme, Human Development Reports, <http://hdr.undp.org/en/countries/profiles/MOZ> Accessed 21 October 2015.

## ECONOMY

At independence in 1975, Mozambique was one of the world's poorest countries. Socialist mismanagement and a brutal civil war from 1977 - 1992 exacerbated the situation. In 1987, the government embarked on a series of macroeconomic reforms designed to stabilise the economy. These steps, combined with donor assistance and with political stability since the multi-party elections in 1994, propelled the country's GDP from US\$4 billion in 1993, following the war, to about US\$30.9 billion in 2014. Fiscal reforms, including the introduction of a value-added tax and reform of the customs service, have improved the government's revenue collection abilities. In spite of these gains, more than half the population remains below the poverty line. Subsistence agriculture continues to employ the vast majority of the country's work force. A substantial trade imbalance persists although aluminium production from the Mozal smelter has significantly boosted export earnings in recent years. In 2012, The Mozambican government took over Portugal's last remaining share in the Cahora Bassa Hydroelectricity Company (HCB), a significant contributor to the Southern African Power Pool. The government has plans to expand the Cahora Bassa Dam and build additional dams to increase its electricity exports and fulfil the needs of its burgeoning domestic industries. Mozambique's once substantial foreign debt has been reduced through forgiveness and rescheduling under the IMF's Heavily Indebted Poor Countries (HIPC) and Enhanced HIPC initiatives, and is now at a manageable level. In July 2007, the US government's Millennium Challenge Corporation (MCC) signed a US\$506.9 million Compact with Mozambique that ended in 2013. The Compact focused on improving sanitation, roads, agriculture, and the business regulation environment, in an effort to spur economic growth in the four northern provinces of the country. Citizens rioted in September 2010 after fuel, water, electricity, and bread price increases were announced. In an attempt to lessen the negative impact on the population, the government implemented subsidies, decreased taxes and tariffs, and instituted other fiscal measures. Mozambique grew at an average annual rate of 6% - 8% in the decade up to 2014, one of Africa's strongest performances. Mozambique's ability to attract large investment projects in natural resources is expected to extend high growth rates in coming years. Revenues from these vast resources, including natural gas, coal, titanium and hydroelectric capacity, could overtake donor assistance within five years.

**GDP (purchasing power parity)** \$31.1 billion (2014 est.)  
 \$28.96 billion (2013 est.)  
 \$26.96 billion (2012 est.)  
 Note: data are in 2014 US dollars  
 Country comparison to the world: 127

**GDP - real growth rate** 7.4% (2014 est.)  
 7.4% (2013 est.)  
 7.1% (2012 est.)  
 Country comparison to the world: 10

**GDP - per capita (PPP)** \$1 200 (2014 est.)  
 \$1 100 (2013 est.)  
 \$1 000 (2012 est.)  
 Note: data are in 2014 US dollars  
 Country comparison to the world: 222

<b>GDP - composition, by end use</b>	Household consumption: 74.2% Government consumption: 17.9% Investment in fixed capital: 50.3% Investment in inventories: 0% Exports of goods and services: 31.8% Imports of goods and services: -74.3% (2014 est.)
<b>Unemployment rate</b>	17% (2007 est.) 21% (1997 est.) Country comparison to the world: 154
<b>Population below poverty line (below US\$ 1.25 per day)</b>	52% (2009 est.)
<b>Household income or consumption by percentage share</b>	Lowest 10%: 1.9% Highest 10%: 36.7% (2008)
<b>Public debt</b>	47.2% of GDP (2014 est.) 41.1% of GDP (2013 est.) Country comparison to the world: 77
<b>PRISON POPULATION<sup>78</sup></b>	
<b>Prison population total</b>	15 663 (Sept 2013)
<b>Prison population rate (per 100,000 of national population)</b>	62 (Sept 2013)
<b>Pre-trial detainees / remand prisoners (percentage of prison population)</b>	32.6% (Sept 2013)
<b>Female prisoners (percentage of prison population)</b>	3.9% (Sept 2013)
<b>Number of establishments / institutions</b>	184 (Sept 2013)
<b>Official capacity of prison system</b>	7 804 (Sept 2013)
<b>Occupancy level (based on official capacity)</b>	200.7% (Sept 2013)

<sup>78</sup> World Prison Briefs <http://www.prisonstudies.org/country/Mozambique>

## Methodology

### Interviews

The methodology intended was as per the methodological design set out in Chapter 1 of this report. In Mozambique, it was established that all male detainees in the *Estabelecimento Penitenciário Provincial de Maputo* (formerly *Cadeia Central da Machava*), are visited regularly, and that the *Penitenciário* also houses detainees from a broad swathe of the nearby countryside. Consequently the methodology did not require sampling of not-visited detainees and their traced households, as was required in Kenya and Zambia.

Some 39 interviews were carried out with male detainees at *Estabelecimento Penitenciário Provincial de Maputo* and 30 interviews were carried out with female detainees at *Estabelecimento Penitenciário Especial para Mulheres de Ndlavela* as well the *Estabelecimento Penitenciário Preventivo de Maputo* (former *Cadeia Civil*).

Very few female pre-trial detainees were held in the *Penitenciária* targeted for the research. The two *Penitenciárias* had to be visited on multiple occasions in order to conduct a minimum of 30 interviews, as the same detainees continued to be the only women incarcerated. These women are thus all the female pre-trial detainees held in the two *Penitenciárias* over the period that the fieldwork was conducted. They thus represent the universe of such detainees over that time. It is unclear whether the women held in these *Penitenciárias* are representative of all those held throughout the country throughout the year.

Some 69 interviews were held with visitors to detainees. All of these were visitors to the *Penitenciárias*. Some 39 interviews were with persons visiting male detainees at *Estabelecimento Penitenciário Provincial de Maputo*; 20 were with visitors of female detainees at *Estabelecimento Penitenciário Especial para Mulheres de Ndlavela*; and eight were with visitors of female detainees at *Estabelecimento Penitenciário Preventivo de Maputo*, while the location of the remainder was not recorded, but related to female detainees.

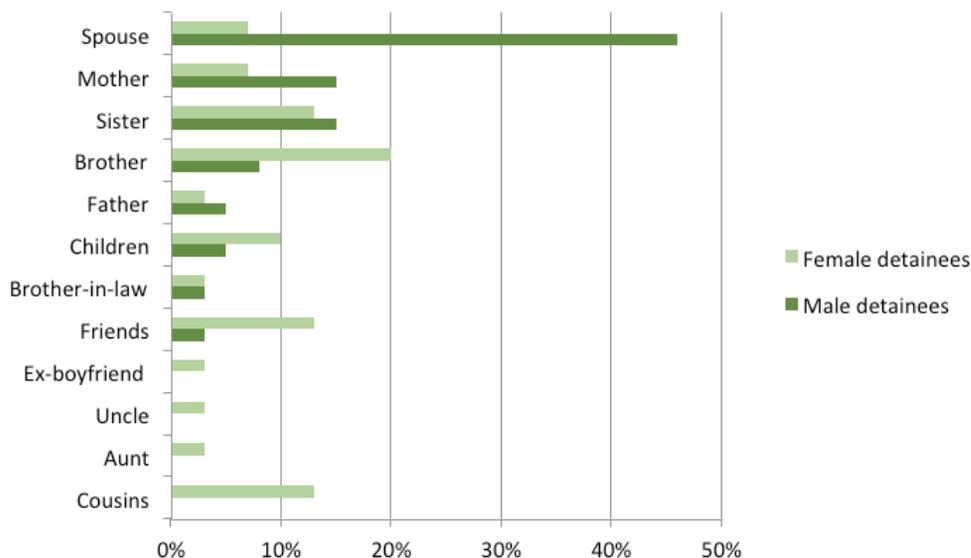
Visitors to detainees interviewed ranged in age from 18 to 72 years. The median age for visitors interviewed in relation to female detainees was 37 years, while for visitors to male detainees it was 29 years.

Some 68% of all visitors interviewed were female, and 32% male. However, among visitors to female detainees interviewed, the majority were male (53%). Visitors to male detainees interviewed were 85% female. The majority of visitors spoke Tsonga/Shangaan/Ronga (73%); followed by Portuguese (7%); Chope (4%); and Chuabo (4%). This is generally in line with the language of detainees.

The vast majority of visitors to male detainees were female relatives, with 44% being wives; 15% mothers; and 15% sisters - see Figure 3.1. This demonstrates that while men are far

more likely to be detained than women, the impact of their detention is highly likely to fall on female relatives. Siblings and extended family and friends were more common visitors to female detainees.<sup>79</sup>

Figure 3.1: Relationship of visitor respondent to detainee



### Register data

The prison register records all pertinent details of admissions and was used to ascertain certain key data relating to the detainees interviewed, including their date of admission, which could be used to calculate the duration of detention. Demographic, offence and detention data of detainees interviewed was compared with the findings of the recently completed Mozambique audit on case flow management and conditions of detention (hereinafter referred to as ‘the Mozambique audit’), conducted by *Liga dos Direitos Humanos and Centro dos Direitos Humanos (Universidade Eduardo Mondlane)*, and supported by the Dullah Omar Institute (University of the Western Cape).

### Findings

The findings here make use of the interviews with both detainees as well as with visitors and also refer to data collected from registers.

<sup>79</sup> The most common visitors to female detainees were brothers (20%), followed by sisters (13%), cousins (13%), sons and daughters (10%), and friends of the family (10%), as shown in Figure 3.1.

## Socio-economic profile of detainees

The socio-economic profile of detainees is that they are mostly of income-earning age and have family members who rely on them.

### Detainees are of income-earning age

For the male detainees interviewed, the ages ranged from 17 to 46 years, with the median age being 28 years, and the most common (mode) age 25 years (7%). This is in line with the Mozambique pre-trial audit findings, which found pre-trial detainees ranged in age from 13 to 67, with the median being 26. For female detainees, the ages ranged from 19 to 52 years, with the median age of 29 years, also being the most common age (10%). This suggests most detainees are of income-earning age and are likely to be economically active.

### Most detainees are literate with some education

The average years of schooling in Mozambique<sup>80</sup> for men and women aged 15 - 49 years, was seven and five years, respectively, in 2011.<sup>81</sup> The median amongst male interviewees was the 7th class which was also the most common class reached (26%), with education ranging from no education (10%), to some post-school education (less than 1%).<sup>82</sup> The education levels among female detainees interviewed, ranged from no education to the 12th class. The most common levels of education were the 5th class (17%), and the 10th class (17%). The level of education of detainees interviewed consequently appears to be in line with trends for Mozambique as a whole, and suggests detainees are no more or less educated than other Mozambicans.

### Nearly three quarters of detainees are economically active

Some 72% of detainees, same percentage for male and female, were earning money at the time of their arrest. This is in line with national employment ratio data for men (76%, 2006) and women (78%, 2006). Among men, the most common income-earning activities were construction-related (22%), mainly masonry, painter, carpenter employment as a security

80 Mozambique's basic education comprises two primary levels: lower (classes 1-5) and upper primary (classes 6-7); students who complete upper primary can go on to secondary school (classes 8-12, divided into classes 8-10 and 11-12). National tuition and other fees in primary education (up to grade 7) were abolished in 2004/5; however, this reform is unlikely to have benefitted the majority of detainees in this sample. Technical and vocational education and training opportunities exist for graduates of lower and upper primary, or of lower secondary, while university is open only to graduates of secondary schools.

81 Education and policy data centre (EPDC) Average years of schooling, 2011, National, Urban Rural Combined, Ages 15-49, EPDC extraction of DHS dataset, available at <http://www.epdc.org/content/average-years-schooling-literacy-and-educational-attainment-mozambique-tanzania> Accessed 21 October 2015.

82 The pre-trial audit found 9% of pre-trial detainees indicating illiteracy and 1% having higher education. The education range of those interviewed was thus reasonably representative of the pre-trial population found in the audit.

guard (19%) hawking and selling (11%) and being a driver (7%). Other activities included being an artist; working at the University; cutting coal in the bush; being in the military; and selling scrap. The most common methods of earning money among women were domestic work (29%); selling clothes and furniture (23%); and formal employment (23%). One female detainee said she was engaged in sex work.

### Detainees earned below the minimum wage

Some 58% of detainees were able to indicate an amount for their earnings at the time of their arrest - see Table 3.1. The median earnings for all detainees was MT 3 000 (US\$ 95) which was also the most common (15%) amount earned.<sup>83</sup> However, there were different trends for men and women. Some 62% of male detainees listed their earnings with the median being MT 3 900 (US\$ 124)<sup>84</sup> and 53% of women listed their earnings, with the median being MT 2 500 (US\$ 79).<sup>85</sup> All of these earnings put the majority of pre-trial detainees at earning less than the statutory minimum wage (MT 3 010 or US\$ 95).

Most visitor-respondents confirmed that the detainee earned an income. Among those visiting female detainees, 73% said the detainee earned an income, and among those visiting male detainees, 87% said the detainee earned an income at the time of arrest. Female detainees who lived with their visitors were less likely to earn (60%), than those female detainees who lived elsewhere (87%). By contrast, male detainees who lived with their visitors were more likely (91%) to earn, than those who lived elsewhere (60%). Only 39% of visitor respondents (49% of those who said detainees contributed), were able to quantify the amount earned by the detainee.

Table 3.1: Earnings of detainees, according to detainees and visitors

	Minimum	Median	Maximum
Male detainee earnings, according to detainees	MT 1 500 \$47.50	MT 3 900 \$123.50	MT 10 000 \$316.65
Male detainee earnings, according to visitors	MT 2 000 \$63.33	MT 3 765 \$119.22	MT 10 000 \$316.65
Female detainee earnings, according to detainees	MT 90 \$2.85	MT 2 500 \$79.16	MT 30 000 \$949.97
Female detainee earnings, according to visitors	MT 1 500 \$47.50	MT 3 000 \$95.00	MT 12 000 \$379.98

### More than half of male detainees are married

The majority of male detainees interviewed are married (54%). It is unknown the extent to

83 Range from MT 90 (US\$ 3) to MT 30 000 (US\$ 950) per month, 25th percentile MT 2 400 (US\$ 76), 75th percentile MT 4 500 (US\$ 143).

84 Range from MT 1 500 (US\$ 48) to MT 10 000 (US\$ 320).

85 Range from MT 90 (US\$ 3) to MT 30 000 (US\$ 950).

which interviewees referred to formal marriage or to consensual union is practiced when indicating they were married. In relation to Mozambique as a whole, the 2007 Census found only 18% of men aged 25 - 34 years were formally married. However, once consensual unions are included, this rises to 80%. Consequently the exact extent to which the marriage trends amongst detainees, reflects broader society, is unclear. What is clear is that detainees are more likely than not to be married, indicating some sense of social stability.

By contrast, the majority (50%) of female detainees were single, while a third was married (33%), and some widowed (7%). Formal marriage amongst women in Mozambique is 19% for women aged 25-34 years, and 80% if consensual unions are included. This suggests that female detainees are less likely to be married than ordinary Mozambican women.

### **Most detainees have two or more children and additional dependents**

The vast majority of detainees have children, (92% among women and 82% among men). The number of children ranged from one to six. The most common number of children among women was three (31%), and among men two (28%). The median was two for both men and for women. Three quarters (75%) of detainees said they had dependents other than their own children. The number ranged between one and 12, with the median being two, and the average 2.6.

### **Nearly all detainees supported at least one other person**

Some 92% of detainees said they supported between one and six people financially. The total amounts listed for each person supported summed ranged from MT 200 (US\$ 6) to MT 6000 (US\$ 190), which in turn ranged from 7% to 100% of detainees' income, with the median proportion being 33%.

### **One fifth cared for other dependents in non-financial ways**

Some 22% of detainees said they cared for and supported between one and five people in ways other than financially. This was 33% among women and 13% among men. The people receiving care and support from detainees were all extended family members. Among those providing such care and support, the most common support provided was food (46%), and often food which was self-produced through subsistence farming.

### **Disabilities among dependents of detainees**

Some 6% of detainees said that among their dependants was a person with a disability. The type of disabilities alluded to included eyesight problems, absence of limbs, and internal pain. The WHO estimates that 6% of the Mozambique population has a disability.<sup>86</sup>

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<sup>86</sup> WHO World Report on Disability, p. 273, available at [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf)

## The majority of detainees speak the majority language

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations convention which commits to the elimination of racial discrimination and the promotion of understanding among all races. “Racial discrimination” is defined as “...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Over or under-representation of any group among detainees in comparison with the ethnic composition of the general population could be suggestive of patterns of discrimination in law enforcement.

Unlike the findings in other countries, where representation of minority languages was high, among the detainees interviewed, the majority language was the same as the majority language of the province. Among male detainees interviewed, some 67% were Tsonga/Shangaan speakers, followed by Chuabo, Portuguese, Macua and Sena, at 5% each. Tsonga / Shangaan is the majority language in the province of Maputo. Among the female detainees interviewed, some 76% were Tsonga/Shangaan/Ronga, 10% Portuguese and 3% each of Macua, Mandau, and Matwa.

## Households affected by the detention

The project design sought to understand the socio-economic impact of pre-trial detention primarily through the lens of the household. Questions were also asked regarding those whom detainees supported financially at the time of their arrest. In Mozambique, most, but not all, visitors were household members of the detainee. The interviews with visitors provide insights into additional households affected by the detention of the detainee, other than the detainee households. These are referred to as ‘visitor-respondent households’.

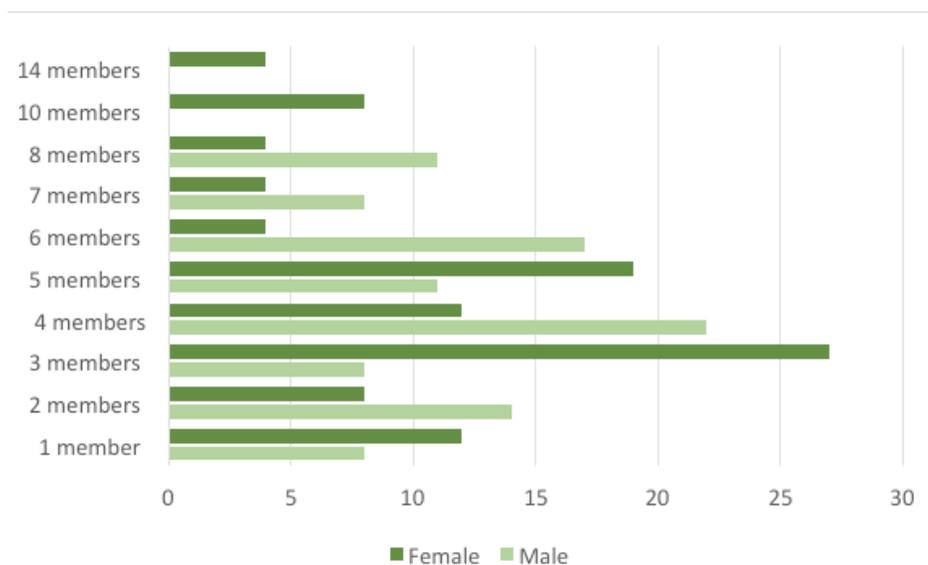
## Most detainees live in households comprising four or more members

More than half of detainees’ households comprised four or more members, see Figure 3.2. The most common household size amongst female detainees was three (27%), and among male detainees four (22%). Male and female detainees had similar trends. The majority of detainees lived in households comprising two adults and a number of children.<sup>87</sup> A small proportion of detainees lived alone; 12% of female detainees and 8% of male detainees, rendering further support to the observation that most detainees are not social outcasts, but

<sup>87</sup> The second member of the household was the detainees’ spouse for 53%, with the median age of 27 years for the second member. For 49% the third person in the household was the son or daughter. Some 50% of the third persons in the household were under the age of 18. For some 51% the fourth person was also a son or daughter, with 57% of the fourth persons being under the age of 18.

are rather socially connected.

Figure 3.2: Household size, male and female detainees



### Affected households include other households

Visitor respondents said they live in households comprising between 1 and 11 members. In relation to male detainees, the profile of household size was generally similar to that reported by male detainees in the interviews with detainees.<sup>88</sup> By contrast, the profile of households of visitors of female detainees more prominently featured 1 and 2 person households than did those of female detainees themselves, where households of 3 or more persons were more prominent. Note that visitors to female detainees were commonly brothers and sisters, cousins and friends. This suggests that visitors of female detainees did not necessarily live in the same household as the detainee.

Nearly half (49%) of visitor-respondents said that the detainee they were visiting, lived permanently in their household, while a further 22% said the detainee lived there occasionally, while the detainee did not live with 29% of visitor-respondents. Among those visiting female detainees, 50% said the detainee did not live with them, while among visitors to male detainees, this was only 13%. The implication of this is that the households affected by the detention of the detainee extended beyond the households in which the detainee lived, particularly in relation to female detainees.

<sup>88</sup> The most common household size amongst visitors visiting male detainees was four (28%), followed by three (15%).

### The majority of detainees are household heads

The majority of detainees said they were the head of the household in which they lived (81% of male detainees and 53% of female detainees). Among those who were not household heads, the most commonly identified household head was the mother (20%); or father (40%) among male detainees; and mother (25%) or husband (17%); among female detainees. This suggests that male detainees who are not household heads, tend to reside in their parental home. The majority of those who were not household heads were under the age of 25 years.

### Median household income close to minimum wage

Detainees interviewed were asked to provide a table listing each household member and their respective contributions to household income. Total household income was calculated by summing the incomes for each household member, as provided by the detainee. A total value was obtained for just under half of households. Total household income ranged between MT 500 (US\$ 16) and MT 30 000 (US\$ 950), median MT 3 600 (US\$ 114).<sup>89</sup> Note that the minimum wage in Mozambique, the lowest of which applies to the agricultural sector, is MT 3 010 (US\$ 95).<sup>90</sup> Thus total household income is close to the lowest minimum wage; US\$ 114 versus US\$ 95.

Total income for visitors' households was also calculated by summing the contributions of all earning members, as provided by the visitor respondent.<sup>91</sup> The amounts ranged from MT 300 (US\$ 9.50) to MT 7 000 (US\$ 222), median (and most common amount) MT 3 000 (US\$ 95). This was broadly similar to, although generally slightly lower than, the household incomes provided by detainees. The median was equal to the minimum wage in Mozambique (MT 3 010 or US\$ 95).

Table 3.2: Household income

Household income	Minimum	Median	Maximum
Detainee households	MT 500 \$15.83	MT 3 600 \$114.00	MT 30 000 \$950.00
Visitor-respondent households	MT 300 \$9.50	MT 3 000 \$95.00	MT 7 000 \$221.66

### Three quarters of detainees contributed to visitor household income

Detainees' contribution to total household income was large. According to detainees,

<sup>89</sup> Most common incomes MT 500 (US\$ 18), MT 1 500 (US\$ 48) and MT 4 500 (US\$ 143) (6% for each).

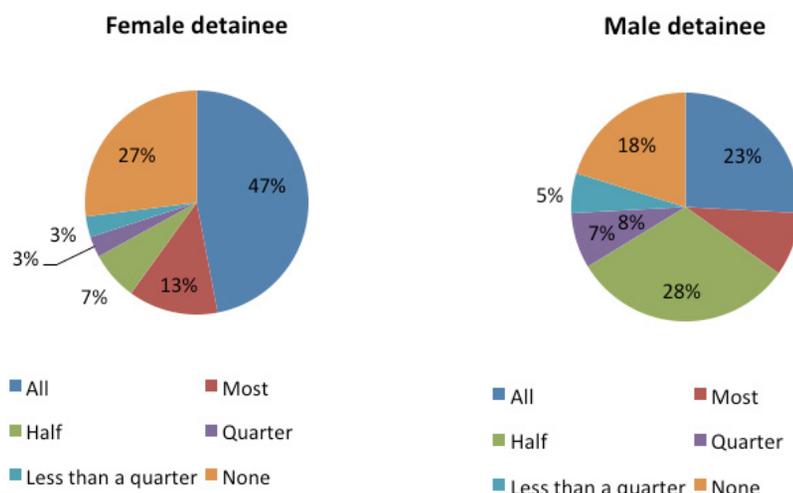
<sup>90</sup> AllAfrica.com Mozambique: Government Announces New Minimum Wages 30 April 2014 available at <http://allafrica.com/stories/201405010229.html> Accessed 21 October 2015.

<sup>91</sup> An amount for the total household income could be determined for 41% of respondents.

the median amount contributed by detainees to their households is MT 2 500 (US\$ 80), which was also the most common amount (13% contributed this amount).<sup>92</sup> Among female detainees MT 3 000 (US\$ 95) is the median and most common amount (18% contributed this amount)<sup>93</sup>, while among men MT 2 500 (US\$ 80) is the median and also the most common amount (16% contributed this amount).<sup>94</sup> The median financial contribution to the household was thus equal to 70% of the median total household income. For those households for which an income was known (49%), for 59% the percentage contribution of the detainee to total household income was 100%. Among men, 70% contributed 100% to total household income. Among women, 43% contributed 100%.<sup>95</sup>

This contribution was confirmed by visitor-respondents. Some 75% of respondents said the detainee had contributed financially to their households, as shown in Figure 3.3. This rose to 82% among respondents who said the detainee lived with them, and to 88% among respondents who said the detainee was earning. Some 63% of those visiting female detainees said they contributed to their household, and 84% of those visiting male detainees. Respondent-visitors were asked the extent to which detainees contributed their earnings to the household. The majority of detainees contributed half or more of their earnings to the respondent household at the time of arrest.

Figure 3.3: Detainee estimate of contribution of earnings to household income, according to visitor-respondents



92 Among those who indicated a value, the range contributed was between MT 500 (US\$ 16) and MT 30 000 (US\$ 950) to the own household at the time of their arrest.

93 The range was from MT 1 000 (US\$ 32) to MT 30 000 (US\$ 950),

94 The range was from MT 500 (US\$ 16) to MT 12 000 (US\$ 38),

95 A zero contribution applied to 21% of women and 5% of men). The remainder (29%) ranged between 17% and 44% for women, 38% and 89% for men

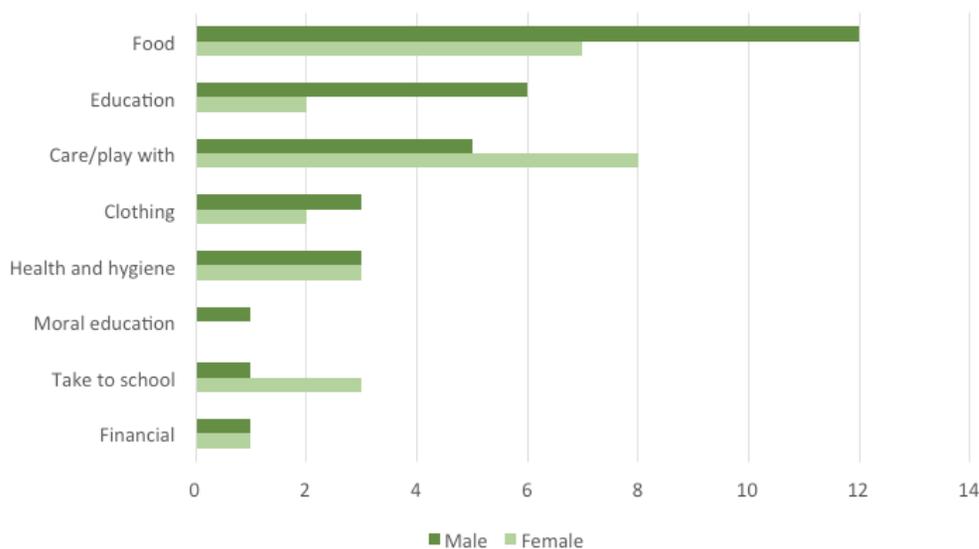
### Nearly all female detainees cared for children in the detainee household prior to detention

Some 90% of female detainees and 58% of male detainees said they provided care for the children in their household. The number of children they cared for ranged from one child (16%) to eight children (2%), the median being three children, which was also the most common number of children cared for (23%). Male and female detainees described the care they provide as the activities of a typical father or mother.

- *They are my nephews. I was caring for them in the absence of the mother*
- *I did everything a mother does for her children.*

The qualitative descriptions provided are classified in the Figure 3.4 below.

Figure 3.4: Types of care provided by detainees to children in their care at time of arrest



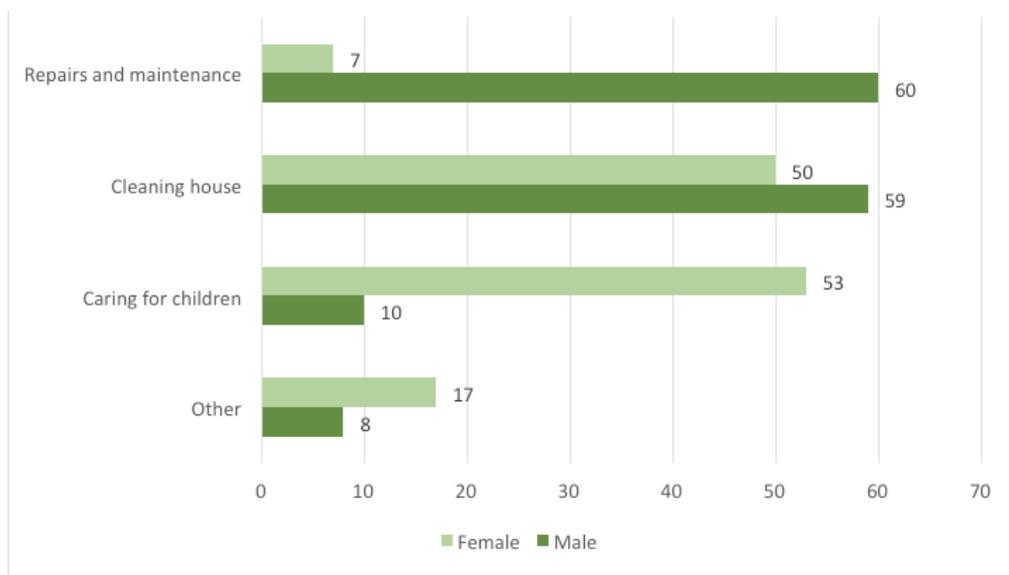
According to detainees, the vast majority of both female and male detainees were integrally involved in children’s lives, their own and others, at the time of their arrest. It can be concluded that their absence would have a substantial impact.

### Nearly all detainees made at least one non-financial contribution to the household

Visitor-respondents described other non-financial contributions by detainees. Among those visiting male detainees, 92% said the detainee made at least one non-financial contribution to the respondent household. Some 54% said the primary non-financial contribution provided by male detainees was cleaning the house; 26% said repairs and maintenance of the house; 10% caring for children; and 3% other. Some 45% listed a second non-financial

contribution; with 34% listing repairs and maintenance; 5% saying house-cleaning; and 5% listing other, as shown in Figure 3.5.

Figure 3.5: Percentage of male and female detainees making non-financial contributions to house, primary and secondary combined



Among those visiting female detainees, 86% said the detainee made at least one non-financial contribution to the respondent household. Some 37% said the primary non-financial contribution provided by female detainees was cleaning the house; 33% said caring for children; 10% mentioned food or farm production; and 7% cooking. Some 40% listed a second financial contribution, 20% said caring for children; 13% cleaning the house; 7% said repairs and maintenance of the house.

### Disability in the household higher than national norm

Some 15% of visitor-respondents said there was a person with a disability living in their household. Some 6% mentioned a psycho-social disability (mental or personality disorder); 1% a hearing disability; while 8% had problems with limbs, such as amputations or lack of function. This compares to the 6% of detainees who mentioned a disability in their household. All visitor-respondents said they were not receiving any support services in relation to these disabilities. As indicated above, the WHO estimates that 6% of the Mozambique population has a disability.<sup>96</sup> It thus appears that the prevalence of disabilities in the households surveyed is above the national norm.

<sup>96</sup> WHO World Report on Disability, p. 273, available at [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf)

## Economic impact of detention

The rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), include:

- The equal right of men and women to pursue economic, social and cultural rights (art 3);
- The right to work and the duty of the state to take measures to enable people to access gainful employment (art 6);
- The right to just conditions of employment (art 7);
- The right to social security (art 9);
- The duty of the state to provide the widest possible protection to the family (art 10);
- The right to an adequate standard of living and to be free from hunger (art 11);
- The right to the enjoyment of the highest attainable standard of physical and mental health (art 12); and
- The right to education (art 13).

The nature of the obligations on states set out by the ICESCR is not that states must ensure that every person has employment and social security. The obligation is that states should 'respect', 'protect' and 'promote' these socio-economic rights. The duty to 'respect' entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and to use their resources to satisfy needs. This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedure and criminal laws. As the demographic profile and profile of affected households above demonstrates, the decision to detain an accused person before trial almost invariably interferes with the resources of individuals, including individuals other than those being detained. In this section the nature of that interference is explored in more detail.

### Two thirds reported a loss in income arising from the detention

Most visitor respondents said they experienced a loss of income as a result of the detention. Some 57% of those visiting female detainees; and 70% of those visiting male detainees experienced a loss of income. In the qualitative descriptions of this loss, some referred to the additional costs incurred:

- *Much money because we have to send food and money to treat [pay] the transport process. Things have changed for the worse because of the expenses.*

Others referred to the direct loss of the detainee's income:

- *The amount he was contributing [we] no longer have.*
- *I lost everything. He gave me 6 000.00 meticaís (US\$190) per month.*
- *All the value [money] he gave me.*
- *Half of income was lost.*
- *All the value [money] he attached.*
- *Largely because he was the one who worked.*

Some referred to additional loss of their income caused by loss of working time when coming to visit:

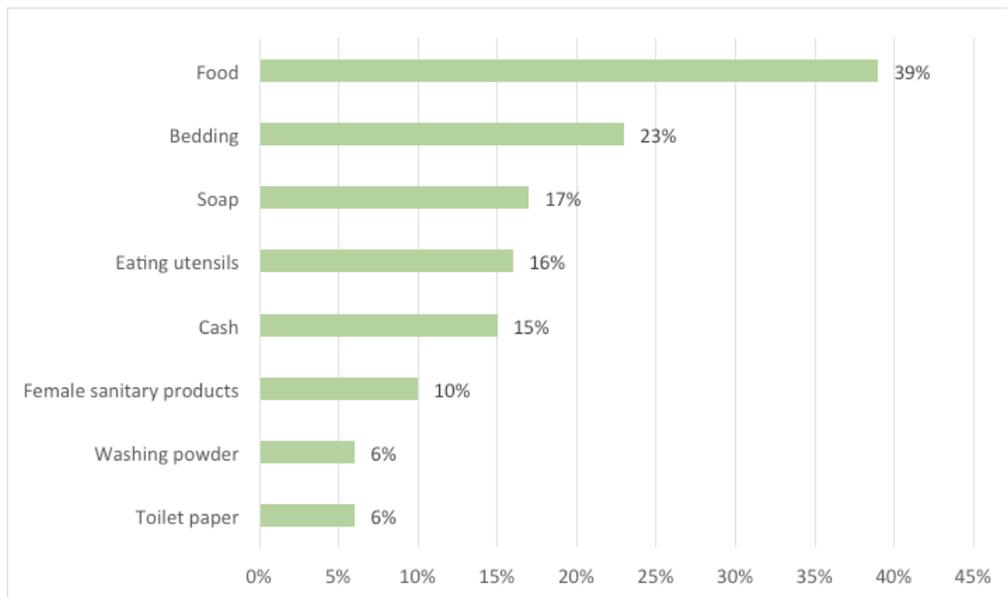
- *I sold beer and refreshments before his arrest. When he was arrested, I had to stop to go support his case, I lost all the money.*
- *When I come to visit, I miss work.*
- *On visiting days I have to go to his house to get some things and deliver [to] the detainee. It is laborious and costly.*
- *Some could not quantify the economic impact:*
- *I have no idea, but sometimes [I] do not have anything for the children.*

### **Additional costs incurred by visiting**

The vast majority of detainees are visited and are visited at least once a month. Some 80% of detainees said they were visited while they were in police detention. This was 83% among female detainees and 77% among male detainees. Among these, detainees mentioned between one and seven visitors while in police detention. The reasons cited for visiting, included reasons of affection, and bringing food (12%).

Some 85% of detainees said they were visited while in a *Penitenciária*. As shown in Figure 3.6, a broad range of items were brought to detainees by visitors. Some 15% said money, of which 72% said this was recorded in an official register. Some 72% of detainees said they were able to buy things in the *Penitenciária*, mostly bread, cool drinks, milk and fruit.

Figure 3.6: Profile of items brought to detainees by visitors, according to detainees



Almost all of the visitors interviewed said they were visiting because of the close family relationship: *Come visit because he is my son; Visit because it is my husband; and because they missed the detainee very much, Longing and solidarity.* Visiting was not therefore predominantly about practical issues but mainly for emotional reasons: *To see how she is and settle the heart.* The emotional attachment is evident in the nature of the qualitative reasons for visiting: *For being my mom, so she does not feel alone.*

Some 16% of visitors interviewed were visiting for the first time, and 9% for the second time. The remainder said this was their third, fourth or more visit, and many said they had visited several times in the past. Some of the comments among the frequent visitors were as follows:

- *[I visit] whenever possible.*
- *Since he came, I lost count.*
- *On visiting days, when I have money for transportation.*
- *I come whenever, I cannot remember how many times.*
- *Repeatedly.*

Some 94% of respondents were able to estimate the cost of their transport for visits with the median cost of a single journey being was MT 40 (US\$ 1.30), which is equivalent to 1% of the minimum wage. Given that most visited on multiple occasions (see above), these costs are likely to mount quickly.

Table 3.3: Transport cost

Transport costs for visitors	Minimum	25th percentile	Median	75th percentile	Maximum
MT	14	28	40	100	22 500
US\$	0.44	0.88	1.27	3.17	713

The most common cost was MT 21 (US\$ 0.67) (11%). In terms of duration, journeys ranged from 20 minutes to 10 hours. The most common journey duration was two hours (16%); followed by three hours (10%); and one hour (11%); and most (82%) of journeys were by bus. Most commonly respondents said they would undertake such a journey at least once a month (40%); 18% weekly; and 1% fortnightly; some 39% could not say how often.

Visitors were able to quantify the cost items brought on visits. While it is true that food, soap, toothpaste etc. will be purchased and consumed whether or not a person is detained; when a person is detained it is often the case that the family must buy additional items, which would ordinarily have been shared in the family context, to give to the detainee to keep in detention which cannot be shared in the household or family. In addition, these purchases are unexpected and unplanned. Food brought is often 'special' or of a better quality than usually provided in the home, as visitors seek to provide extra nourishment for the detained person, who must eat prison food ordinarily. Money amounts spent on bribes and legal assistance would of course not have been incurred had the person not been detained.

#### Almost half of visitors bring food

Some 44% of visitors brought food on their visits. Two-thirds of those bringing food brought home-cooked food or pre-prepared cooked food. Fruits, vegetables, fish, eggs and biscuits were also brought. The food was estimated to have cost from MT 65 (US\$ 2.06) to MT 1 200 (US\$ 38.00) at each visit. The most common cost was MT 100 (US\$ 3.17), which represents 3% of the minimum wage.

#### A minority brought cash

Some 15% brought cash on visits to the detainee. This ranged from MT 20 (US\$ 0.64) to MT 400 (US\$ 12.68) (most common amount MT 100 (US\$ 3.17)). Some 3% said they paid bribes, costing MT 100 (US\$ 3.17).

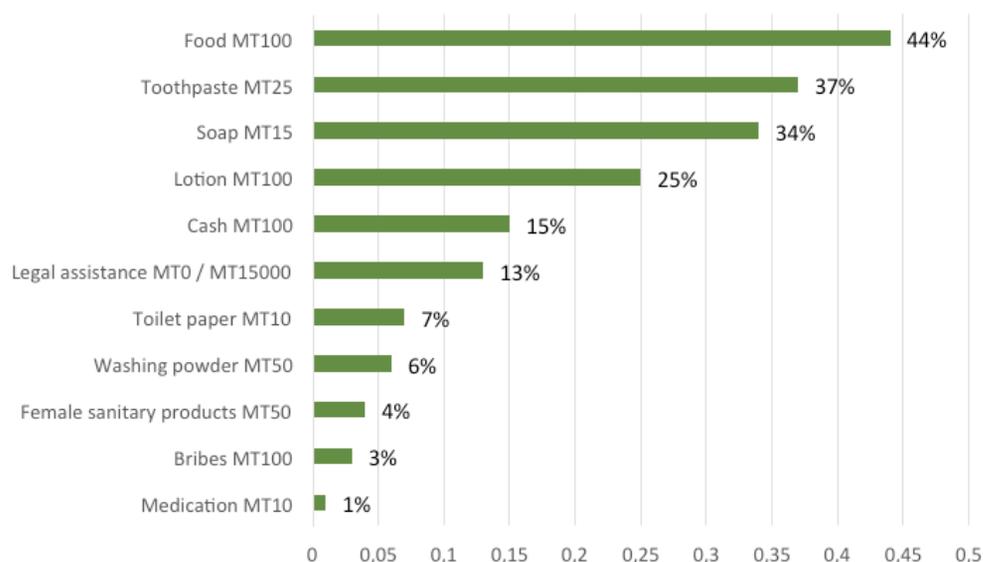
#### Many visitors bring other household items

As shown in Figure 3.7 - 37% brought toothpaste, costing from MT 20 (US\$ 0.63) to MT 35 (US\$ 1.11) (most common MT 25 (US\$ 0.79)). Some 34% brought soap, costing from MT 10 (US\$ 0.32) to MT 50 (US\$ 1.58) (most common MT 15 (US\$ 0.48)). Some 25% brought lotion, costing from MT 25 (US\$ 0.79) to MT 150 (US\$ 4.75) (most common MT 100 (US\$ 3.17)). Some 6% brought washing powder, costing from MT 35 (US\$ 1.11) to MT 50 (US\$

1.58). Some 7% brought toilet paper, costing from MT 6 (US\$ 0.19) to MT 12 (US\$ 0.38). Some 10% of those visiting women brought sanitary hygiene products, costing MT 50 (US\$ 1.58) to MT 80 (US\$ 2.54). Some 3% brought clothing, from home. Some 1% brought chronic medication, costing MT 10 (US\$ 0.32).

Combining the common cost of all these items amounts to 15% of the minimum wage per month.

Figure 3.7: Percentage bringing items and their common cost



### One in ten brought legal assistance

Some 13% said they brought some sort of legal assistance on the visit (7% IPAJ) and 3% paid for the legal assistance, with this costing MT 15 000 (US\$ 475).

### One third had to borrow money to meet shortfall caused by detention

Some 34% of visitors said they were forced to borrow money in order to make up for the shortfall in income caused by the detention. The median amount borrowed was equivalent to a third of the minimum monthly wage. Some 19% borrowed from a friend; 10% borrowed from a family member; and 5% borrowed from an employer. Other lenders were local leaders and the church. The amount to be paid back equalled the amount loaned, and only 1 respondent mentioned a 15% interest rate applying.

Table 3.4: Amount borrowed by visitor-respondents to make up shortfall

Amount borrowed	Minimum	25th percentile	Median	75th percentile	Maximum
MT	MT 10	MT 200	MT 1 000	MT 4 000	MT 15 000
US\$	\$0.32	\$6.33	\$31.67	\$126.66	\$474.98

### One in ten visitor-respondents had to sell something to meet the shortfall

Some 9% of visitor-respondents said they were forced to sell one or two items to make up for the shortfall in income caused by the detention. When asked to describe the items sold, respondents mentioned selling beans; a 3-burner stove; a microwave; a bed; a phone; a television; a dresser; and a DVD machine. Others feared losing such items in the near future: *Much screwed up. I run the risk of losing goods kept in the house.*

### The assets of detainees affected negatively

Some 80% of detainees said they had 'assets' at the time of their arrest. Some 69% said between one and five of their assets were affected by their detention. However, some of the assets identified were social or employment-related. Visitor-respondents confirmed these types of impacts, and 7% said they had movables stolen as a result of the detention. Some 6% said they ran the risk of losing the house in which they lived due to the detention. Detainees described the effects on their various 'assets' qualitatively as outlined below.

Effect on physical assets:

- *The [farm] products will be consumed by livestock from neighbouring farm.*
- *My brother demolished it [the house].*
- *The house is rented and my wife has no money to pay.*
- *It has disappeared and I do not know where.*
- *Lost in the city of Maputo.*
- *The house was abandoned and some goods, appliances and TV were stolen.*

Effect on social assets:

- *Lost my job.*
- *Friends distanced themselves [from me].*
- *Contempt and disrespect.*
- *Negative image.*
- *The community is outraged.*

- *I am degraded.*
- *Here I can no longer draw or paint.*
- *My daughter was taken by one of my uncles.*

## Social impact of detention

Families, especially the children, were negatively affected by the detention. The widest possible protection and assistance should be accorded to the family.<sup>97</sup> The right to education of children was clearly also affected by the detention.<sup>98</sup>

### Less security, less food and more work

Some 7% of visitors said they had less food as a result of the detention, while 34% said there was more work in the house, and 38% said the general security of the family was affected. The following quotes reflect this:

- *I have suffered because I no longer have my son [to] help.*
- *I no longer have support. Before [I was] receiving support in food and now no longer get [it].*
- *Changed much without his salary, cannot pay the rent and do not have family support.*
- *He helped me with personal expenses. Now I have support from my in-laws but is not the same thing.*
- *We have to work hard, lack the money at home. Make Chamussas with my mother to sell and [we have] nothing to eat.*

### Children negatively affected

Some 74% of those detainees caring for children said their detention had affected the children in their household. Detainees were asked to describe the nature of the impact. Many mentioned the children having to relocate and now living with another relative or even with their neighbours. Table 3.5 summarises the qualitative responses, using the actual (translated) words of detainees, regarding the impact of detention on children.

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97 Article 10, ICESCR.

98 Article 13, ICESCR.

Table 3.5: Qualitative descriptions of impact of detention on children

Category	Female detainee responses	Male detainee responses
Relocation/ alternative care	<ul style="list-style-type: none"> <li>• They had to go to live with her father.</li> <li>• They went to live with an aunt and uncle.</li> <li>• Went to live with a paternal uncle and left to study.</li> <li>• Had to move home.</li> <li>• They are under the care of my father who understands nothing of housework.</li> <li>• Went to live with her grandmother.</li> <li>• Due to physical incapacity of my husband, children are in the care of neighbours.</li> <li>• Had to move home and live with others.</li> <li>• Do not have someone who can take care of them.</li> <li>• Children began living with [their] grandmother [who] has financial difficulties.</li> </ul>	<ul style="list-style-type: none"> <li>• Do not know how they are right now because my parents are already old.</li> </ul>
Absence/miss/ trauma	<ul style="list-style-type: none"> <li>• For I am their father and mother.</li> <li>• [They] were traumatized.</li> <li>• Feel my absence.</li> <li>• They are suffering from the absence of the mother.</li> <li>• Feel my absence.</li> <li>• They cry a lot, and are disappointed when they come to visit mom.</li> <li>• They never came. I think they've been in jail.</li> <li>• I do not know how, because I asked not to bring them to prison.</li> </ul>	<ul style="list-style-type: none"> <li>• It is so because they still do not understand what happened to me.</li> <li>• Feel my fault and I also feel them.</li> <li>• The family is dysfunctional, does not have anyone to look after them.</li> <li>• They feel the lack [of] uncle's house.</li> <li>• Were disturbed.</li> <li>• Were affected in sad shape.</li> <li>• They were very shocked especially the eldest, the youngest understands.</li> </ul>

Lost resources	They are having difficulties when it comes to education and food.	<ul style="list-style-type: none"> <li>• I can no longer give my contribution to their education.</li> <li>• Let go of the nursery.</li> <li>• It has changed the way of life and the family's income dropped.</li> <li>• Impact is much as the mother does nothing for sustenance.</li> <li>• They depended on my salary, now no longer benefit.</li> </ul>
Lack of security		<ul style="list-style-type: none"> <li>• No longer have the same conditions of life. Sometimes comes to visit me with wounds on the body.</li> <li>• They are helpless, because the conditions have worsened.</li> </ul>

Some 32% of visitor-respondents in relation to female detainees said the children in their household were forced to move and live with another relative as a result of the detention. The figure was 3% in relation to male detainees:

- *We now live in his parents' house.*
- *Children are starved and we were almost expelled from the house we rented.*

### Relationships with family affected

Detainees were asked whether their relationships with their families improved or deteriorated as a result of their detention. Somewhat surprisingly, relationships with family members for most male detainees were reported to have improved as a result of the detention.<sup>99</sup> Possible interpretations include that the majority of pre-trial detainees are integral to their families and not ostracised by the family, with the detention not affecting key relationships. This may be because the detainee is not blamed for the detention. For female detainees, family relationships other than the marriage tended to be positively affected.<sup>100</sup> Among female detainees with husbands, most (55%) said this relationship had deteriorated slightly.

<sup>99</sup> Among male detainees with wives, 74% said their relationship with their wife had “greatly improved”; relationship with parents 79% “greatly improved”; children 100% greatly improved; brothers and sisters 60% “greatly improved”.

<sup>100</sup> In relation to parents, 13% did not know. Among those who did, 62% noted a slight or great improvement in their relationship with parents. In relation to children, 43% said they did not know. Among those who did know, 75% noted a slight or great improvement. In relation to brothers and sisters, 19% did not know. Among those who did know, 57% noted a slight or great improvement.

Some 8% of visitor-respondents said their own relationships with other immediate family members were affected, and in 3% extended family relations were also affected. Some 3% said relationships with friends were affected.

### Relations with friends and employers affected

The impact on relationships with non-family was not equally positive, particularly for female detainees. This suggests that outside of the family, the detention brings stigma. In relation to employers, 63% of male detainees said there had been deterioration in the relationship and 20% said they did not know, and all those who did know, said the relationship had deteriorated. Of the 82% of male detainees who could comment on the impact of their detention on their relationship with friends, 54% said there was improvement; and 46% said deterioration. By contrast among the 70% of female detainees who did know the impact of their detention on their relationships with friends; only 35% said there was improvement; and 65% said there was deterioration.

### Prior respect of community

Detainees were asked about the respect of the community before and after their detention. Some 50% said they were well-respected before their detention; 32% said they were respected the same as everyone else; and 9% said they were not respected. The trends were similar for male and female detainees. Some 61% said there was no change as a result of their detention, but 13% said the respect they enjoyed deteriorated as a result of their detention. The trends were the same for male and female detainees.

### Stigma, stress and depression

Some 3% of visitor-respondents said stigma was experienced; 7% said they experienced depression; and 7% said they experienced stress-related illnesses or effects.

- *Changed completely, I have to educate children alone and need help.*
- *Changed, I have a baby of 3 months and I'm getting sick.*
- *Changed for the worse, he helped [with] the nutrition of children and other.*

Some 37% of visitor-respondents mentioned other effects – all of these were in relation to female detainees. Some mentioned their own psychological distress:

- *I feel a lot of pain.*
- *Yes, [I have been affected in a] sentimental way. Creates a pain because [I] cannot help her there.*
- *Always crying for her.*
- *Having a sister held me logical.*
- *Psychologically affected.*

- *She is very much needed. She is like my mother.*
- *After all she is my daughter.*

Others mentioned the practical and social implications and problems:

- *(We have been affected) in every way. She is [the one] who is the head of the family and helped in everything.*
- *Preoccupation with children because she is out of family life.*
- *I am very concerned about the situation of her.*
- *I no longer have food at home.*

Visitor-respondents were asked to describe generally how things had changed as a result of the detention. Of the 62% who provided a response here, more than 90% commented negatively on the change. Some of the qualitative comments have been incorporated in the sections above, where relevant.

Some comments relating to emotional strain are:

- *I lack someone at home. It wears me and my family down.*
- *I'm not the same. I had to adapt myself to a new lifestyle without my husband.*
- *Changed much but because I cannot stop thinking about him and this is affecting a lot. And sick just thinking about it.*
- *Changed because I do not have much to give, and what little I have I share with him.*

## Health impact of detention

“The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”  
(Article 12, ICESCR)

This provision of the ICESCR means that the state must ensure that health care facilities, goods and services are available in sufficient quantity; are physically and economically accessible; are ethically and culturally acceptable; and are of a medically appropriate quality, for everyone. The right to health is fundamental to the physical and mental well-being of all individuals and is a necessary condition for the exercise of other human rights.<sup>101</sup> International human rights law clearly affirms that detainees retain fundamental rights and freedoms guaranteed under

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101 General Comment No. 14 of Committee of ESCR, 2000, para 12 General Comment No. 14 (2000) The Right to the Highest Attainable Standard of Health, (Article 12 of the International Covenant of Economic, Social and Cultural Rights). UN Committee on Economic, Social and Cultural Rights, 2000. para 1.

human rights law, “subject to the restrictions that are unavoidable in a closed environment.”<sup>102</sup> At the very least, prisoners are entitled to a standard of health care the same as that available in the general community, without discrimination.<sup>103</sup> Indeed states may have to ensure a higher standard of care than is available to people outside of prison, because in prison, most material conditions of incarceration are directly attributable to the state, and inmates have been deprived of their liberty and means of self-protection, giving rise to a positive duty of care, to include effective methods of screening, prevention, and treatment of life-threatening diseases.<sup>104</sup> In short, detainees should not leave prison in a worse state of health than when they arrived. The evidence in this report suggests detainees’ health deteriorated after their detention, and although some received treatment, this was limited in nature and not always effective. In addition, given that nearly all detainees will sooner or later be released, the ill-health experienced in prison, especially in relation to communicable diseases, whether due to poor health care services or poor conditions of detention, creates significant risks to the community in general and specifically to the households to which that prisoner may return.

The prevalence of poor health increased by 50% as a result of the detention, from 25% experiencing ill-health at the time of arrest to 37% becoming ill after arrest. However, most detainees had access to medication while in detention.

### A quarter of detainees ill at arrest

Some 25% of detainees interviewed said they were suffering from an illness at the time of their arrest. This was 40% among women and 13% among men. Some 30% of women who said they were ill reported that they had high blood pressure, 15% said they had HIV/AIDS; 15% asthma; 8% malaria; 8% a uterine infection; and the remainder had other pains and rheumatism. Among the small proportion of men who were ill, were those who said they had asthma, HIV/AIDS, and high blood pressure.

102 UN Committee on Human Rights, General Comment No. 21, Article 10, Humane Treatment of Prisoners Deprived of their Liberty, UN Doc. HRI/Gen/1/Rev.1 at 33 (1994), para. 3.

103 Basic Principles for the Treatment of Prisoners, UN General Assembly Resolution 45/111 (1990); WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Articles A (4) and C (ii); the Body of Principles for the Protection of All Persons Under any form of Detention or Imprisonment, UN General Assembly Resolution 43/173 (1988). Although these instruments are not legally binding in and of themselves, they provide authoritative guidance to states on the interpretation of relevant treaty obligations.

104 See, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, CPT/IN/E 2002, para. 31; WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Articles A (4) and C (ii); the Body of Principles for the Protection of All Persons Under any form of Detention or Imprisonment, UN General Assembly Resolution 43/173 (1988); UNAIDS International Guidelines on HIV/AIDS and Human Rights, (2006), Article 21(e); UNODC, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for Effective National Response (2006).

### Access to own medication is a problem

All of those who were sick at the time of detention were taking some medication for their illness at the time of their arrest. Of this group, only half said they were able to access their medicine while in police detention and 58% were subsequently able to access it in a *Penitenciária*.

### Many detainees become ill in prison

Some 37% of detainees said they were or became ill during their time in a *Penitenciária*; 47% of female detainees and 28% of male detainees. The most common illness while in a *Penitenciária* was malaria (12%). Among female detainees, malaria accounted for 21% of those who reported being ill; compared to 9% among male detainees. Male detainees complained of unspecified headaches; body aches; coughs; fevers; high blood pressure; and boils. Female detainees mentioned in addition to malaria; they had HIV (7%); and unspecific pains, headaches and bleeding. Additional illnesses mentioned were diarrhoea; herpes; and dizziness.

### Most detainees accessed effective medical care

Some 92% of detainees said they were able to access medication while in a *Penitenciária*, variably from doctors, nurses and the hospital, and on more than one occasion. Some 80% said the medication was effective; 10% said it was a little effective; and 5% said it was not.

## Experience of criminal justice system

The right to a fair trial is a peremptory norm of international customary law<sup>105</sup> and enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR). Articles 9, 10 and 15 of the ICCPR inform the content of a fair trial rights and establish that:

- Arrested or detained persons must be brought promptly before a judicial officer;
- Arrested and detained persons are entitled to trial within a reasonable time or to release;
- It must not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial;
- Trial must occur without undue delay;
- There must be a fair and public hearing by an independent and impartial tribunal;

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<sup>105</sup> A peremptory norm is a fundamental principle from which no derogation is permitted. UN Human Rights Committee, *General Comment 29, States of Emergency (article 4)*, CCPR/C/21/Rev.1/Add.11 (2001), and UN Human Rights Committee, *General Comment 32: Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32 (23 August 2007), [54].

- There must be equality before the courts and tribunals;
- There must not be arbitrary detention;
- There must be restriction of the use of incommunicado detention;
- There is access for lawyers, doctors and family; and
- There is independent internal and external oversight.<sup>106</sup>

## Arrest and police detention

The ICCPR provides in Article 9(1) that everyone has the right to liberty and security of person, which means no one shall be subjected to arbitrary arrest or detention, and that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Our analysis of the intersection of social and economic rights, together with the right not to be arbitrarily detained, suggests pre-trial detention should occur only when absolutely necessary. This is echoed in provision 10(b) of the Luanda Guidelines, which state ‘Pre-trial’ detention is a measure of last resort and should only be used where necessary, and where no other alternatives are available. Article 9(3) of the ICCPR also provides that it shall not be the general rule that persons awaiting trial shall be detained in custody, and release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Whether pre-trial detention is absolutely necessary is difficult to determine based on the nature of the charge. Nevertheless, a charge such as theft is suggestive of alternative methods of bringing an accused to trial. Indeed theft was the most common charge for both men and women. Furthermore, the fact that most detainees were not recidivists also suggests the possibility of alternatives to pre-trial detention.

## Maputo Prison pre-trial detainees mostly comprise less serious offences

Data on the ‘snapshot’ composition of Maputo Central Prison’s population showed that, as at February 2013, the prison held 2002 prisoners, of whom 43% were pre-trial detainees (*preventivos*). In addition, the prison oversees the incarceration of a further 438 prisoners in the surrounding District Prisons, of whom 37% are also pre-trial detainees.<sup>107</sup> Processo

106 UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, 3 July 2001, [34]. Articles 6 and 7 of the AChHPR reflect ICCPR safeguards, and the AChHPR has provided further guidance on the content of the right to fair treatment in the Resolution on the Right to Recourse and Fair Trial (Res.4(XI) 92) and the Principles and Guidelines on Rights to a Fair Trial and Legal Assistance in Africa (see also, *Rights International v Nigeria, African Commission on Human and Peoples Rights, Communication no. 215/98, [29]*). See also, *Rights International v Nigeria, African Commission on Human and Peoples Rights, Communication no. 215/98, [29]*.

107 Data presented by prison management during a visit to the prison on 12 February 2013 by the Human

Sumário Crime applies to defendants charged with offenses punishable by a fine or up to one year's imprisonment and a corresponding fine, caught in the act (*in flagrante delicto*) or not (*fora flagrante delicto*), or where the accused is caught 'red-handed' (*in flagrante*), and 'querela' i.e. complaint processes, where there has been a complaint by a victim.<sup>108</sup>

Among pre-trial detainees, some 69% were held in relation to '*sumário-crime*', while the remainder are held in relation to '*querela*'.<sup>109</sup> The process is of *querela* when offenses are punishable by prison for more than 2 years and 24 years (article 61 PC).<sup>110</sup> This suggests either that such persons are being held at police stations, or that they are not held pre-trial at all. The most common crimes for both pre-trial detainees and sentenced prisoners were theft and robbery. The number of pre-trial admissions to this prison in recent years averages at 3 800 per year.<sup>111</sup>

### Theft was the most common charge male detainees faced

Detainees (men only) interviewed at this *penitenciário* were most likely to be charged with theft (*furto*) (47%); robbery (*roubo*) (11%); followed by homicide (8%); and arms and ammunition charges (6%), see Figure 3.8 below. This is a similar profile to that obtained in the Mozambique pre-trial audit, in which theft (*furto*) (21%); robbery (*roubo*) (14%); and homicide (2%); also featured prominently.<sup>112</sup>

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Rights League (*Liga dos Direitos Humanos*) and CSPRI. See <<http://ppja.org/countries/mozambique/conditions-improve-at-maputo-central-prison-1>>. Accessed 21 October 2015.

108 Data presented by prison management during a visit to the prison on 12 February 2013 by the Human Rights League (*Liga dos Direitos Humanos*) and CSPRI. See <<http://ppja.org/countries/mozambique/conditions-improve-at-maputo-central-prison-1>>. Accessed 21 October 2015.

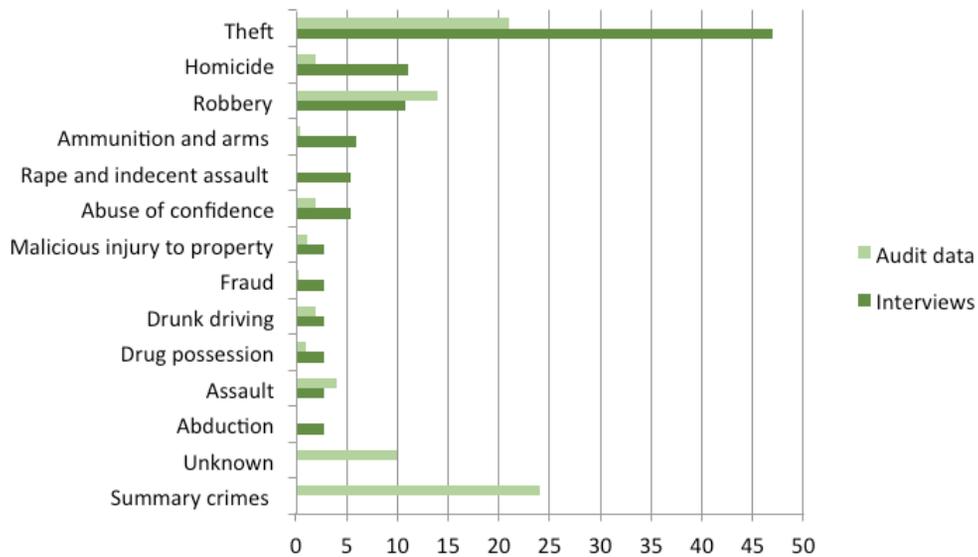
109 Data presented by prison management during a visit to the prison on 12 February 2013 by the Human Rights League (*Liga dos Direitos Humanos*) and CSPRI. See <<http://ppja.org/countries/mozambique/conditions-improve-at-maputo-central-prison-1>>. Accessed 21 October 2015.

110 Data presented by prison management during a visit to the prison on 12 February 2013 by the Human Rights League (*Liga dos Direitos Humanos*) and CSPRI. See <<http://ppja.org/countries/mozambique/conditions-improve-at-maputo-central-prison-1>>. Accessed 21 October 2015.

111 OSISA & Community Law Centre, Centre for Human Rights (CDH) Eduardo Mondlane University (2015 forthcoming) *Pre-trial detention in Mozambique: Understanding caseload management and conditions of incarceration*.

112 For many observations in the audit, the actual crime was not recorded and only "summary crime" was recorded (in 24% of the sample in the Mozambique audit). Similarly in 10% of observations in the audit no crime was recorded.

Figure 3.8: Offence profile of male detainees interviewed (percent)

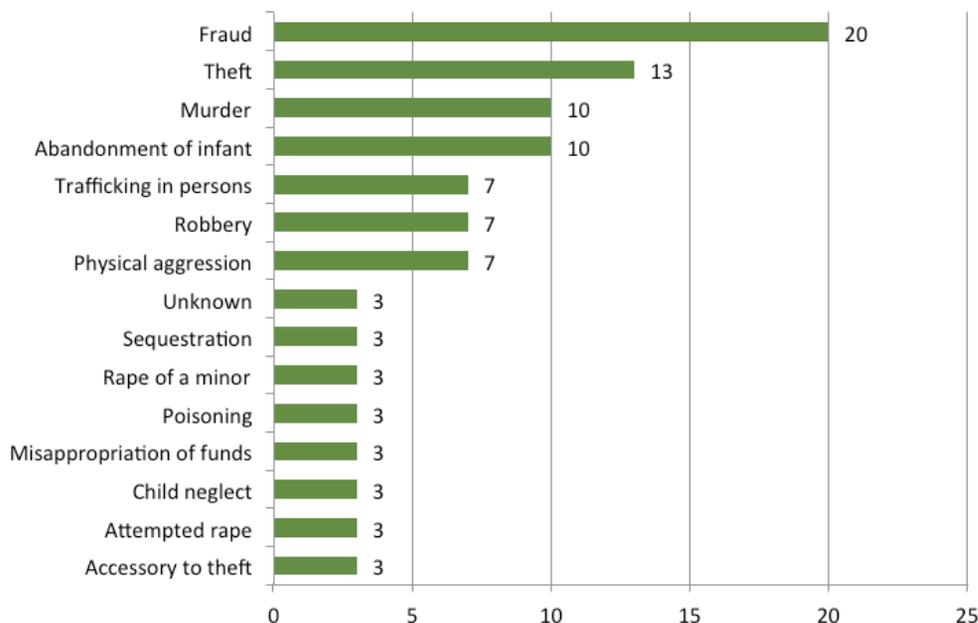


### Theft and child-related offence most common amongst women

Female detainees were interviewed at *Estabelecimento Penitenciário Especial para Mulheres de Ndlavela (Ndlavela Women’s Prison)*; and at *Estabelecimento Penitenciário Preventivo de Maputo (Maputo Remand Prison)*. The offences with which the women who were interviewed were charged mostly related to fraud or theft (together 46%); see Figure 3.9. There were also a number of offences possibly relating to children, including abandonment of infant; child neglect; abduction; and ‘rape of a minor’<sup>113</sup> (together 26%). Murder and poisoning (*envenemato*) charges comprised 13% of the offences for which the female detainees in pre-trial detention were charged.

113 It is unclear whether this was as an accessory or not.

Figure 3.9: Offence profile (percent) of female detainees interviewed



### Nearly all detainees faced only one charge

Only 3% were held on more than one charge, with 97% being held on only one charge. A significant proportion of detainees were arrested at home, as well as on the street. Other circumstances of arrest included at the hospital, bank, and airport.

### Most families are informed of the arrest in person or by telephone

Visitors had most commonly (41%) been informed by telephone of the detention of the detainee; while 15% were actually present when the person was arrested; and the remainder were informed in person, either by neighbours or by the police.

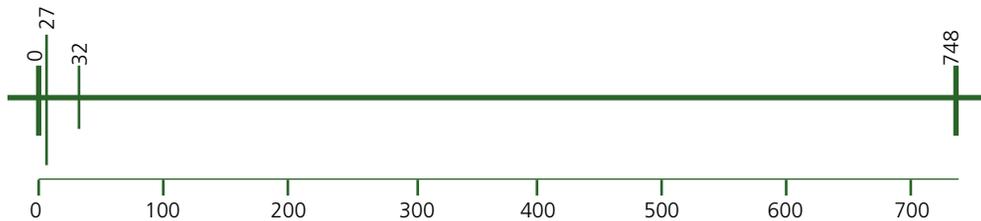
### Some families experienced significant delay in being informed of the arrest

Most commonly, respondents were informed a day after the arrest (35%); or the same day as the arrest (31%). However, for 24% of respondents, it took two days or more for them to be informed. For 5%, it took a month or more. The longest time lapse before being informed was 90 days. Some 61% said they were also informed when the detainee was transferred to a *Penitenciária* from police custody. Most commonly this was on the same day that it occurred (37%); or the next day (29%); and for 25% this took three days or more. The maximum was 120 days.

### Police detention in various locations

Some 99% of detainees interviewed spent some time in police detention. Only 8% spent time in police detention in only one location; 70% in two locations; 20% in three locations; and 2% in four in locations. This indicates that detainees are highly likely to spend time in a variety of police locations, before entering the *Penitenciário*. For 72% of detainees, it was possible to calculate the time from police detention, to transfer to the current *Penitenciário*.

Figure 3.10. Duration of police detention



As reflected in Figure 3.10, the duration of police detention ranged from the same day to 748 days, with the median being seven days (both male and female), 25th percentile two days, and 75th percentile 32 days. This suggests that 75% of detainees spend more than two days before being transferred to a *Penitenciário*. The trends were the same for men and women.

### Few detainees assaulted in custody

The African Charter for Human and Peoples’ Rights (ACHPR) prohibits torture in Article 5. Torture is defined in Article 1 of the Convention against Torture as:

“...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>114</sup>

The right not to be subjected to torture and other ill-treatment is a non-derogable right; no one may be subjected to torture and other ill-treatment under any circumstance, including during times of war or public emergency. The prohibition of torture and other ill-treatment is

114 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1).

also a rule of international customary law: it is regarded as absolute and universally accepted that even states which have not ratified any of the international treaties that explicitly prohibit torture and other ill-treatment may not use torture.

Pre-trial detainees are at risk of torture because the incentives and opportunities for torture are most prevalent during the investigation stage of the criminal justice process. Pre-trial detainees are entirely in the power of detaining authorities, who often perceive torture and other forms of ill-treatment as the easiest and fastest way to obtain information, extract a confession, or mete out punishment. There are extremely few circumstances where the use of force by an official of a detainee would be justified, for example, in a situation of self-defence or in protection of others, or where a detainee was posing a danger to others. The UNSMR explicitly outlaws corporal punishment for disciplinary offences.

Only 4% of detainees interviewed said they had been assaulted while in detention. This was 5% among men and 3% among women. Most commonly identified as the perpetrators were other detainees, followed by police.

### Prospects for release unknown

Nearly all (98%), of visitor-respondents said they had no idea how much longer the detainee would be detained.

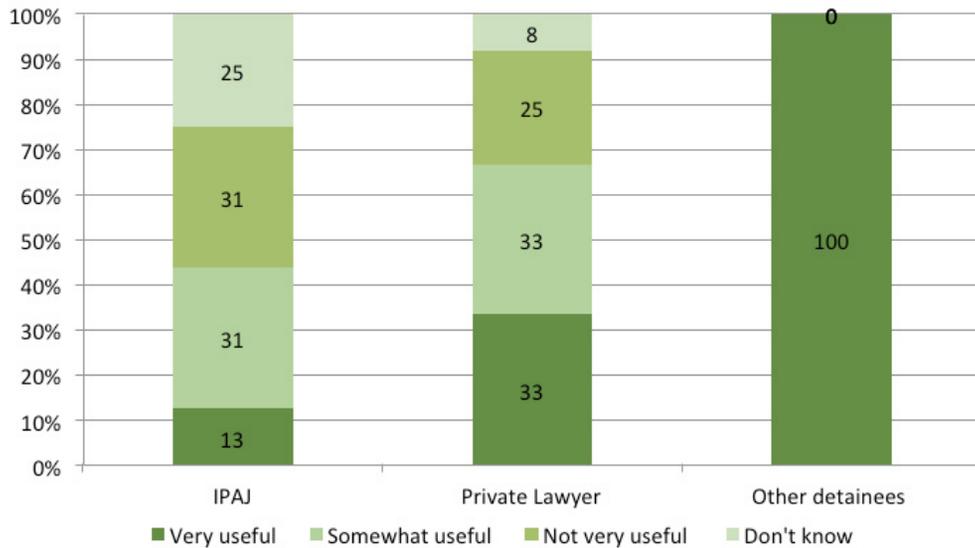
## Legal assistance

The ICCPR sets out specific obligations of states to provide state-funded counsel for indigent persons. Article 14(3)(d) of the ICCPR requires that an accused offender is entitled “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it”. States are required to provide legal aid only where “the interests of justice so require”. The Luanda Guidelines, in Guideline 4(d), provide that detained persons should have access to legal assistance of their choice, and if they cannot afford this, to legal assistance at state expense.

### Most detainees received legal assistance

Just over half (54%) said they received legal assistance. Some 41% (76% of those receiving assistance) said this was with Instituto do *Patrocínio e Assistência Jurídica (IPAJ)*, which is the state funded legal aid, and rated this service as follows: 13% said it was ‘very useful’; a third said it was ‘somewhat useful’; and another third said they were ‘not very useful’, see Figure 3.11. When asked why, most referred to the slow progression of their cases. Some 25% using IPAJ said they did not know how to rate IPAJ, and/or had not been to court yet. Some 17% had made use of private lawyers, and a third said these were very useful. Some 7% took advice from other detainees and rated this advice as ‘very useful’.

Figure 3.11: Ratings of legal advice and assistance



### Few can afford private lawyers

None of the detainees interviewed said that they paid IPAJ anything for legal assistance. Payments to private lawyers ranged from MT 2 000 (US\$ 64) to MT 25 000 (US\$ 792), with most using a private lawyer (75%), saying they did not know how much the private lawyer would ultimately cost.

### The decision to detain pre-trial

The ICCPR provides that it must not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial. Many detainees had not yet appeared in court. In September 2013 the Constitutional Court ruled unconstitutional provisions in the Mozambique criminal procedure law which permitted prosecutors in *fora flagrante delicto* cases, to mandate detention pre-trial, on the basis that the Constitution provides that only the judiciary may do so.<sup>115</sup> It is unclear whether the detention of those who said they had not yet appeared in court dated to before this time, or whether the practice continues despite the court’s ruling. Not appearing in court was the main reason given for bail not being granted.

<sup>115</sup> <http://ppja.org/about-ppja/newsletter-6-estimating-the-average-duration-of-pre-trial-detention-criminal-procedural-provisions-unconstitutional-in-mozambique-ppja-report-on-detention-oversight/view>, Accessed 21 October 2015.

### One third had not yet appeared in court

At the time of the interviews, some 34% of detainees said they had not yet appeared in court. Some 54% of detainees had appeared once in court; 6% twice; and 4% thrice. Some 85% of those who appeared once said the magistrate was there when they appeared each time; 25% of those had appeared twice; and 67% had appeared three times.

### Not appearing in court the main reason bail not granted

When asked why they had not been granted bail, some 83% of detainees provided a reason. Of these, 41% said they had not yet been in court in order to apply for bail. Again, it is unclear whether their detention pre-dates the Constitutional decision, alluded to above, or whether practice has failed to change. Some 29% said they “knew they could not ask for bail” or thought that “the charge did not allow for bail”. All of these detainees were accused of robbery or theft (or accessory or accomplice to these crimes). Some 16% of those said they could not afford bail, and that was why they were detained. Security amounts (see below), were well in excess of median earnings.

### Security required unaffordable

The registers recorded the security required for release pre-trial by the court. Only 20% of male detainees interviewed had an amount for security recorded, which presumably they were unable to afford and thus remained incarcerated. The amounts ranged from MT 10 000 (US\$ 319) to MT 260 000 (US\$ 8240), with a median of MT 120 000 (US\$ 3 800). The most common amount was MT 150 000 (38% of those with an amount mentioned this amount). All of the amounts listed for security for male detainees applied to those facing theft or robbery charges. The minimum wage in Mozambique, the lowest of which applies to the agricultural sector, is MT 3010 (US\$ 95)<sup>116</sup> which amount is also in line with median incomes earned by detainees (see the section below). The security amounts are thus far in excess of median earnings, with the lowest amount comprising more than three months’ minimum wage, and the median being equivalent to 40 months’ minimum wage. Only 14% of female detainees had an amount for security recorded. The amounts were MT 40 000 (US\$ 1600); MT 70 000 (US\$ 2210) (two of these amounts); and MT 150 000 (US\$ 6 000). Three of these amounts applied to fraud charges, and the highest to theft charges. All of these amounts are far in excess of median earnings.

### Nearly all detainees had a fixed address

Some 77% of male detainees and 83% of female detainees lived in a permanent home (*fixa demora*) at the time of their arrest. However, those living in other types of accommodation

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<sup>116</sup> AllAfrica.com *Mozambique: Government Announces New Minimum Wages* 30 April 2014 available at <http://allafrica.com/stories/201405010229.html> Accessed 21 October 2015.

described them as “rented” or “leased”, which also suggests a permanent structure. The ability to demonstrate a fixed address is a requirement of pre-trial release in most jurisdictions. In Mozambique all ownership of land is vested in the state.<sup>117</sup> The Mozambique Land Law recognises a use-right to land, known by the Portuguese acronym, *DUAT* (*Direito do Uso e Aproveitamento de Terra*); land use rights are obtained by inheritance, occupation, state grant, purchase or lease.<sup>118</sup> In urban Mozambique, most residents access land through the property market (62%), either obtaining land on the formal market by buying or leasing use-rights held by *DUAT* holders or, more commonly, obtaining use-rights on the informal market.<sup>119</sup>

### Most detainees detained for the first time

For most detainees (81%), their current detention was the first time they had been detained. Male detainees were more likely to have been detained previously. Some 29% of male detainees had previously been detained, compared to only 3% of female detainees. The majority of those previously detained (63%) said they were absolved in the previous case.

### Bribes most likely to be offered by police and lawyers

Of the 92% of all detainees who responded to the question, some 18% said they had at some stage been asked to pay a bribe. However, only 12% identified from whom the bribe was asked. It may thus be possible that they had been asked for a bribe in a different context and not necessarily in relation to their arrest and detention. The distribution appears below in Figure 3.12.

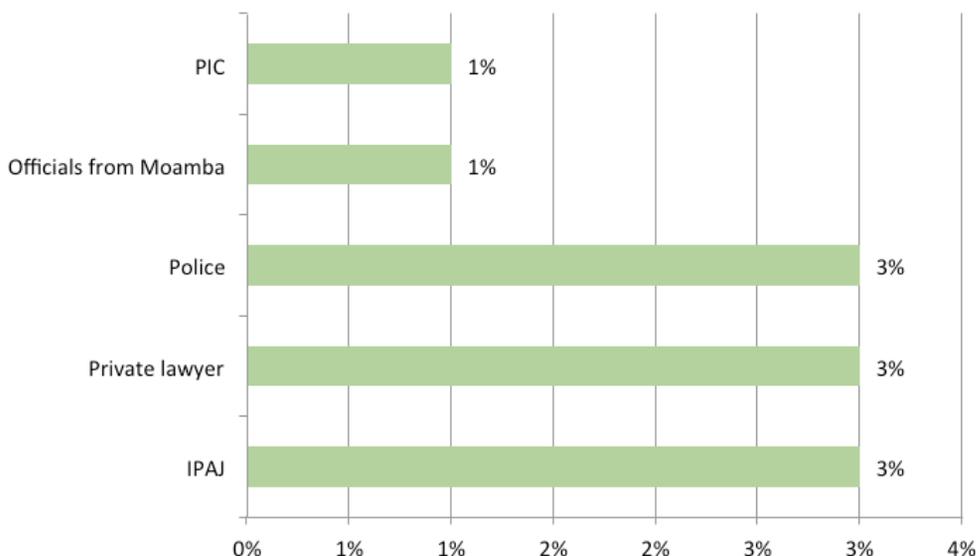
Female detainees were much more likely to say they were asked to pay a bribe, with 28% saying they were offered to pay a bribe compared to 11% of male detainees. Bribe amounts mentioned ranged from MT 7 000 (US\$ 222) to MT 50 000 (US\$ 1 585), but most detainees were not sure of how much exactly was sought or paid. Of those who were offered a bribe 22% (some 6% of all detainees), said they could afford to pay the bribe. Some 33% of whom were offered to pay a bribe, were considering paying it. Some 19% of those offered, had already paid an amount. Amounts already paid were MT 2 000 (US\$ 63) and MT 25 000 (US\$ 792).

117 Articles 109 and 111, Constitution of Mozambique.

118 IS Academy on Land Governance for Equitable and Sustainable Development ‘Food Security and Land Governance Factsheet’ <http://www.landgovernance.org/system/files/Mozambique%20Factsheet%20-%202012.pdf> Accessed 21 October 2015.

119 IS Academy on Land Governance for Equitable and Sustainable Development ‘Food Security and Land Governance Factsheet’ <http://www.landgovernance.org/system/files/Mozambique%20Factsheet%20-%202012.pdf> Accessed 21 October 2015.

Figure 3.12: Officials offering a bribe to detainees



## Duration of pre-trial detention

Article 14 of the ICCPR provides that trial must occur without undue delay, and article 9 provides that detained persons are entitled to trial or release within a reasonable time. In its jurisprudence the United Nations Human Rights Committee, the body responsible for monitoring compliance by states party to the ICCPR, has made it clear that detention which may be initially legal may become ‘arbitrary’, if it is unduly prolonged or not subject to periodic review.<sup>120</sup> The durations of detention recorded reflect the differences between an admissions profile (which reflects the durations of people entering and leaving the prison); visitors’ estimates; and an institution profile which shows the trends in relation to detainees currently incarcerated. The admissions profile median duration is 66 days, suggesting half of detainees will spend 66 or more days before being released.

<sup>120</sup> Alfred de Zayas “The examination of individual complaints by the United Nations Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights”, in G. Alfredsson et al. (eds), *International Human Rights Monitoring Mechanisms*, Martinus Nijhof Publishers, The Hague, 2001, pp. 67-121. Also A. de Zayas, “Desarrollo jurisprudencial del Comité de Derechos Humanos”, in Carlos Jiménez Piernas (ed.), *Iniciación a la Práctica en Derecho Internacional*, Marcial Pons, Madrid, 2003, pp. 215-277. See in particular case No.305/1988 (Van Alphen v. The Netherlands) UN Doc. A/45/40, Vol. 2, Annex IX, Sect. M, para. 5.8: “The drafting history of Article 9, paragraph 1, confirms that ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.” Manfred Nowak, U.N. Covenant on Civil and Political Rights. Commentary, N.P. Engel, Kehl, Strasbourg, 1993, pp. 172 ff.

### Many visitors were unsure of the duration of detention

Visitor-respondents were asked to estimate for how long the detainee had already been in detention. Only 40% were able to provide an estimate. This ranged from 1 to 365 days, with the median at 90 days; 25th percentile 21 days; and 75th percentile 150 days, see Table 3.6. It is possible that those with longer durations found it more difficult to estimate the duration of detention. The trends are somewhat shorter than the durations recorded for detainees interviewed, but closer to pre-trial audit data. The pre-trial audit found a range of 0 to 655 days, with a median of 66 days.

Table 3.6: Respondent view of duration of detention

Duration of detention to date (days)	Minimum	25th percentile	Median	75th percentile	Maximum
Register data of male detainees interviewed	79 days	282 days	328 days	442 days	945 days
Register data admissions profile from audit	0 day	14 days	66 days	212 days	655 days
Estimate of visitors interviewed (40%)	1 day	21 days	90 days	150 days	365 days

### The median duration of detention of male detainees interviewed was almost one year

The duration of detention from admission, to the date of data collection, among the male detainees interviewed, ranged from 79 days (2.5 months) to 945 days (2.6 years), with a median of 328 days (11 months). Note that these figures are durations to date, and do not give the full duration of detention, as the interviews were conducted while detainees were still in detention.

### The study is representative of detainees spending more than two months in detention

The pre-trial audit found a range of 0 to 655 days (1.8 years) with a median of 66 days (2.2 months). The interviewed detainees for this project thus had significantly longer durations than found in the audit. This is because the audit made use of an admissions profile, which reflects admissions, while the methodology adopted was more likely to reflect an occupation profile. Consequently the data on impact is likely to be representative of admitted detainees who spend more than two months in detention, see Figures 3.13 and 3.14. This duration applied to approximately half of admissions measured in the audit, as the median duration

measured was 66 days, see Table 3.7. It should be noted that these durations in the audit applied only to those sentenced or released by the time the data was drawn from the registers. Time in detention prior to entry into the current prison is also not taken into account.

Figure 3.13: Duration of detention in days, interviewed detainees

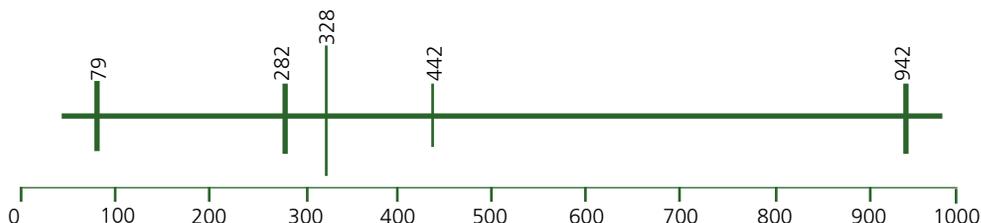


Figure 3.14: Duration of detention in days, admissions profile and pre-trial audit

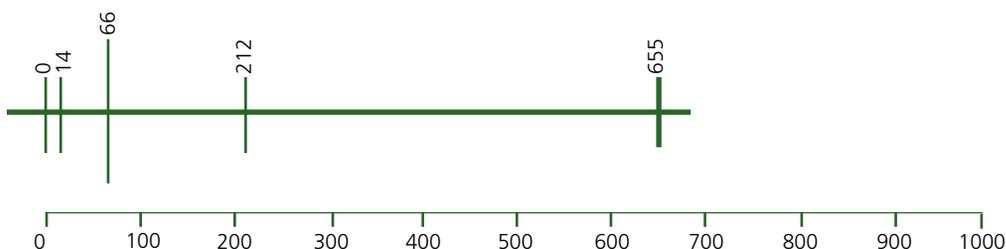


Table 3.7: Duration of detention, pre-trial audit and detainees interviewed

Duration of detention to date (days)	Minimum	25th percentile	Median	75th percentile	Maximum
Male detainees Interviewed	79	282	328	442	945
Audit detainees	0	14	66	212	655

Thus the male detainees interviewed are more representative of those who are currently in detention (which would tend to feature long stays more prominently) than of the profile of admission (in which shorter stays have more prominence). In particular, the interviews are representative of the half of admissions who spend 66 days or more in detention.

### Large variation in detention of female detainees

Median duration of detention for female detainees interviewed is four months. Amongst

the 37% of female detainees whose cases were resolved by the end of the data collection (recall that the data was collected over time), the duration of detention varied from 12 to 370 days, with the median being 118 days (4 months). For those who remained in detention (63%), the duration varied from 73 days to 1 042 days, with the median being 297 days (10 months). This suggests that women who are detained beyond 4 months may be held for very long time periods.

## Conclusion

The detention of detainees in Maputo, Mozambique, has a clear socio-economic impact. Compliance with fair trial rights limits the clear socio-economic impact on affected households. The findings underscore the need for pre-trial detention to be a measure of last resort and for the shortest possible duration. Decisions to detain or to continue to detain an accused person outside of fair trial norms have a broader impact which infringes upon the rights of persons other than the detained person, frequently penalising those who are already poor and marginalised.

# Chapter 4

## The Socio-economic Impact of Pre-trial Detention in Zambia

### Acknowledgements

The support and co-operation of the Prison Service; former Lusaka Province Regional Commander; current Lusaka Province Regional Officer; Southern Province Regional Prison officer; Lusaka Central Prison Officer in Charge; Kalomo Prison Officer in Charge; and the Prison Secretary; is acknowledged and appreciated.<sup>121</sup>

### Summary

The socio-economic rights embodied in international conventions such as the ICESCR imply that states must 'respect', 'protect' and 'promote' socio-economic rights. The duty to 'respect' entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and to use their resources to satisfy needs.

This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedure and criminal laws. Respect for socio-economic rights by states in the context of pre-trial detention means that criminal procedural laws and practices must be designed and implemented in such a way as to ensure that the impact of interference with socio-economic rights on all persons is minimised, by ensuring that detention of an accused only occurs when absolutely necessary and for the shortest possible duration.

This chapter provides some insight into who is detained and the impact of pre-trial detention as experienced by detainees and affected households in Lusaka and Kalomo, the latter some

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121 In particular we would like to thank the following individuals: Commissioner of Prisons, Mr. Percy Chato, Assistant Commissioner Mr. Chrispin Kaonga, Lusaka Province Regional Commanding officer, Mr. Christopher Kajimbala, Southern Province Regional Commanding Officer, Mr. Richard Phiri, Officer in Charge, Lusaka Central Prison, Mr. Oliver Liseba, Officer in Charge, Kalomo State Prison, Mr. Mulenga Nyambe, The Prison Secretary, Mr. Micheal Sakala. Field workers: Rumbidzai Mutasa, Chembo Dioma, Leah Mulenga, Salome Zulu, Cecily Nakazwe, Makasa Mwenya, Mapalo Mushanga, Twataizya Kasanda. Data Capturer: Sarah Muyunda.

350 km from Lusaka to the south west of Zambia. The findings in this chapter demonstrate that the decision to detain an accused person before trial in Zambia, almost invariably interferes with the resources of individuals, including individuals other than those being detained. The findings also suggest that the detention of accused persons is not occurring, only when absolutely necessary nor for the shortest possible duration, but rather that it is frequently avoidable and reduce-able in duration.

The research reveals that male detainees are highly likely to be income-earning supporting their own households, as well as another household. Detainees were more likely than the Zambian average to be married, and tended to have slightly larger households than the Zambian average. Almost all detainees were economically active and had education levels in line with the Zambian population. They were highly likely to speak a minority ethnic language, relative to Lusaka and Kalomo profiles.

Available information suggests they are likely to be held on theft charges or on so-called 'unbailable offences'. Detainees are highly likely to spend some months in detention. Instances of exceptionally long duration of detention were observed, with some 10% of detainees interviewed having been in custody for four years or longer. In many of these instances families had ceased to visit the detainees. The extent of ill-health among detainees increased while in detention, and few received treatment.

Interviews with affected household members confirm the impact of the detention occasioned by their arrest. More than half of households were entirely reliant on the detainee's former contribution for total household income. More than half had to sell an asset; and a third had to borrow money as a result of the detention. One in 25 sold land; and one in four sold livestock.

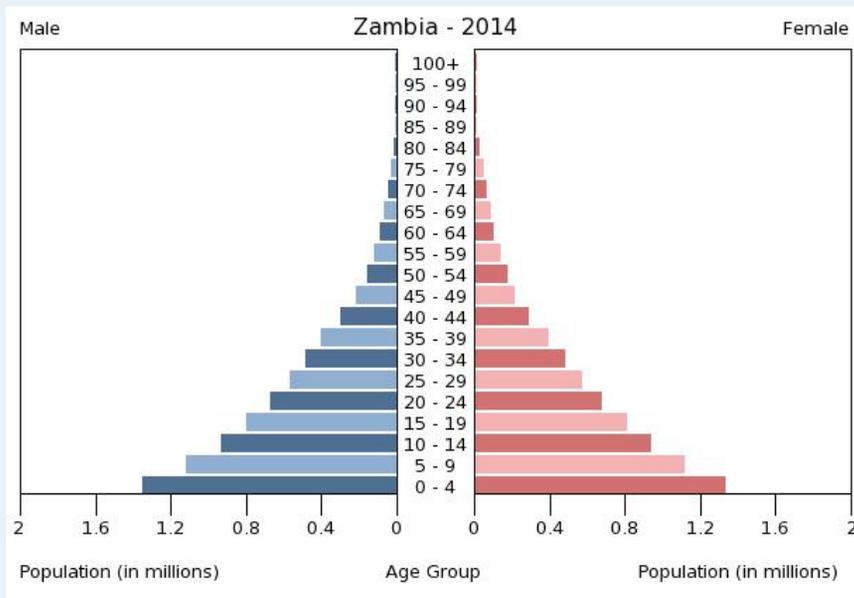
Travel costs alone for visiting were almost one-sixth of household income, and travel times were such that it is likely that visiting a detainee would consume a day, preventing income-earning activities from occurring. Nine out of ten visitors brought food on visits, with a median cost of around one-tenth of household income. The median travel costs for a single visit represented 17% of median household income. Consequently, many had ceased to visit due to the high costs associated with the visits.

## Profile of Zambia

### ZAMBIA POPULATION AND SOCIETY<sup>122</sup>

<b>Population</b>	15,066,266
<b>Ethnic Groups</b>	Bemba 21%, Tonga 13.6%, Chewa 7.4%, Lozi 5.7%, Nsenga 5.3%, Tumbuka 4.4%, Ngoni 4%, Lala 3.1%, Kaonde 2.9%, Namwanga 2.8%, Lunda (north Western) 2.6%, Mambwe 2.5%, Luvale 2.2%, Lamba 2.1%, Ushi 1.9%, Lenje 1.6%, Bisa 1.6%, Mbunda 1.2%, other 13.8%, unspecified 0.4% (2010 est.)
<b>Languages</b>	Bembe 33.4%, Nyanja 14.7%, Tonga 11.4%, Lozi 5.5%, Chewa 4.5%, Nsenga 2.9%, Tumbuka 2.5%, Lunda (North Western) 1.9%, Kaonde 1.8%, Lala 1.8%, Lamba 1.8%, English (official) 1.7%, Luvale 1.5%, Mambwe 1.3%, Namwanga 1.2%, Lenje 1.1%, Bisa 1%, other 9.2%, unspecified 0.4%

#### Age structure



122 All information from the CIA World Fact Book unless otherwise indicated. <https://www.cia.gov/library/publications/the-world-factbook/geos/za.html>

<b>Dependency ratios<sup>123</sup></b>	Total dependency ratio: 95.4% Youth dependency ratio: 89.7% Elderly dependency ratio: 5.7% Potential support ratio: 17.6% (2015 est.)
<b>Urbanization</b>	Urban population: 40.9% of total population (2015) Rate of urbanization: 4.32% annual rate of change (2010-15 est.)
<b>Major urban areas - population</b>	Lusaka (capital) 2.179 million (2015)
<b>Life expectancy at birth</b>	Total population: 52.15 years Male: 50.54 years Female: 53.81 years (2015 est.) Country comparison to the world: 217
<b>Education expenditures</b>	1.3% of GDP (2008)
<b>Mean years of schooling<sup>124</sup></b>	6.49
<b>School life expectancy (primary to tertiary education):</b>	N.A.
<b>Human Development Index<sup>125</sup></b>	0.561

123 Dependency ratios are a measure of the age structure of a population. They relate the number of individuals that are likely to be economically “dependent” on the support of others. Dependency ratios contrast the ratio of youths (ages 0-14) and the elderly (ages 65+) to the number of those in the working-age group (ages 15-64). Changes in the dependency ratio provide an indication of potential social support requirements resulting from changes in population age structures. As fertility levels decline, the dependency ratio initially falls because the proportion of youths decreases while the proportion of the population of working age increases. As fertility levels continue to decline, dependency ratios eventually increase because the proportion of the population of working age starts to decline and the proportion of elderly persons continues to increase.

*Total dependency ratio* - The total dependency ratio is the ratio of combined youth population (ages 0-14) and elderly population (ages 65+) per 100 people of working age (ages 15-64). A high total dependency ratio indicates that the working-age population and the overall economy face a greater burden to support and provide social services for youth and elderly persons, who are often economically dependent.

*Youth dependency ratio* - The youth dependency ratio is the ratio of the youth population (ages 0-14) per 100 people of working age (ages 15-64). A high youth dependency ratio indicates that a greater investment needs to be made in schooling and other services for children.

*Elderly dependency ratio* - The elderly dependency ratio is the ratio of the elderly population (ages 65+) per 100 people of working age (ages 15-64). Increases in the elderly dependency ratio put added pressure on governments to fund pensions and healthcare.

*Potential support ratio* - The potential support ratio is the number of working-age people (ages 15-64) per one elderly person (ages 65+). As a population ages, the potential support ratio tends to fall, meaning there are fewer potential workers to support the elderly.

124 United Nations Development Programme, Human Development Reports: Zambia, <http://hdr.undp.org/en/countries/profiles/ZMB> Accessed 21 October 2015.

125 United Nations Development Programme, Human Development Reports: Zambia, <http://hdr.undp.org/en/>

## ECONOMY

Zambia has had one of the world's fastest growing economies for the past ten years, with real GDP growth averaging roughly 6.7% per annum. Privatisation of government-owned copper mines in the 1990s relieved the government from covering mammoth losses generated by the industry, and greatly increased copper mining output and profitability, spurring economic growth. Copper output increased steadily from 2004, due to higher copper prices and foreign investment, but weakened in 2014, when Zambia was overtaken by the Democratic Republic of Congo as Africa's largest copper producer. Zambia's dependency on copper makes it vulnerable to depressed commodity prices, but record high copper prices and a bumper maize crop in 2010 helped Zambia rebound quickly from the world economic slowdown that began in 2008. Despite strong economic growth and its status as a lower middle-income country, widespread and extreme rural poverty and high unemployment levels remain significant problems, made worse by a high birth rate, a relatively high HIV/AIDS burden, and by market-distorting agricultural policies. Economic policy inconsistency and poor budget execution in recent years has hindered the economy and contributed to weakness in the kwacha, which was Africa's worst performing currency during 2014. Zambia has raised \$1.75 billion from international investors by issuing separate sovereign bonds in September 2012 and April 2014, significantly increasing the country's public debt as a share of GDP. On January 1, 2015, a new mineral royalty tax regime dramatically increased mining taxes, and has led to an economic impasse between the government and the mines. If left intact, the new tax could result in the closure of less profitable mines, the loss of thousands of jobs, and the loss of additional foreign investment.

<b>GDP (purchasing power parity)</b>	\$61.05 billion (2014 est.) \$57.91 billion (2013 est.) \$54.27 billion (2012 est.) Note: data are in 2014 US dollars Country comparison to the world: 100
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<b>GDP - real growth rate</b>	5.4% (2014 est.) 6.7% (2013 est.) 6.8% (2012 est.) Country comparison to the world: 25
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<b>GDP - per capita (PPP)</b>	\$4 100 (2014 est.) \$3 900 (2013 est.) \$3 600 (2012 est.) Note: data are in 2014 US dollars Country comparison to the world: 177
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<b>GDP - composition, by end use</b>	Household consumption: 51.7% Government consumption: 21.2% Investment in fixed capital: 26.1% Investment in inventories: 0.3% Exports of goods and services: 44.3%
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countries/profiles/ZMB Accessed 21 October 2015.

	Imports of goods and services: -43.6% (2014 est.)
<b>Unemployment rate</b>	15% (2008 est.) 50% (2000 est.) Country comparison to the world: 144
<b>Population below poverty line</b>	60.5% (2010 est.) (below US\$ 1.25 per day)
<b>Household income or consumption by percentage share</b>	Lowest 10%: 1.5% Highest 10%: 47.4% (2010)
<b>Public debt</b>	37.3% of GDP (2014 est.) 31.6% of GDP (2013 est.)
<b>PRISON POPULATION<sup>126</sup></b>	
<b>Prison population total</b>	17 160 (2014)
<b>Prison population rate</b>	(per 100,000 of national population) 118 (2014)
<b>Pre-trial detainees / remand prisoners (percentage of prison population)</b>	23.2% (2014)
<b>Female prisoners (percentage of prison population)</b>	1.0% (2014)
<b>Number of establishments / institutions</b>	88 (2014)
<b>Official capacity of prison system</b>	6 100 (2014)
<b>Occupancy level (based on official capacity)</b>	279.3% (2014)

## Methodology

### Interviews

The methodology intended was as per the methodological design as set out in Chapter 1 of this report. In Zambia it was established from the visitors' registers that a significant proportion of detainees are not visited. This meant, in addition to interviewing visitors and

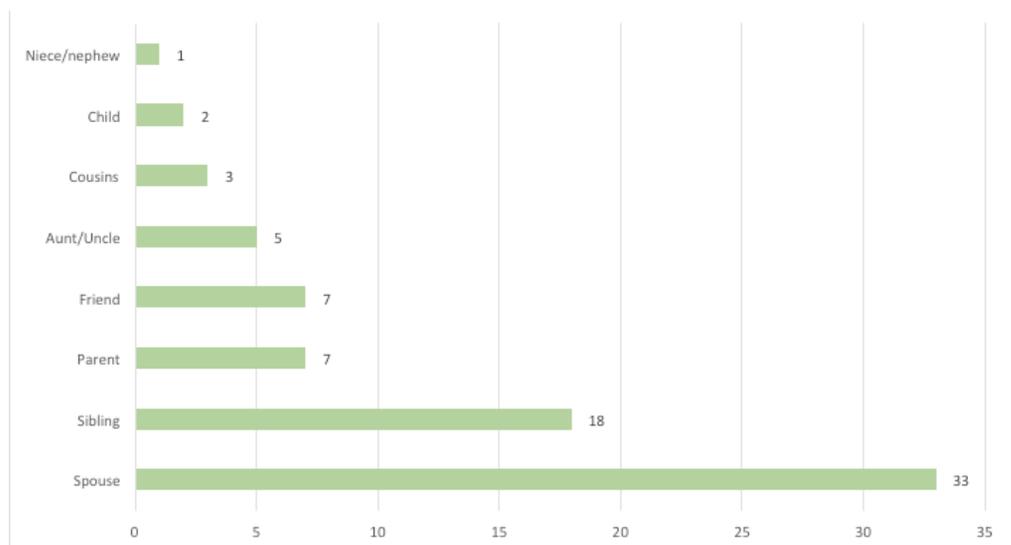
<sup>126</sup> World Prison Briefs <http://www.prisonstudies.org/country/zambia>

their detainees, it was necessary also to interview detainees who were not visited and their associated family members, by drawing a sample of detainees to be traced.

In total, 118 interviews were conducted with male detainees at Lusaka Central Prison and at Kalomo State Prison. Kalomo is a town in southern Zambia, lying north-east of Livingstone, on the main road and railway line to Lusaka, approximately 350 km southwest of Lusaka. Some 30 interviews among female detainees were conducted, all of which took place at Lusaka Central Prison, over a period of time, as very few female detainees are held at any particular time, with a relatively low turnover.

There were 138 interviews with visitors and traced persons, of which 46 interviews were conducted with traced persons, and 92 with visitors. Some 37% of all interviews with visitors and traced persons took place at Lusaka Central, 30% took place at Kalomo State Prison and 34% took place at other locations.

Figure 4.1: Relationship of visitor-traced person respondents to detainee, percentages



Visitor-traced person respondents ranged in age from 18 to 66 years, with a median age of 34 years; compared to detainees which ranged in age from 17 to 54, with a median age of 32. Some 61% of visitor-traced person respondents were female and 39% were male. Female detainees were slightly more likely than male detainees to have respondents linked to them who were male.

Figure 4.1 above presents the profile of visitor-traced person respondents in relation to both male and female detainees. Only 7% were not direct family members of detainees.

## Register data

A 2011 report on an audit of case flow management and conditions of detention is an important source for this study.<sup>127</sup> The Zambia Audit was a comprehensive assessment of pre-trial detention in Zambia, which resulted from extensive sampling of data from admissions registers in 11 prisons and other official sources in Zambia. Given its comprehensive nature, it provides a useful benchmark to assess detainee profiles against, to ensure representivity. Where this is done, reference is simply made to the 'Zambia Audit'. The admissions profile obtained in the audit was compared to the profile of the detainees interviewed in this study.

## Findings

The findings here make use of the interviews with both detainees, as well as with visitors and traced persons, and also refer to data collected from registers in the Zambia Audit.

## Socio-economic profile of detainees

The socio-economic profile of detainees, which emerging from the data, is that detainees are working-class family members, responsible for supporting many dependents, with households larger than the Zambian average.

### The median age of detainees is older than 25

The Zambia Audit found that the median age amongst detainees is 25 - 29 years. Male and female detainees interviewed had a median age of 32 years. This older age profile is in common with findings from other parts of Africa, and suggests detainees are of an age of prime economic activity.

Table 4.1: Ages of detainees interviewed (in years)

Age of detainees interviewed	Minimum	25th percentile	Median	75th percentile	Maximum
Male detainees interviewed	17	27	32	37	54
Female detainees interviewed	18	24	32	37	50

127 OSISA & Community Law Centre (2011) *“Pre-trial detention in Malawi: Understanding caseload management and conditions of incarceration”* Johannesburg: OSISA.

## Detainee education levels are in line with the general population

It is often assumed that detainees may be less educated than the ordinary person. The median level of male detainees' education is Grade 9, which is the final year of Upper Basic education.<sup>128</sup> By comparison, the 2010 Zambia Census found that for the highest education level completed amongst the population (25 years and older), 48% had completed primary school level (Grade 9); 37% had completed secondary school; and 15% had completed tertiary education.<sup>129</sup> This is broadly in line with the trends for the detainees interviewed, suggesting that male detainees are not markedly different from the general population in terms of education.<sup>130</sup> Female detainees interviewed ranged in level of education from Grade 1 to tertiary education. The median level of education was Grade 7 (the final year of Middle Basic education).<sup>131</sup> The schooling levels were somewhat lower than that observed for men, in line with the reported education gender parity index<sup>132</sup> of 0.96 for Zambia as a whole.<sup>133</sup>

## Most detainees are employed

The most common occupations of detainees interviewed were farmer (23%); businessman (21%); truck driver or driver (8%); general worker (3%); brick layer (3%); librarian (2%); and police (2%), as reflected in Figure 4.2. These occupations accounted for 59% of detainees. Other occupations listed included electrician, painter, police, librarian, machine operator, teacher, security guard, shopkeeper, miner, and soldier. Some 6% of the male detainees did not list an occupation. The most common occupations listed for female detainees were

128 Schooling in Zambia falls into the levels of Lower Basic: Grades 1-4; Middle Basic: Grades 5-7; Upper Basic: Grades 8-9; Secondary, Grades 10-12. Traditionally, Grades 8-9 were part of secondary schooling, but these are often now taught in upgraded primary schools, known as "basic schools". This allows pupils unable to access secondary school to continue their schooling up to Grade 9. Government schools are nominally free for Grades 1-7, although 'contributions' and uniforms purchases may be required from the school.

129 Zambia Central Statistical Office 2010 Census of Housing and Population available at <http://www.zamstats.gov.zm/report/Census/2010/2010%20Census%20of%20Population%20National%20Analytical%20Report%20-%202010%20Census.pdf> Accessed 21 October 2015.

130 The 25th percentile for detainees was Grade 7 (the final year of Middle Basic education) and the 75th percentile was Grade 10 (the first year of secondary school). Nearly 14% has completed school (Grade 12) and a further 9% had some form of tertiary education, such as a diploma, college or university qualification.

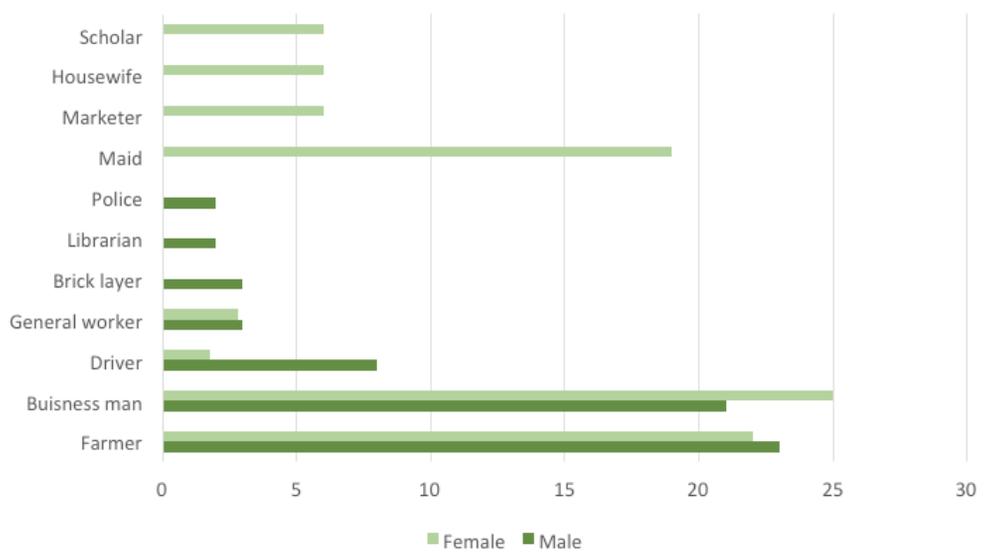
131 The 25th percentile was Grade 6, and the 75th percentile was Grade 9. Some 10% had some form of tertiary education, such as a Diploma, College or University qualification.

132 The Gender Parity Index (GPI) reflects females' level of access to education compared to that of males. This is calculated for each school phase. A GPI of less than 1 indicates that there are fewer females than males in the formal education system in proportion to the appropriate school-age population. A GPI of more than 1 means that there are proportionately more girls than boys attending school. A score of 1 reflects equal enrolment rates for boys and girls (Children Count: <http://www.childrencount.ci.org.za/indicator.php?id=6&indicator=45>).

133 Zambia Central Statistical Office 2010 Census of Housing and Population available at <http://www.zamstats.gov.zm/report/Census/2010/2010%20Census%20of%20Population%20National%20Analytical%20Report%20-%202010%20Census.pdf> Accessed 21 October 2015.

businesswoman (25%); farmer (22%); domestic worker<sup>134</sup> (19%); marketer (6%); housewife (6%); and still at school (6%). Other occupations listed included cleaner, bar lady and secretary. None failed to list an occupation. Consistent with what was alluded to above, detainees are economically active persons, save for 6% of males who did not list an occupation.

Figure 4.2: Occupation of interviewed detainees by gender



### Most male detainees earning well above minimum wage

Some 65% of visitor-traced person respondents could confirm that the detainee had been earning an income at the time of his arrest. According to these respondents, detainees earned between ZK 150 (US\$ 24) and ZK 16 200 (US\$ 2571) per month at the time of their arrest, with a median of ZK 1 650 (US\$ 262).<sup>135</sup> The Zambia Minimum Wages and Conditions of Employment Act, defines the Minimum Wage per sector. In 2012 the minimum wages in Zambia were raised, and domestic workers’ wages were increased by more than 100% from ZK 250 (US\$ 39.64) to ZK 522 (US\$ 82.77).<sup>136</sup> This suggests that most detainees were earning well above the lowest minimum wage for domestic workers. This does not, however, imply that detainees were wealthy, and differences in income profile were apparent according to whether the detainees were male or female, with female detainees generally earning less than male detainees.

134 ‘Employed’ or ‘Maid’

135 25th percentile ZK 1200 (US\$ 190), 75th percentile ZK 11 200 (US\$ 1778).

136 “Government announces revised minimum wage” *Lusaka Times* 11 July 2012 available at <http://www.lusakatimes.com/2012/07/11/government-announces-revised-minimum-wage/> Accessed 21 October 2015.

Table 4.2: Detainee income

Income of detainees, according to respondents	Minimum	25th percentile	Median	75th percentile	Maximum
All detainees	ZK 150 \$ 23.79	ZK 1 200 \$190.29	ZK 1 650 \$261.66	ZK 11 200 \$1 776.09	ZK 16 200 \$2 568.98
Female detainees	ZK 300 \$47.57	ZK 350 \$55.50	ZK 600 \$95.15	ZK 1 000 \$158.58	ZK 2 000 \$317.16
Male detainees	ZK 150 \$23.79	ZK 1450 \$229.94	ZK 1 650 \$261.66	ZK 11 500 \$1 823.66	ZK 16 200 \$2 568.98

Some 70% of those visitor-traced person households, linked to female detainees, said that the detainee was earning an income at the time of arrest. Of these, 58% could indicate their earnings. These ranged from ZK 300 (US\$ 48) to ZK 2 000 (US\$ 317), and median ZK 600 (US\$ 95). Thus most female detainees, who were earning, were apparently earning amounts in the vicinity of the minimum wage.

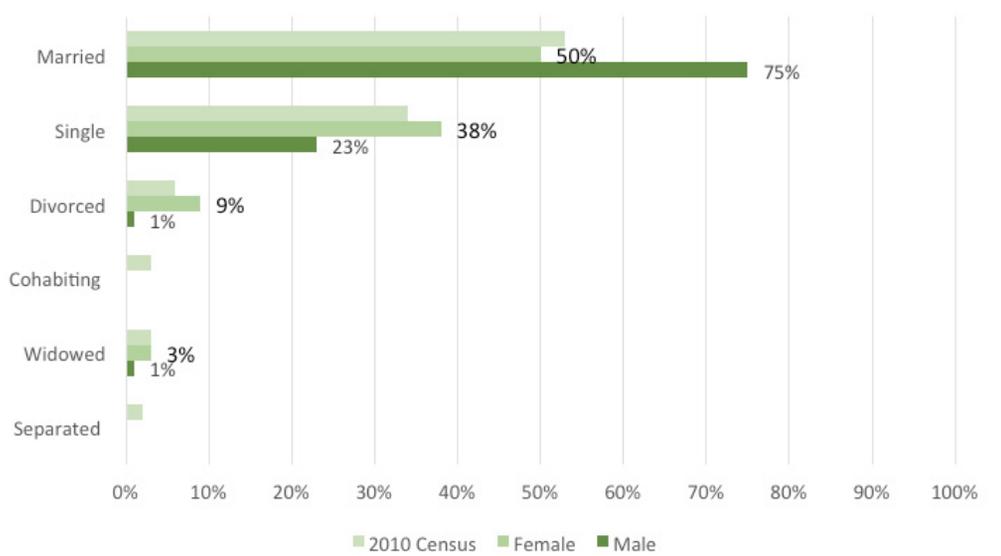
Male detainees earnings were provided by 60% of respondents, linked to male detainees. This ranged from ZK 150 (US\$ 24) to ZK 16 200 (US\$ 2571) per month at the time of their arrest, and median ZK 1 650 (US\$ 262). Thus the majority of male detainees, who were earning, were apparently earning well above the minimum wage, and well above what female detainees were apparently earning, with a minority earning small amounts. Therefore, not only were nearly all detainees economically active, but they were fairing reasonably well given circumstances.

### Male detainees are more likely to be married than the ordinary Zambian

Some 75% of male detainees said they were married; 23% were single; 1% were divorced; and 1% were widowed. A comparison with the 2010 Zambia Census, suggests that detainees are slightly more likely to be married than the ordinary Zambia as illustrated in Figure 4.3 below.<sup>137</sup> The profile for female detainees is more in line with the overall trend for Zambia, suggesting that female detainees were no more or less likely to be married than women in Zambia generally.

<sup>137</sup> Zambia Central Statistical Office 2010 Census of Housing and Population available at <<http://www.zamstats.gov.zm/report/Census/2010/2010%20Census%20of%20Population%20National%20Analytical%20Report%20-%202010%20Census.pdf>> Accessed 21 October 2015.

Figure 4.3: Marital status of detainees, compared to Zambia Census percentages



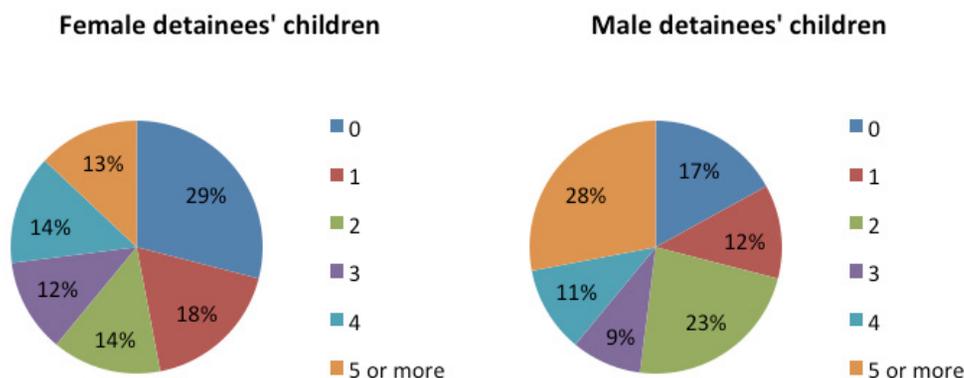
Polygamy is a relatively common practice in Zambia. The Zambia Sexual Behaviour Survey of 2009 found that one-third of respondents aged 15-49 years were single/never-married; about half were in a monogamous union; and 6% were in polygamous unions.<sup>138</sup> Detainees are more likely (13%) to be in polygamous unions; than is the overall trend for Zambia (6%). Of the male detainees who were married; 83% had one wife; 12% had two wives; and 5% had three wives.

**The majority of detainees had children and other dependents**

The majority of male and female detainees had children and other dependents. Some 83% of the male detainees interviewed had children, with the number ranging from none to 12, with the median being two.<sup>139</sup> The trend for female detainees is somewhat different, in line with the lower marriage rate and slightly younger age profile. Some 71% had children; while 29% did not. The number of children ranged from none to ten, with the median being two.<sup>140</sup>

138 Zambia Central Statistical Office <http://www.zamstats.gov.zm/surveys/zsbs.php>  
 139 The most common number of children among detainees was two (23%); followed by one (12%); then four (11%); then three (9%).  
 140 The most common number of children of female detainees (after 'none') was one (18%); followed by two (14%); and then four (14%).

Figure 4.4: Male detainees interviewed, number of children



In addition to their own children, detainees were asked whether they had other dependents. Some 55% of male detainees said they had dependents other than their own children. Amongst those who had other dependents, the median number was three. Some 42% of female detainees said they had dependents other than their own children. The median number of other dependents, amongst those female detainees who had other dependents, was two.

### Incidence of disability among detainees higher than in general population

The 2010 Zambia Census found that 2% of the Zambian population had a disability.<sup>141</sup> The detainees interviewed reported to have a higher incidence of disability than what was found in Zambia generally in the Census. Some 5% of male detainees said they had some sort of disability. The types of disability described included blindness and permanent limb injuries. Some 9% of female detainees said they had some sort of disability. This was a higher proportion than among male detainees. These were predominantly described by detainees themselves as psycho-social in nature. This could suggest underlying conditions which may have been a factor in their detention, and perhaps should have been considered by a court ordering their further detention. Mental illness is highly stigmatised in Zambia,<sup>142</sup> and discrimination, as well as poor services, may thus have contributed to their over-representation in the prison population.

141 Zambia Central Statistical Office 2010 Census of Housing and Population available at <<http://www.zamstats.gov.zm/report/Census/2010/2010%20Census%20of%20Population%20National%20Analytical%20Report%20-%202010%20Census.pdf>> p. 69. Accessed 21 October 2015.

142 Psychology in Africa, Zambia mental health profile, <http://psychologyinafrica.com/profiles/2013/8/13/zambia-mental-health-profile> Accessed 21 October 2015.

## Minority language speakers are over-represented

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations convention which commits States Parties to the elimination of racial discrimination and the promotion of understanding among all races. Racial discrimination is defined as:

“...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

Given that the most common language in Lusaka province is Nyanja (62%), it would have been expected that the majority of detainees would speak Nyanja. However, only 10% spoke the dominant language. The most common languages among detainees interviewed were Tonga (38%) and Bemba (14%).

Over or under-representation of any group among detainees in comparison with the ethnic composition of the general population could be suggestive of patterns of discrimination in law enforcement. However, in this study it was difficult to determine whether detainees in the sample over or under-represent any particular group, not least because the ethnic composition of the exact catchment area of the prisons concerned, cannot be precisely determined. Furthermore, it is unclear whether the interviewed detainees are representative of detainees in general in Lusaka and Kalomo in terms of language.

In another southern African country (Malawi) it was observed that the majority language of a region is seldom the majority language of pre-trial detainees in that region’s population.<sup>143</sup> It is unclear whether the same applies in Zambia. This is nonetheless a phenomenon requiring further research, given the extensive research done in Europe and North America, finding that police forces use ethnic and racial profiling to target certain groups.

## Households affected by the detention

The project design sought to understand the socio-economic impact of pre-trial detention primarily through the lens of the household. This strategy underestimated the extent to which pre-trial detainees in pre-trial detention would be migrants. Thus, respondent-traced person households were not necessarily the same as detainee households. Fortunately questions were also asked regarding those whom detainees supported financially at the time of their arrest. Consequently these latter questions provided more insight as to the impact

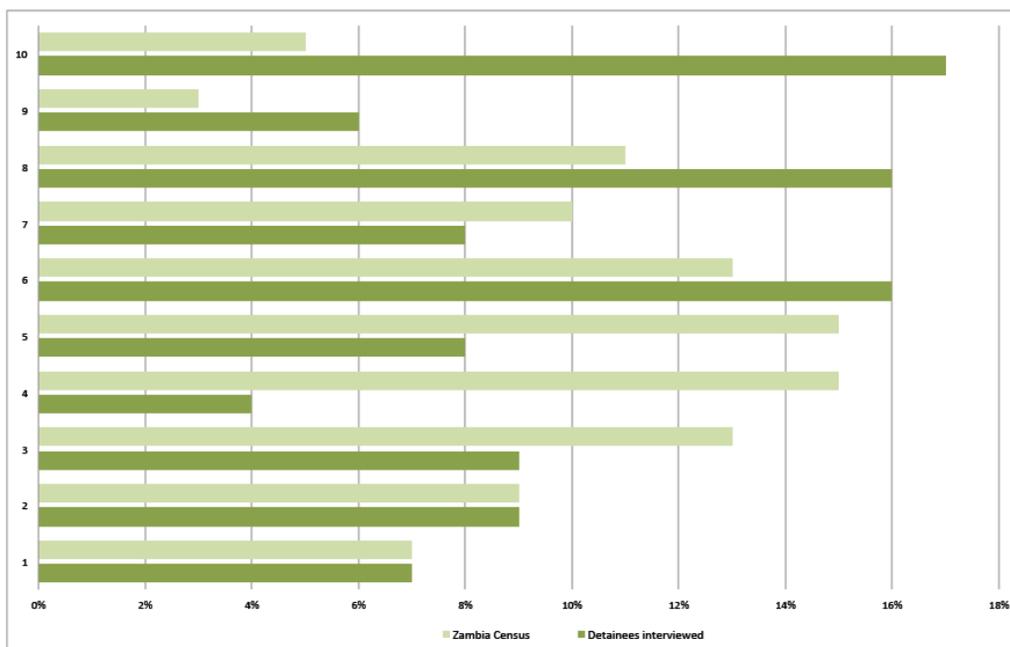
143 OSISA & Community Law Centre (2011) *“Pre-trial detention in Malawi: Understanding caseload management and conditions of incarceration”* Johannesburg: OSISA.

on other family members due to the arrest and continued detention of the detainee, than the questions relating to households. The interviews with visitors and traced persons also provided additional insights into other households affected by the detention of the detainee.

### Detainees’ own households are larger than average urban households

The 2010 Zambia Census found that the average household size in 2010 was 5.2 persons. The number of persons in their household as reported by detainees ranged from one to 13, as shown in Figure 4.5. The median household size, as reported by detainees, was six. The over-representation of larger households amongst detainees may relate to the higher incidence of polygamy than in the population as a whole, as well as the high incidence of dependents other than children among detainees. Alternatively, the high incidence of very large households amongst detainees may suggest a significant proportion lived in communal dwellings, possibly as a cost-saving measure.

Figure 4.5: Detainee households of various sizes, percentage, compared to Zambia population

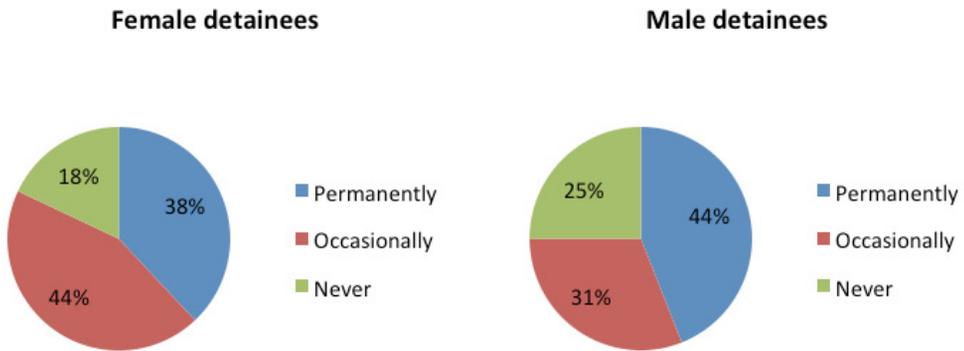


### Affected households extended beyond detainees’ households

Many of the visitor-traced persons also affected by the detainees’ detention said the detainee did not live with them permanently at the time of arrest. Despite the majority of visitor-traced person respondents being family members of the detainee, only 42% described the detainee as living permanently in their household; while 24% said they ‘never’ lived in the

household. In relation to female detainees, 38% were living 'permanently'; and 18% 'never' in respondent households. In relation to male detainees; 44% were living 'permanently' with the respondent; and 25% 'never' lived with the respondent, see Figure 4.6. The remainder of respondents said detainees lived in the respondent households 'occasionally'. This is consistent with detainees being migrants and/or living in households separate from family, or maintaining more than one household via polygamous unions.

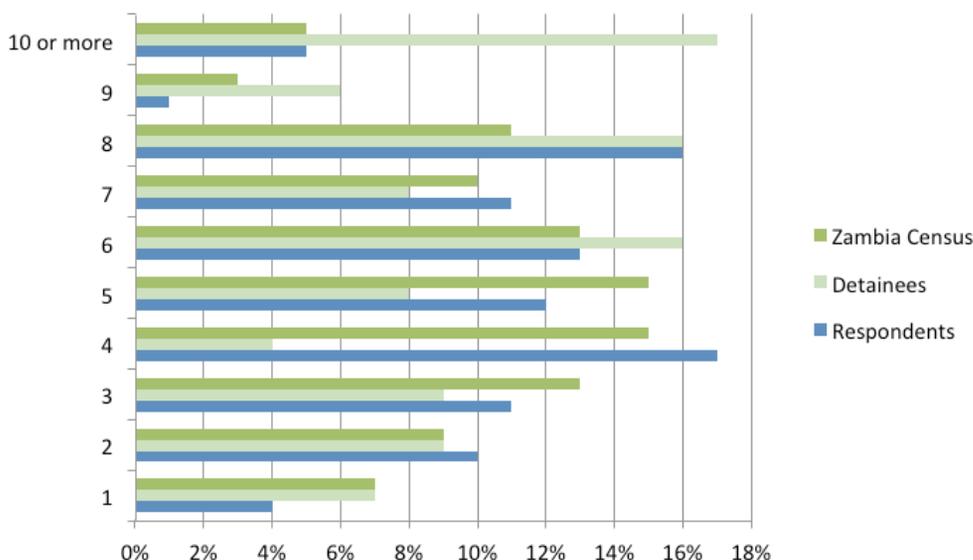
Figure 4.6: Percentages of female and male respondents living with detainees



The size of other affected households differed from that of detainees, see Figure 4.7. Other affected households ranged in size from one to 12 people. The most common household size was four, and the median was five. Respondent household size profile was more similar to the Zambia Census than the detainee profile, which over-represents very large households.<sup>144</sup>

<sup>144</sup> The median age of the first household member in the visitor-traced person respondents' household was 34 years; the second age 30 years; the third age 17 years; the fourth age 15 years; and the fifth age 12 years. Some 12% of all members of all households were under the age of seven years; and 15% of households of four had children under seven.

Figure 4.7: Percentage of respondent households of different sizes



### Detainees are highly likely to be household heads of their own households

Some 90% of male detainees said they were the head of the household at the time of their arrest,<sup>145</sup> while some 41% of female detainees said they were household heads. The 2010 Zambia Census found that 78% of households were headed by men.<sup>146</sup> This suggests that female detainees are more likely to be household heads than the ordinary Zambian woman.<sup>147</sup>

### Most detainees supported households

Some 16% of visitor-traced person respondents said the detainee contributed all the income of the visitor-traced person household at the time arrest; 31% said most; 5% said half; 7% said a quarter; and 5% less than a quarter.<sup>148</sup> Thus for 52% of respondents, the detainee contributed half or more of the respondent household income at the time of the arrest.

145 For those who were not household heads, the household heads were older relatives, such as parents or older siblings.

146 Zambia Central Statistical Office 2010 Census of Housing and Population available at <<http://www.zamstats.gov.zm/report/Census/2010/2010%20Census%20of%20Population%20National%20Analytical%20Report%20-%202010%20Census.pdf>>, p. 91 Accessed 21 October 2015.

147 Some 71% of female detainees who were household heads were not married. Some 34% said their husband was the household head. Other household heads indicated by female detainees included parents and employers. The latter could suggest a live-in domestic employment arrangement.

148 Some 35% could not say whether the detainee was earning at the time of arrest.

### For more than half of detainee households, detainee contribution comprised 100% of income

Some 90% of detainees provided figures on their own contribution to household income. Their contribution to their own households ranged from ZK 10 (US\$ 1.57) to ZK 7 000 (US\$ 1 100), median ZK 600 (US\$ 94).<sup>149</sup> More than half of households were entirely reliant on detainee's income; in other words household income equalled the detainee contribution.<sup>150</sup>

### Median household income similar to minimum wage

Incomes were provided by 75% of visitor-traced person respondents. Total cash income of the household was obtained by summing the contributions of all indicated household members. The total income ranged from ZK 100 (US\$ 15.80) to ZK 5 000 (US\$ 794); median ZK 700 (US\$ 111). Recall that in 2012 the minimum wages in Zambia were raised, with domestic workers' wages being increased by more than 100% from ZK 250 (US\$ 39.64) to ZK 522 (US\$ 82.77). This suggests that the majority of respondent households had incomes close to the minimum wage for domestic workers.

Among the 93% of detainees interviewed who provided information on incomes, median household income was ZK 700 (US\$ 110), and other percentiles as shown in Table 4.3. The range is somewhat wider than the range for household income (ZK100 (US\$ 16) to ZK 5 000 (US\$ 786)) determined in the visitor and traced person interviews, but the median is the same.

149 These figures are lower than the detainee earnings figures given by visitor and traced person respondents. This could be because the latter figures related to total earnings, while the former referred to household contributions, which may be lower than earnings. A further possibility is that respondents had an inflated idea of detainee earnings.

150 The extent of detainee contribution could be calculated for 77% of the detainees. The ratio ranged from 7:1 (household income being seven times as large as the detainee contribution); to 1:1 (household income and detainee contribution being the same). In other words the detainee contribution comprised 100% of total household income. The most common ratio was 1:1; which was also the median, while the 75th percentile was 1:1.4. In other words, according to detainees, more than half of households were entirely reliant on detainee's contribution for total household income.

Table 4.3: Median household income

Household income	Minimum	25th percentile	Median	75th percentile	Maximum
<b>Detainees interviewed – household income</b>	ZK 51 US\$8.01	ZK 400 US\$62.88	ZK 700 US\$110.05	ZK 1 400 US\$220.09	ZK 7 500 US\$1179.06
<b>Detainees interviewed – detainee contribution to household income</b>	ZK 10 US\$1.57	ZK 350 US\$55.02	ZK 600 US\$94.32	ZK 2 000 US\$314.42	ZK 7 000 US\$1100.46
<b>Visitors and traced persons interviewed – household income</b>	ZK 100 US\$15.72		ZK 700 US\$110.05		ZK 5 000 US\$786.04

### Detainees generally earned more than households

For the 54% of visitor-traced person respondents, the ratio of household earnings to detainee earning was available. In only 4% of these cases did household income equal or exceed the detainee income at the time of arrest. The ratio ranged from one tenth (with the detainee earning at the time of arrest ten times as much as the household income now), to 4.67 times (household earning almost five times as much as the detainee used to earn). The median was one fifth (detainee earning five times as much as respondent household).

### Detainee non-monetary contribution

Some 44% of respondents said the detainee cared for children in the household. This was 50% among female detainees. Some 16% cared for crops (3% among females); 17% cleaned house (53% among women); and 35% did repairs and maintenance (3% among females).

### Disability in the household above the national figure

Similar to the detainee profile, some 5% of visitor-traced person respondents identified a member of the household with a disability. These included psycho-social disabilities, paralysis, and disabilities of the limbs. Some two-thirds of these respondents said the person with the disability was receiving some treatment or support. The 2010 Zambia Census found that 2% of the Zambian population had a disability.<sup>151</sup> This suggests households affected by pre-

151 Zambia Central Statistical Office 2010 Census of Housing and Population available at <<http://www.zamstats.gov.zm/report/Census/2010/2010%20Census%20of%20Population%20National%20Analytical%20Report%20-%202010%20Census.pdf>> p. 69. Accessed 21 October 2015.

trial detention have a somewhat higher incidence of disability than other households in Zambia. The reasons for this are not apparent, but may relate to poverty, social exclusion, and discrimination.

## Economic impact of detention

The rights contained in the ICESCR include:

- The equal right of men and women to pursue economic, social and cultural rights (art 3);
- The right to work and the duty of the state to take measures to enable people to access gainful employment (art 6);
- The right to just conditions of employment (art 7);
- The right to social security (art 9);
- The duty of the state to provide the widest possible protection to the family (art 10);
- The right to an adequate standard of living and to be free from hunger (art 11)
- The right to the enjoyment of the highest attainable standard of physical and mental health (art 12); and
- The right to education (art 13).

The nature of the obligations on states set out by the ICESCR is not that states must ensure that every person has employment and social security. The obligation is that states should 'respect', 'protect' and 'promote' these socio-economic rights. The duty to 'respect' entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and to use their resources to satisfy needs. This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedural and criminal laws. As the demographic profile and profile of affected households above demonstrates, the decision to detain an accused person before trial almost invariably interferes with the resources of individuals, including individuals other than those being detained. In this section the nature of that interference is explored in more detail.

### Loss of income as a result of the detention

Affected households have their right to an adequate standard of living directly impacted upon through the loss of the detainees' income. Given the high degree of support to households by detainees noted in the socio-economic profile, it is unsurprising that when respondents were asked, *Have you experienced a loss of income since the arrest of the detainee? In what way?*, nearly all, (94%), said they had experienced loss. One respondent said poignantly, *So much so that that I cannot even account.*

## Loss of business or income-earning activities of the detainee

Qualitative responses from traced persons and visitors linked to male detainees frequently mentioned loss of income contribution. One response indicated the added impact in polygynous situations:

- *My husband used to give me ZK17 (US\$ 2.69) each month to buy food in the house. The second wife used to receive ZK15 (US\$ 2.38). Since his detention, we have both not received that money. Also I have spent part of the income to visit the detainee and buy him food. Also paid lawyer together with second wife. In addition, all the savings made by him (the detainee) have finished.*

As much as this report is about quantifying the socio-economic impact of pre-trial detention, it would not do justice to the issue if the real and lived experiences of respondents are not also reflected. The responses below reflect experiences of hardship and loss over extended periods of time, leaving people in desperate situations.

- *He was good at saving money. Now all the savings have finished we cannot watch him starve and suffer in prison. Plus also income from his job which no longer comes in.*
- *The family has lost his contribution for 8 months now. I have [has] also spent a lot of money visiting and feeding detainee.*
- *I have been looking after him for the last 8 years, visiting him and providing food and other things. The family also lost the detainee's income which was used to educate a lot of his siblings.*
- *First the family lost detainee's income for its up keep. Also in the last 3 years once a month I have been visiting the detainee and bringing him food.*
- *Because my husband ran away from me and the detainee is the one who was helping me to look after the orphans we have in the family.*
- *The detainee used to buy me food and even kept my mother. He used to help me with ZK 15.00 (US\$ 2.35) per month for food.*
- *Because I have to support his family as well. He used to contribute some money to my mother's welfare but now I give her money alone.*
- *He was a responsible son-in-law.*
- *In addition when required I buy medicine for the detainee, detainee's wife and two children who are all living with HIV.*
- *For over a year, the family has not been getting the money that was being brought by the husband. The family has also spent money in travelling to see him.*

Responses in relation to female detainees were similar, reflecting loss and hardship.

- *Yes, we had to close their grocery store. She used to contribute ZK 400 (US\$ 63) before she was detained.*
- *Especially in police detention we struggled. We have also lost the income from the chicken business.*
- *A lot has been lost. We lost her income as she was fired. Plus food. Transport costs were high when he used to travel from Kabwe to Lusaka.*
- *We have to work extra hard to raise enough money.*
- *She is the ex-wife and used to contribute ZK100 (US\$ 16) monthly for Benson's school requirements.*

### Additional expenses incurred by visiting

Thus not only is there the loss of the detainees' income, but also of income foregone by the members of the affected households in the time taken to visit the detainee. Visitors and traced persons pointed out that while they were spending time and money visiting the detainee, they were not able to spend time on their income generating activities.

- *Both me and my sister-in-law Mundia have lost a lot of income. I have lost all my savings. There are travelling costs from Kabwe to Lusaka and back [almost 290 km], costs for food, as no food is given to suspects in police cells, and telephone costs.*
- *Instead of saving the little that we make, we end up spending it on food and transport to visit.*
- *Buying food for detainee and transport. I have also taken three of her children and am buying for them.*
- *I have to bring my sister lunch three times a week just to keep her spirits high.*

### Visits while in police detention to bring food

Respondents frequently mentioned the added burden during police detention, when detainees do not receive food, but must rely on visitors. Some 79% of detainees said they received visitors while in police detention.<sup>152</sup> The most common reason for visiting was to bring food, with almost all visitors providing this as the main reason for visiting. The implication is that costs are being incurred for households immediately following arrest, due to poor conditions of detention and services at police stations.

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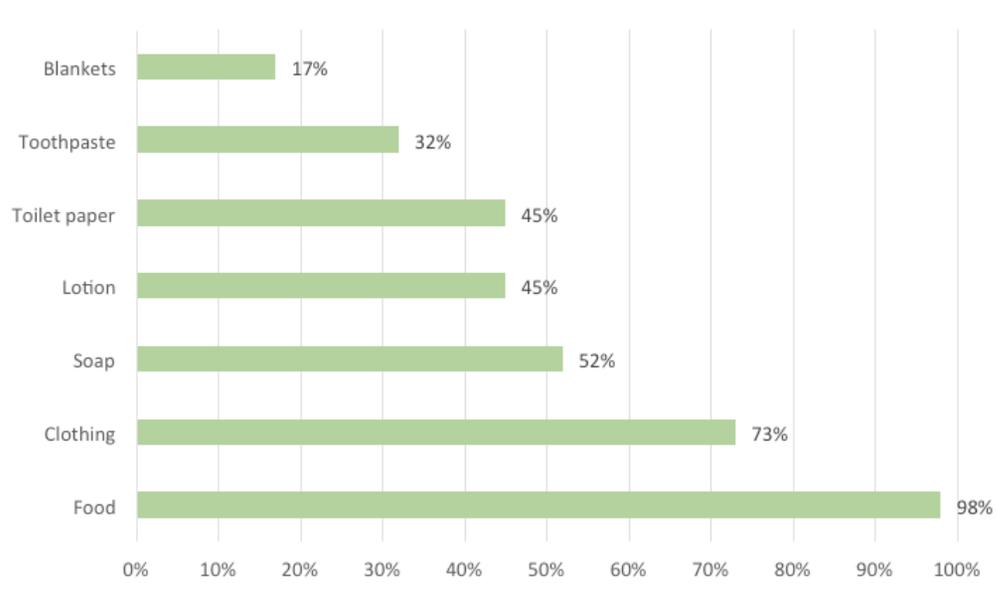
<sup>152</sup> Among male detainees, a third of detainees received visits from their wives; and 20% of female visitors received visits from their husbands. Some 13% of all detainees received visits from mothers; 11% from sisters; 8% from brothers; 4% from fathers; and 4% from friends.

### Visits while in prison on remand are detainees’ lifeline

Some 83% of detainees said they had received visits while on remand at some time.<sup>153</sup> Although a third of respondents were traced, most respondents had visited the detainee previously. Those who were traced, were more likely to be associated with a detainee who had spent a longer time in detention, median 270 days; compared to median 60 days for those who were visitors. This suggests that the burden of visiting becomes less tenable the longer the detainee remained in custody, as traced persons were selected from among those detainees who had not been recently visited. Serious charges may also decrease the prospects of release, and escalating costs of visits, may further limit and erode the frequency of visits.

The profile of items brought to detainees by visitors is presented below in Figure 4.8.

Figure 4.8: Profile (%) of items brought by visitors to detainees



Among those visitor-traced person respondents who were visitors (67%), the most common reason given for visiting was in order to bring food. Almost all indicated that food was the primary reason for visiting. Inmates usually receive only one meal a day from the prison administration, generally consisting of nshima (thickened maize meal porridge) with *kapenta* (fish) or beans. It should be noted that the items listed in Figure 4.8 can by and large be

<sup>153</sup> The profile of visitors was similar to the profile in police detention; some 35% of male detainees received visits from wives; and 10% of female detainees from husbands. However, 75% of male detainees said they were married and more than half of female detainees said they were married. This suggests that more than half of married detainees did not receive visits from spouses.

regarded as essential, and it is not unreasonable to expect that a prison service should supply such items. This is perhaps the best illustration of how the poor are subsidising imprisonment.

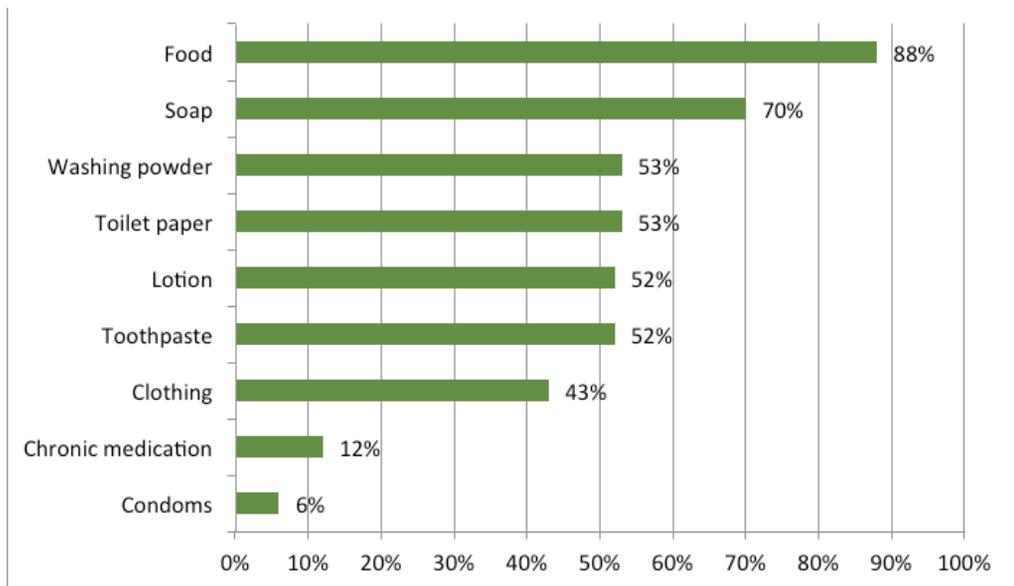
**Median cost for food per visit is 11% of household income**

The majority of visitor-traced person respondents (88%) brought food for the detainee on visits. According to respondents, the food items they brought for the detainee included mealie meal, cooking oil, vegetables, fruit, rice, samp, sugar, sour milk, beef, nshima, kapenta, eggs, juice, sweet potato, groundnuts, chicken, soya pieces, tomatoes, onions, dried fish, and salt. The total cost of food brought each time ranged from ZK 5 (US\$ 0.80) to ZK 500 (US\$ 80), median ZK 75 (US\$ 11.90), 25th percentile ZK 25 (US\$ 3.97), 75th percentile ZK 100 (US\$ 15.87). Thus the median cost of food brought per visit represented 11% of total monthly household income. Using the median figures, it applies that a weekly visit over a month period would consume in respect of food alone, 44% of household income.

**Detainees need much more than food**

Some 70% of visitor-traced persons brought soap, which most commonly cost ZK 5 (US\$ 0.80). Some 52% brought toothpaste, which most commonly cost ZK 6.50 (US\$ 1.00). Some 52% brought lotion, which most commonly cost ZK 12 (US\$ 1.90). Some 53% brought washing powder, which commonly cost ZK 8.50 (US\$ 1.35), and a similar percentage brought toilet paper, commonly costing ZK 3,50 (US\$ 0.56). The total cost of items other than food regularly brought by more than half of respondents was ZK 23.50 (US\$ 3.73), representing 3% of total household monthly income.

Figure 4.9: Percentage of visitor-traced person respondents bringing certain items



**Other items infrequently brought on visits by a minority of respondents**

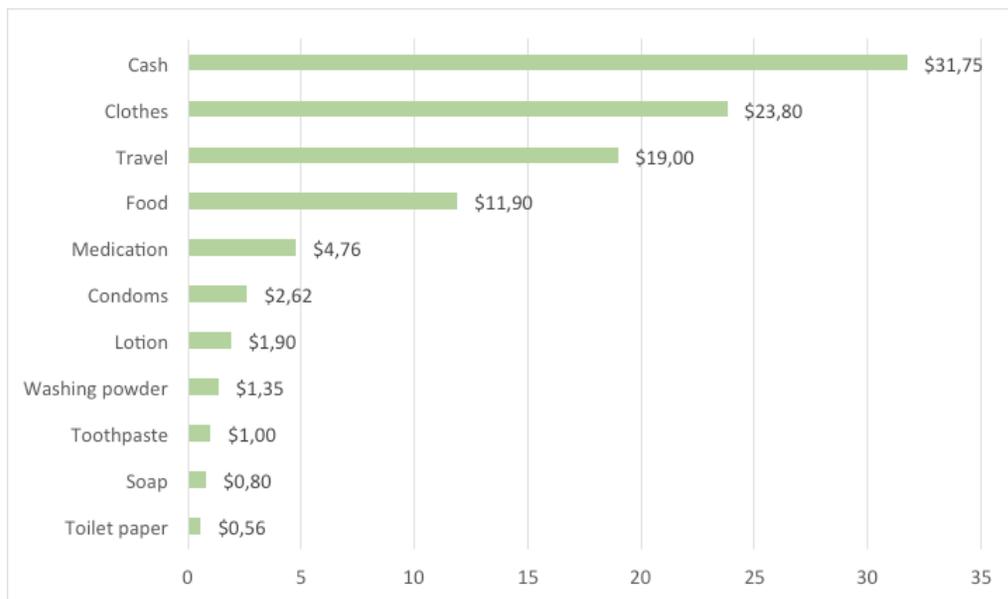
Some 43% of visitor-traced persons brought clothes for the detainee at least once. For one third of these, these were old clothes. Amongst those who purchased clothes, the value of the items brought ranged from ZK 7 (US\$ 1.11) to ZK 500 (US\$ 80), median ZK 150 (US\$ 23.81). Some 6% brought condoms, costing around ZK 16.50 (US\$ 2.62). Some 12% brought chronic medication, costing around ZK 30 (US\$ 4.76).

**One in five visitors brought cash**

About one in five visitor-traced person respondents said they brought cash on visits. This ranged from ZK 80 (US\$ 12.70) to ZK 1100 (US\$ 174), with the latter amount being brought “for officers to buy her food”. The most common amount was ZK 200 (US\$ 31.75), among those who brought.

Figure 4.10 below presents the median values, as reflected above, of costed items associated with visiting detainees in US \$. It should be noted that not all visitors incur these costs and the aim is rather to present a summary of the preceding paragraphs relating to costs of visits.

Figure 4.10: Median values of items associated with visiting detainees in US \$.



The total value of these items amounts to US\$ 99.44 and even if only a third of this is brought to a detainee per month, the amount is in excess of US\$ 30.00.

### Visit travel cost per visit is 17% of household income

Some 82% of respondents provided the travel costs for visiting. These ranged from ZK 15 (US\$ 2.38) to ZK 1600 (US\$ 254), median ZK 120 (US\$ 19), 25th percentile ZK 50 (US\$ 7.94), and 75th percentile ZK 260 (US\$ 41). Thus, the median travel costs per visit represent 17% of median household income. Added to the median cost of food, (11% of median household income); these two items represent 28% of median household income per visit.

### Visit travel time costs a working day

Some 85% were able to indicate the distance in terms of travel time for visits. This ranged from 8 minutes to 840 minutes (14 hours); median 90 minutes, 25th percentile 60 minutes, 75th percentile 180 minutes. Travel times were such that visits would probably result in a day's work lost for most respondents; a silent expense for most households.

### Median visit travel distance is 50 km

Some 45% of respondents were able to indicate the travel distance for visits. This ranged from 5 km to 1 024 km, median 50 km, 25th percentile 30 km, 75th percentile 150 km. Thus for a quarter of these respondents, the visiting distance was more than 150 km away, with the majority of respondents travelling by bus. Given the distances involved, it is not surprising that travel cost consume 17% of median household income per visit.

### Additional costs incurred

Travel costs for finding a lawyer and the cost of a lawyer was a particular form of additional cost mentioned.

- *Travelling costs to Livingstone to look for legal aid lawyer.*
- *I have to pay legal expense and to buy food for my son and home.*
- *Travelling to prison, buying food for detainee and his friends and paying for the lawyer.*
- *Travelling costs to see the detainee. Travelled to Livingstone High Court, Human Rights Commission and bought food for the detainee.*

Other travel costs:

- *Have had to be buying food for the detainee's family, food for the detainee and spent money travelling to and from the prison to visit the detainee.*
- *The family spent part of the household income on transport to and from the detention facilities and also in buying food. I travelled to Livingstone to see his brother to ask for help in securing his release*

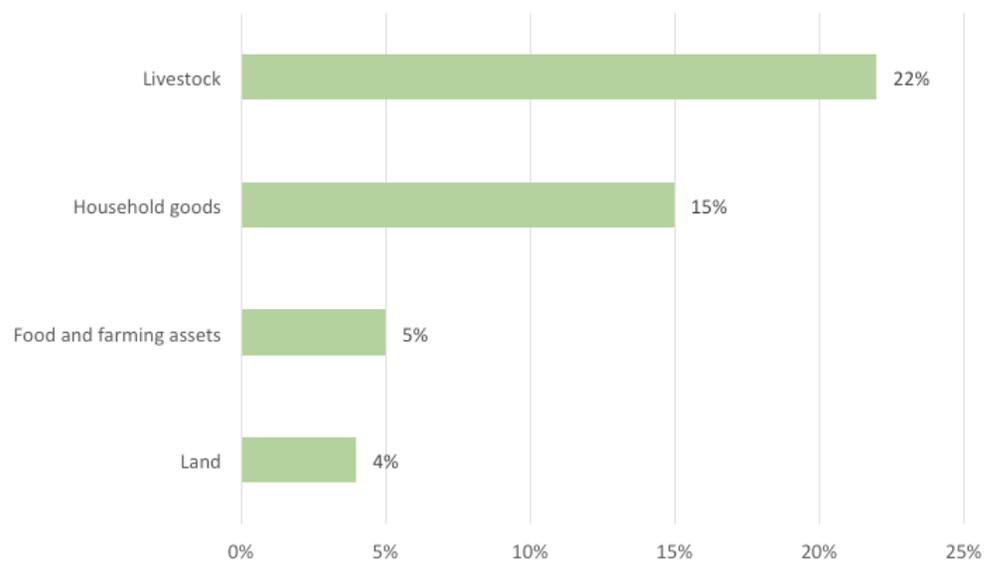
### Debt created by the detention

More than a third of households were forced to borrow. Some 36% said they had been forced to borrow money. The amounts ranged from ZK 100 (US\$ 15.87) to ZK 5000 (US\$ 794). The most common amount was ZK 1 500 (US\$ 238). Most borrowed money from family and friends.

### Impact on detainee assets caused by the detention

More than half of households (53%) were forced to sell something to cover the loss of income as presented in Figure 4.11 below.

Figure 4.11: Profile in percentages of items the respondents said they were forced to sell.



The most common item sold was livestock. Livestock included cattle, goats and sheep. Farming assets which were sold included a tractor tyre and maize. Household goods sold included a radio, a television, a vehicle, sofas, phones, and clothes. Some also said they had to sell items at a cheaper price in order to ensure a sale: *I sold maize at a cheaper price to have transport to and from prison.*

### Social Impact of Detention

The widest possible protection and assistance should be accorded to the family (Article 10, ICESCR). Families, especially children, were negatively affected by the detention. As indicated in the socio-economic profile above, the vast majority of detainees were family members

with a number of children and other dependents. The higher than average incidence of disability among detainee households suggests impacts of detention may also be magnified for this reason.

### Impact on spousal relationship

At least four detainees (3%) said they were “deserted” by their wives. In the traced person interviews some families indicated that the prohibitive cost of visiting led to them ceasing to visit. Just over half said their relationship with the detainee has deteriorated. The 12% of detainees who reported an improvement in their relationship with their spouse, indicated that the spouse was the only one visiting them, and so they saw each other often. This was mainly because the detainees’ families were able to find transport money for only one person to visit the detainee. In these instances, it was decided that it was the spouse who would be the one to visit the detainee.

### Impact on children

Fieldworkers noted that a large number of detainees with children reported that the relationships with their children had deteriorated as they had not seen their children for extended periods of time. Instances of children having to move and be cared for by other carers were also noted, as well as food insecurity.

- *He was looking after some dependants and now the dependants and children have moved to the village where they are staying with my mother who is too old to look after them and care for them.*
- *Emotionally and financially we are affected because the children need her and we are having less food at home as we have to use the money to bring her food*

### Impact on other relationships

Similarly, it was reported that there was also deterioration in relation to friendships, especially for detainees who had been in detention for an extended period. The relationships with extended members of the family also deteriorated. In Zambian culture extended families are very close. For instance, cousins are regarded as siblings, aunts and uncles are regarded as parents. Most of the detainees reported that they were close to their extended family prior to detention. Detainees felt let down or deserted by extended family members who did not support them.

### Detainees’ reduction in social standing

Almost all detainees said that prior to their arrest, they were respected the same as everyone else, or were well-respected. Some 24% said there would be no change as a result of the arrest, but 70% said they would be less respected than before. This suggests that in

Zambia, an arrest and detention carries a great deal of stigma which is likely to continue to affect detainees after their release, and affect their re-integration into society. In the case of withdrawal of charges or acquittal this is an extremely unfair burden on the released person.

## Health impact of detention

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”  
(Article 12, ICESCR)

This provision of the ICESCR means that the state must ensure that health care facilities, goods and services are available in sufficient quantity, are physically and economically accessible, are ethically and culturally acceptable, and are of a medically appropriate quality, for everyone. The right to health is fundamental to the physical and mental well-being of all individuals and is a necessary condition for the exercise of other human rights.<sup>154</sup> International human rights law clearly affirms that detainees retain fundamental rights and freedoms guaranteed under human rights law, “subject to the restrictions that are unavoidable in a closed environment.”<sup>155</sup> At the very least, prisoners are entitled to a standard of health care the same as that available in the general community, without discrimination.<sup>156</sup> Indeed states may have to ensure a higher standard of care than is available to people outside of prison, because in prison, most material conditions of incarceration are directly attributable to the state, and inmates have been deprived of their liberty and means of self-protection, giving rise to a positive duty of care, to include effective methods of screening, prevention, and treatment of life-threatening diseases.<sup>157</sup> In short, detainees should not leave prison in a worse state of health than when they arrived. The evidence in this report suggests detainees’ health deteriorated after their detention, and few received treatment. In addition, given

154 General Comment No. 14 of Committee of ESCR, 2000, para 12, General Comment No. 14 (2000) The Right to the Highest Attainable Standard of Health, (Article 12 of the International Covenant of Economic, Social and Cultural Rights). UN Committee on Economic, Social and Cultural Rights, 2000. para 1.

155 UN Committee on Human Rights, General Comment No. 21, Article 10, Humane Treatment of Prisoners Deprived of their Liberty, UN Doc. HRI/Gen/1/Rev.1 at 33 (1994), para. 3.

156 Basic Principles for the Treatment of Prisoners, UN General Assembly Resolution 45/111 (1990); WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Articles A (4) and C (ii); the Body of Principles for the Protection of All Persons Under any form of Detention or Imprisonment, UN General Assembly Resolution 43/173 (1988). Although these instruments are not legally binding in and of themselves, they provide authoritative guidance to states on the interpretation of relevant treaty obligations.

157 See, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, CPT/IN/E 2002, para. 31; WHO Guidelines on HIV Infection and AIDS in Prisons (1999), Articles A (4) and C (ii); the Body of Principles for the Protection of All Persons Under any form of Detention or Imprisonment, UN General Assembly Resolution 43/173 (1988); UNAIDS International Guidelines on HIV/AIDS and Human Rights, (2006), Article 21(e); UNODC, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for Effective National Response (2006).

that nearly all detainees will sooner or later be released, the ill-health experienced in prison, especially in relation to communicable diseases, whether due to poor health care services or poor conditions of detention, creates significant risks to the community in general and specifically to the households to which that prisoner may return.

### Detainee health deteriorated in detention

Some 18% of detainees said they were ill at the time of their arrest. The types of illnesses reported included asthma, high blood pressure, malaria, headaches, stomach pains, and injuries from prior accidents and assaults. A quarter said they experienced ill health while in prison, which is an increase of 39% in the prevalence of ill-health among interviewed detainees.

After entering prison, some 11% had malaria; 2% had ulcers; 2% had stomach pains; 2% were HIV positive; and 2% had back pains. Other conditions included asthma, bilharzia, 'body sores', pains, piles, stress, and toothache.

Only 28% of detainees who had been ill said they experienced treatment for their ill-health while in prison, with the majority of these being treated at the prison clinic. The remainder did not receive treatment.

Poor conditions of detention; an insufficient diet; overcrowding; and limited health services exact a heavy toll on detainees, with the longer the detention the heavier the toll.

## Experience of criminal justice system

The right to a fair trial is a peremptory norm of international customary law<sup>158</sup> and enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR). Articles 9, 10 and 15 of the ICCPR inform the content of a fair trial rights and establish that:

- Arrested or detained persons must be brought promptly before a judicial officer;
- Arrested and detained persons are entitled to trial within a reasonable time or to release;
- It must not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial;
- Trial must occur without undue delay;
- There must be a fair and public hearing by an independent and impartial tribunal;

<sup>158</sup> A peremptory norm is a fundamental principle from which no derogation is permitted. UN Human Rights Committee, General Comment 29, States of Emergency (article 4), CCPR/C/21/Rev.1/Add.11 (2001), and UN Human Rights Committee, General Comment 32: Right to Equality before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32 (23 August 2007), [54].

- There must be equality before the courts and tribunals;
- There must not be arbitrary detention;
- There must be restriction of the use of incommunicado detention;
- There is access for lawyers, doctors and family; and
- There is independent internal and external oversight.<sup>159</sup>

## Arrest and police detention

The ICCPR provides in Article 9(1) that everyone has the right to liberty and security of person, which means no one shall be subjected to arbitrary arrest or detention, and that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Our analysis of the intersection of social and economic rights together with the right not to be arbitrarily detained confirms pre-trial detention should only occur when absolutely necessary. This is echoed in provision 10(b) of the Luanda Guidelines, which state, “Pre-trial detention is a measure of last resort and should only be used where necessary and where no other alternatives are available”. Article 9(3) of the ICCPR also provides that it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. Whether pre-trial detention is absolutely necessary is difficult to determine based on the nature of the charge and facts of the case. Nevertheless a charge such as theft is suggestive of alternative methods of bringing an accused to trial. Indeed theft was the most common charge for both men and women.

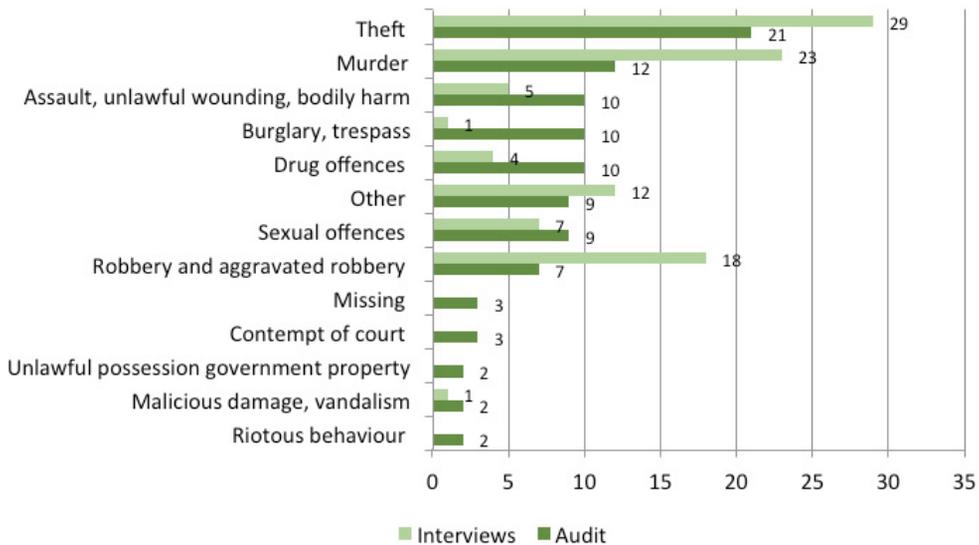
### Theft the most common offence

In the Zambia audit, the most common offence was theft (21%); followed by murder (12%); drug offences (10%); housebreaking (10%); sexual offences (9%); and robbery (7%), see Figure 4.12.

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159 UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, 3 July 2001, [34]. Articles 6 and 7 of the ACHPR reflect ICCPR safeguards, and the ACHPR has provided further guidance on the content of the right to fair treatment in the Resolution on the Right to Recourse and Fair Trial (Res. 4(XI) 92) and the Principles and Guidelines on Rights to a Fair Trial and Legal Assistance in Africa (see also, *Rights International v Nigeria*, African Commission on Human and Peoples Rights, Communication no. 215/98, [29]).

Figure 4.12: Offence profile percentages, Zambia Audit compared with detainees interviewed



Similarly, amongst detainees interviewed, the most common charge faced was theft (29%), in line with the Zambia audit. As much as 55% of theft charges (17% of all charges) were stock theft charges, a crime which carries a mandatory minimum sentence of seven years in Zambia. Although not an officially non-bailable offence, stock theft is viewed in a very serious light and there have been calls in Zambia for the offence to become a non-bailable offence.<sup>160</sup> Some 23% of detainees interviewed were held on murder charges, and 18% on aggravated robbery. These are higher percentages than those found in the Zambia Audit. Murder and aggravated robbery are non-bailable offences and carry stiff penalties.<sup>161</sup> Other charges among the detainees interviewed were defilement (7%); assault (5%); drug offences (4%); vandalism (1%); trespassing (1%); dangerous driving (1%); civil debt (1%); arson (1%); housebreaking (1%); forgery (1%); and possession of stolen property (1%). The non-bailable offences were more prominent among these interviewees than the admissions profile in the audit. This may be because detainees facing non-bailable charges, remain longer in detention, and thus are more likely to be available for interviews. Only 2% of detainees were held on more than one charge.

<sup>160</sup> Make cattle rustling non-bailable, Namwala MP’ The Lusaka Times, 17 October 2014.

<sup>161</sup> Matakala, L. (2011) ‘The legislative framework for pre-trial detention’ in OSISA & Community Law Centre (2011) *Pre-trial detention in Zambia – understanding case flow management and conditions of incarceration*, Johannesburg: OSISA, p. 41.

### Half of detainees spent more than a week in police detention

All of the detainees said they had spent some time in police detention. The duration of police detention prior to transfer to prison ranged from 0 days to 60 days (two months), as shown in Table 4.4.

Table 4.4: Duration of police detention among detainees interviewed

Duration of police detention	Minimum	25th percentile	Median	75th percentile	Maximum
Detainees Interviewed	0	2	8	17	60

The median duration was eight days. In the Zambia audit, the median duration of police detention in Lusaka was two days, with the maximum being 368 days.<sup>162</sup> The Zambian Criminal Procedure Code requires that arrested persons be brought within 24 hours to appear before a court. It is unclear whether those staying longer than 24 hours in this sample, were returned to police detention after appearing in court and then transferred to prison at a later stage, or whether their court appearances were delayed. Neither the police, nor any other agency provides food to detainees at police stations in Zambia, and nor is any bedding provided.<sup>163</sup> Detainees should not be held in police detention for extended periods as police cells are, as a rule, not suitable for extended detention. This results in an added burden on families to provide them with food while they are in police detention.

### Three quarters were informed of detention and transfer

Some 37% of visitor-traced person respondents said they were present when the detainee was arrested; 10% were informed by telephone; 2% in person; 2% by SMS; and 2% by letter. This is a high proportion for 'present at the time of arrest'. It is unclear how the remainder were informed. Three quarters said they were informed of the transfer of the detainee from police station to prison.

### Most detainees did not know for how much longer they will be detained

Only 3% of detainees were hopeful about their imminent release, but the remainder were unsure as to how long they might remain in detention. There are no legislative time limits applicable to pre-trial detention in Zambia. However, 'constitutional bail' can be applied for in cases of 'inordinate delay' that is not the fault of the accused person.<sup>164</sup> Under this type of

162 OSISA & Community Law Centre (2011) *Pre-trial detention in Malawi: Understanding caseflow management and conditions of incarceration*, Johannesburg: OSISA, p. 99.

163 OSISA & Community Law Centre (2011) *Pre-trial detention in Malawi: Understanding caseflow management and conditions of incarceration*, Johannesburg: OSISA, pp. 67-68.

164 OSISA & Community Law Centre (2011) "Pre-trial detention in Malawi: Understanding caseflow management and conditions of incarceration" Johannesburg: OSISA, p. 42.

bail, there is no distinction as to whether the offence is bailable or not bailable; all that needs to be shown is that there has been a delay which is not due to the accused.<sup>165</sup>

## Legal assistance

The United Nations International Covenant on Civil and Political Rights (ICCPR) sets out specific obligations of states to provide state-funded counsel for indigent persons. Article 14(3)(d) of the ICCPR requires that an accused offender is entitled “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it”. States are required to provide legal aid only where “the interests of justice so require”. The Luanda Guidelines, in provision 4(d), provide that detained persons should have access to legal assistance of their choice, and if they cannot afford this, to legal assistance at state expense.

### Three quarters had legal assistance

Some 74% of detainees said they had received some form of legal assistance. As they are still in detention, that such legal assistance did, however, not succeed in securing their release. In Zambia legal aid to the poor is provided through the Legal Aid Board (LAB) as well as through various NGOs in Zambia. The minimum initial consultation fee asked by the LAB is ZK 20 (US\$ 3.27) and to proceed with a criminal case the client is asked for an additional ZK150 (US\$ 23.80).<sup>166</sup> A means test also applies. The total amount of ZK 170 (US\$ 27.07) is equivalent to more than a quarter of the median household income established earlier.

## The decision to detain pre-trial

As already noted the ICCPR provides that it must not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial. In Zambia, non-bailable offences and offences with minimum sentences dominated among pre-trial detainees. Many were detained despite living at permanent addresses.

### Court appearances bring little progress and bail denied on the basis of offence

The number of times detainees had been to court varied from none to 22 times. The median number of times that a detainee had already been to court was 5 times, yet bail was granted. Only 3% said they had not yet been to court. When asked why they had not been granted bail, the most common response from detainees was that they were detained on non-bailable offences. The laws of Zambia provide that those detained on murder; treason or

<sup>165</sup> *ChetankumarShantkal Parekh v The People* ZMSC 25 (10 July 1995).

<sup>166</sup> Zambia Legal Aid Board ‘How it works’ <http://www.legalaidboard.org.zm/#!how-it-works/cfvg> Accessed 21 October 2015.

other capital offences; misprision of treason and treason felony; and aggravated robbery, shall not be granted bail.<sup>167</sup> Some 41% of interviewed detainees were detained on murder or aggravated robbery charges. In addition, the laws of Zambia impose mandatory detention in relation to persons detained on offences under the State Security Act<sup>168</sup> as well as drug trafficking and drug manufacture charges.<sup>169</sup> Drug charges were faced by an additional 4% of detainees interviewed.

### Nearly all detainees lived at a fixed abode

Almost all (98%) of male detainees said they lived in a fixed or permanent structure. The trend was the same for female detainees. Having a fixed abode is a consideration taken into account when making a decision on bail in Zambia.<sup>170</sup> This suggests that detainees were not denied bail due to being vagrants, itinerants, or living in informal structures.

## Duration of pre-trial detention

Article 14 of the ICCPR provides that trial must occur without undue delay, and article 9 provides that detained persons are entitled to trial or release within a reasonable time. In its jurisprudence the United Nations Human Rights Committee, the body responsible for monitoring compliance by States party to the ICCPR, has made it clear that detention which may be initially legal may become 'arbitrary' if it is unduly prolonged or not subject to periodic review.<sup>171</sup> The durations of detention recorded suggest that half of those still detained in prison are likely to have been detained for ten months or more, while a quarter will have endured more than a year. After such lengths of time the socio-economic impacts on family are likely to have been compounded.

167 Section 123(1) Criminal Procedure Code, Cap 88 Laws of Zambia.

168 Section 123 (4) Criminal Procedure Code, Cap 88 Laws of Zambia.

169 Section 43 Narcotic Drugs and Psychotropic Substances, Cap 96, Laws of Zambia.

170 *Oliver John Irwin v. The People* (1993/1994) ZR (Supreme Court)

171 Alfred de Zayas "The examination of individual complaints by the United Nations Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights", in G. Alfredsson et al. (eds), *International Human Rights Monitoring Mechanisms*, MartinusNijhof Publishers, The Hague, 2001, pp. 67-121. Also A. de Zayas, "Desarrollo jurisprudencial del Comité de Derechos Humanos", in Carlos Jiménez Piernas (ed.), *Iniciación a la Práctica en Derecho Internacional*, Marcial Pons, Madrid, 2003, pp. 215-277. See in particular case No.305/1988 (*Van Alphen v. The Netherlands*) UN Doc. A/45/40, Vol. 2, Annex IX, Sect. M, para. 5.8: "The drafting history of Article 9, paragraph 1, confirms that 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances." Manfred Nowak, U.N. Covenant on Civil and Political Rights. Commentary, N.P. Engel, Kehl, Strasbourg, 1993, pp. 172 ff.

### Half of detainees interviewed had been in custody for more than ten months

The admissions profile from the audit coupled with this information suggests that there is a high turnover at Lusaka Central Prison, with the majority of persons spending a short period of time on remand while at the same time a significant minority spend many years on remand. Table 4.5 shows the duration of detention of detainees interviewed. The 90th percentile was 1 386 days (three years and ten months), suggesting 10% spent close on four years or more in detention. Durations of detention could be calculated for 77% of detainees interviewed for this study. The durations referred to here are calculated from the day of arrest to the time of data collection.

The figures (see Table 4.5) are similar to the duration figures provided by visitors and traced persons. Some 70% of visitor-traced person respondents were able to provide the duration of detention of the detainee with whom they were linked. The duration ranged from one day to 3 285 days (nine years), with the median being 240 days (eight months). The 90th percentile was 1 460 days, which suggests that one in ten respondents who knew the duration of the detainees’ detention, said the detainee had been detained for more than four years. This is broadly in line with the information obtained from detainees, which suggests that the majority are detained for less than a year, while a small minority spend exceptionally long periods in detention.

Table 4.5: Duration of detention

Duration of detainees’ detention	Minimum	25th percentile	Median	75th percentile	90th percentile	Maximum
Detainees Interviewed	1 day	178 days	290 days	561 days	1 386 days	3 759 days
Respondents interviewed	1 day	90 days	240 days	450 days	1 460 days	3 285 days

By comparison, the duration of detention found in the Zambia Audit ranged from same day release 0 days to 1796 days (four years and ten months).<sup>172</sup> At the time of the scoping for this research (September 2013) the Lusaka Central Prison provided a list of persons currently in detention, who had been detained awaiting trial for more than six months (N = 80). Only 18 of these (9%) were admitted in the current year, which suggests 91% were admitted at least 9 months previously. At least one of the awaiting trial admission dates was

<sup>172</sup> There was a range of medians for each of the prisons in the Zambia audit, ranging from 11 to 112 days. The admissions profile in the audit is likely to under-state long term detainees as the methodology for drawing the sample could not capture those who had been in custody for more than five years (as the sample was only drawn from the previous 5 years), and the full duration of those not yet released could not be measured.

2003, which translates into eleven years in custody at the time of the fieldwork. The exact number of remand prisoners at Lusaka Central was not provided, but it is understood to hold approximately 1 600 suggesting that the 80 detainees whose trial had yet not commenced and who had been detained for more than six months amounted to 5% of Lusaka Central's prison population.

## Conclusion

The detention of detainees in Zambia, has a clear socio-economic impact. Compliance with fair trial rights limits the clear socio-economic impact on affected households. The findings underscore the need for pre-trial detention to be a measure of last resort and for the shortest possible duration. Decisions to detain or to continue to detain an accused person outside of fair trial norms have a broader impact which infringes upon the rights of persons other than the detained person, frequently penalising those who were previously almost entirely reliant on the detainee.

# Chapter 5

## Conclusion

The results of this study show that the vast majority of pre-trial detainees are ordinary people integrally involved in supporting their families, whether financially or emotionally or in other ways. Their absence through detention has a measurable and substantive socio-economic impact on affected households.

Fair trial rights require that the cases of pre-trial detainees' be heard without undue delay and that they are to be presumed innocent until they are tried, and convicted or acquitted. The evidence in this study suggests that the criminal procedural system metes out a disproportionate 'punishment' in the form of infringement on the socio-economic rights of detainees and their families, and regardless of guilt or innocence. It is indeed a case of the 'process is the punishment'<sup>173</sup> as detainees spend considerable periods in detention while their families need to get by with reduced means and resources, meaning deeper poverty for many. The duty to 'respect' socio-economic rights entails an obligation on states not to interfere with the resources of individuals, their freedom to find a job, nor their freedom to take necessary action and to use their resources to satisfy needs. The study found that in many instances such interference is avoidable.

The socio-economic impact of pre-trial detention is multi-dimensional and is spread unevenly across individuals and households. The degree of vulnerability of households is dependent on a set of factors that interact to either intensify or ameliorate the socio-economic impact of pre-trial detention. From a purely economic perspective, different households have different levels of resources or access to resources which may also determine how they are able to respond to the problem of detention.

There is little doubt that pre-trial detention has a socio-economic impact. The severity of the impact will be determined by the particular circumstances or risk factors present. When a household has several or all of the risk factors, the socio-economic impact of pre-trial detention may be more severe. The question of how long it may take a particular household to recover from a detention incident of whatever duration may also be posed. The research found ample evidence of impact and that this impact may in certain instances be enduring

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173 Feeley, M.M. (1979) *The Process is the Punishment - Handling Cases in a Lower Criminal Court*, New York: Russell Sage Foundation.

and irreversible, such as children dropping out of school, serious diseases being contracted or injuries sustained; property being lost or sold; or poverty being deepened to such an extent that the household never recovers.

In socio-economic impact there are mutually interdependent factors which do not necessarily consistently lead to the same results. The list of factors described below attempts to identify some of the main drivers and relations between different factors and how they affect the socio-economic impact of pre-trial detention.

***Level of poverty:*** The basic financial and non-financial means of a household is fundamental to understanding socio-economic impact of pre-trial detention. In the countries under consideration, most people are not wealthy and consequently nor are pre-trial detainees. In this study, the majority of affected households had at least some income. However, households that are already experiencing a marginal livelihood prior to detention may be forced into deeper poverty from which they are unable to recover. Further, there is evidence here to suggest that households who have managed to secure some assets or savings, will tend to use these to manage the situation until those reserves are exhausted. In these situations, the household is plunged (back) into marginality through the depletion of those assets or savings in managing the situation. While households which are very poor may never recover from the detention and may resort to abandoning the person detained, households who are not marginal have more to lose.

The level of poverty or immediate risk of poverty is in turn linked to other factors and demands on the households.

***Financial reliance on detainee:*** If the detainee is the main or sole income earner in the household and he or she is imprisoned it follows that the impact will be more severe. Situations in which an income-earner has relocated to the urban centre in order to send money home as a family-survival strategy, were prominent in Kenya. The loss of such income is immediate and severe due to the disappearance of at least a relatively stable cash income. The more income-earners a household has, the better able it will be to cope with the loss of income of one member.

***Number of dependents (or household size):*** The greater the number of dependents, especially those who cannot generate income (e.g. children, disabled and the aged) who are dependent or partially dependent on the detainee's income, the more widespread the impact of their detention will be. It can also be argued that the more marginal the position of the dependent is (i.e. the degree of dependence) the more severe the impact will be. Dependents tended to be of much younger or older in age than the detainees.

***Gender:*** The research shows that gender is an important variable determining the nature of socio-economic impact. The detention of men tends to place the burden of managing the situation on female relatives, who may not previously have been earning an income. Women

who are detained tend to be breadwinners, who also make very substantial non-financial contributions to households. When they are imprisoned, this impact is felt particularly by their children and other children they may have cared for or supported, who must frequently relocate in order to be cared for. Men on the other hand, are the numerical majority in pre-trial detention and are generally charged with more serious offences which result in longer periods of detention. The socio-economic impact is frequently felt by previously financially supported wives and mothers, who are forced into earning roles while attempting to continue to visit, support and attempt to secure the release of detainees.

***The nature of the charge:*** Some countries continue to have some offences which are considered to be non-bailable. It is generally the pattern that men are charged with these more serious offences for which bail is not allowed. The result is that they spend longer periods in detention. The findings in this study suggest that the initial socio-economic impact of pre-trial detention is most severe immediately after arrest, but that over time households develop new coping strategies, such as reducing expenses related to the detention itself (i.e. less regular visits and bringing less food and other materials). This should of course not be interpreted to mean that they are able to recover in full and return to, or even improve on, their previous socio-economic position.

***Children:*** Children are extremely vulnerable to negative changes in the socio-economic position of the household. This is manifested in a number of ways, such as decreased access to schooling (cannot afford school fees, drop out of school, no longer walked to school); relocating to relatives or friends; food security; general security; lack of or limited supervision by adults; stigmatization; and so forth. Children are therefore affected by the loss of financial and non-financial support services rendered by the detainee. It is through children's marginalisation and exclusion that pre-trial detention has the most enduring and often irreversible impact, by creating inter-generational consequences.

***Extent of involvement of detainee:*** Other impacts of the detention will to a large extent be determined by how central or not the detainee was to the household's well-being. If the detainee was an occasional visitor, made a small financial contribution and rendered minimal or no non-financial support services and is rarely visited while in detention, it follows that the impact will be less. The data indicates such detainees to be in the minority. By contrast detainees tended to be head of the household, the main income earner, and enabled a range of non-financial support services, resulting in greater impact. At minimum, the implication of his or her detention is that somebody else must now generate the income and render the non-financial support service, or alternatively these functions simply no longer occur.

***Household composition:*** This also links up with the composition of the household. For example, if a husband is detained leaving behind an eight-month pregnant wife with two young children, the impact will differ from when there are two children age 16 and 17 years who may be in a position to support their mother to generate an income and perform

certain functions that their father use to perform.

**Assets:** The research found that many detainees did not hold significant assets, but where this was recorded it was fairly common of households to dispose of assets to generate cash. Selling assets may, however, be a short term strategy increasing longer term vulnerability. Selling of animals or equipment with which food security can be maintained or an income generated may enable immediate support to the detainee but draw the household into deeper poverty. Such sales are likely to have long-term consequences.

**Loss of employment:** If the detainee is in formal employment it is likely that he or she will lose his or her employment the longer he or she is in custody. If self-employed, it is likely that the detainee will lose the business client base unless there is a household member that can step into his or her shoes. In the competitive informal markets of African cities, a niche may be lost forever.

**Employability of other household members:** Detention essentially results in the removal of a household member from that household for a shorter or longer period of time and this comes at a socio-economic cost that may be greater or lesser. In order to maintain the same or an approximate life style, this gap needs to be filled by another person. The extent to which other household members (or persons related to the household) can fill this gap will be an important factor in mitigating adverse socio-economic consequences of the detention. A household consisting of members with high employment potential or self-employment potential will in all likelihood fare better than a household consisting predominantly of people with limited economic potential (e.g. children, elderly and disabled). The research found that many households were disproportionately reliant on the detainee.

**Health:** The research found that large proportions of detained people were ill at the time of arrest and a larger proportion became ill during detention. While this had adverse consequences for them individually during detention, it may also hold longer term consequences for them and the households they return to upon release as it may impact on their socio-economic potential. In this regard, HIV positive detainees and those with tuberculosis may suffer more severe consequences under poor conditions of detention and limited medical treatment. Poor conditions of detention may thus result in a further cost to the families as capacity to function economically may be depleted.

**Support structures:** It was particularly observed in Kenya where a notable proportion of women were economic migrants to the capital where they lived on their own, and remitting funds to their households that are outside Nairobi. Having a spouse appears to be an important factor. The extent to which a detainee can call upon support structures during detention will have an important impact on their access to food, cash (and bail), medicine, access to legal representation and emotional support. At the same time it was noted that detention had varying impact on social, family and spousal relations.

*The cost of detention:* The detention of household members brings new, direct and unplanned costs for a household, and varies due to a range of factors. It was reported that, for example, visiting is one such cost as it is associated with transport costs, food costs, and other material costs, such as medicine. Securing private legal aid – or attempting to do so – or assistance from a state institution (e.g. Human Rights Commission) may also result in costs. Gathering cash for bail, borrowing money, using savings or paying a bribe are further costs associated with detention. Pre-trial detention is therefore not only about losing financial and non-financial contributions, but also about incurring new and unplanned-for expenses. Presumably, the longer detention continues, the higher the total of these expenses will be – until the family is forced to cease incurring these expenses in order to survive. The costs families incur to provide basic necessities to detainees which the state ought to provide, amount to the poor subsidising imprisonment.

The combination of vulnerability factors alluded to above also summarizes the ways in which pre-trial detention may be felt. The findings in all three countries suggest that criminal procedural laws and practices should be designed and implemented in such a way as to ensure that socio-economic impact on all persons is minimised. A first step is in recognising that pre-trial detainees are part of involved systems of care and support, and their detention operates in a multitude of ways to disrupt those systems of care support. In short, their detention has negative consequences for other people.

While respect for fair trial rights may ameliorate socio-economic impact, there is a need to recognise that even when fair trial rights are respected, there may be an additional need to take into account socio-economic impacts, in the way in which laws are made and implemented. Laws and practices which encourage detention and which consequently have disproportionate socio-economic impacts in relation to the harm being addressed by those laws and practices, must be recognised to be counter to states' obligations to respect socio-economic rights. In the light of evidence such as contained in this report, whether or not a country is signatory to the ICESCR, states must take into account the ways in which state laws, policies and practices may be aggravating and entrenching poverty and thus be counter-developmental.

In conclusion, the vast majority of pre-trial detainees generally have a similar profile to most other people in their country, and tend to be integrally involved in supporting their families, whether financially or emotionally or in other ways, and enjoy the respect of society. Their absence has a measurable impact; frequently more than halving incomes; depleting savings; often plunging families into debt; and forcing the sale of assets. While some may be guilty of crimes, fair trial rights require that their cases be heard without undue delay, and that they be presumed innocent until they are tried and convicted.

Over and above fair trial rights, respect for socio-economic rights by states and awareness of poverty impacts would mean that criminal, and criminal procedural laws and practices are

designed and implemented in such a way as to ensure that socio-economic impact on all persons is minimised. This may place an obligation on states to decriminalise and declassify trivial offences; to ensure alternative methods of securing attendance at trial are available; to ensure individuals are tried within a reasonable time; and beyond simple compliance with fair trial rights, encourage the reconsideration of the appropriateness of pre-trial detention.

**These recommendations come in the light of inevitable and severe impacts of prolonged pre-trial detention, causing disproportionate harm to detainees and affected households.**



