

Case flow management in Malawi

Audit of case flow management and conditions of
detention in Malawi

21-22 July 2011

Lilongwe

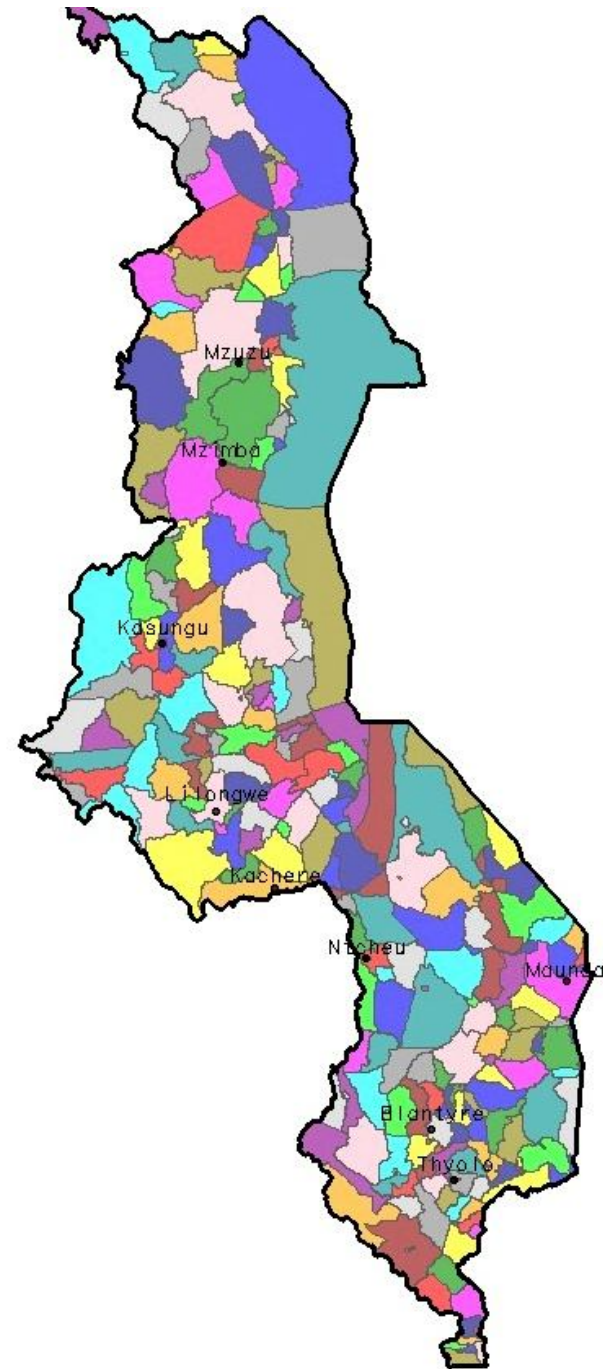
Introduction

- How much time do people spend in pre-trial detention?
 - Primary objective of case flow management section of the report was the estimation of time periods spent in custody by accused persons in the criminal justice system in Malawi
- Who is in pre-trial detention, and for what crimes?
 - Identification of characteristics of the remand prison population, as well as those of people being arrested and before the courts, the secondary objective



Methodology

- Which institutions did we get data from?
 - Police, Subordinate Courts, High Courts, Prisons
- Which places did we get data from?
 - 8 sites targeted
 - 6 sites with data (Blantyre, Kasungu, Lilongwe (Maula and Kachere), Mzimba, Mzuzu, Thyolo)



Methodology

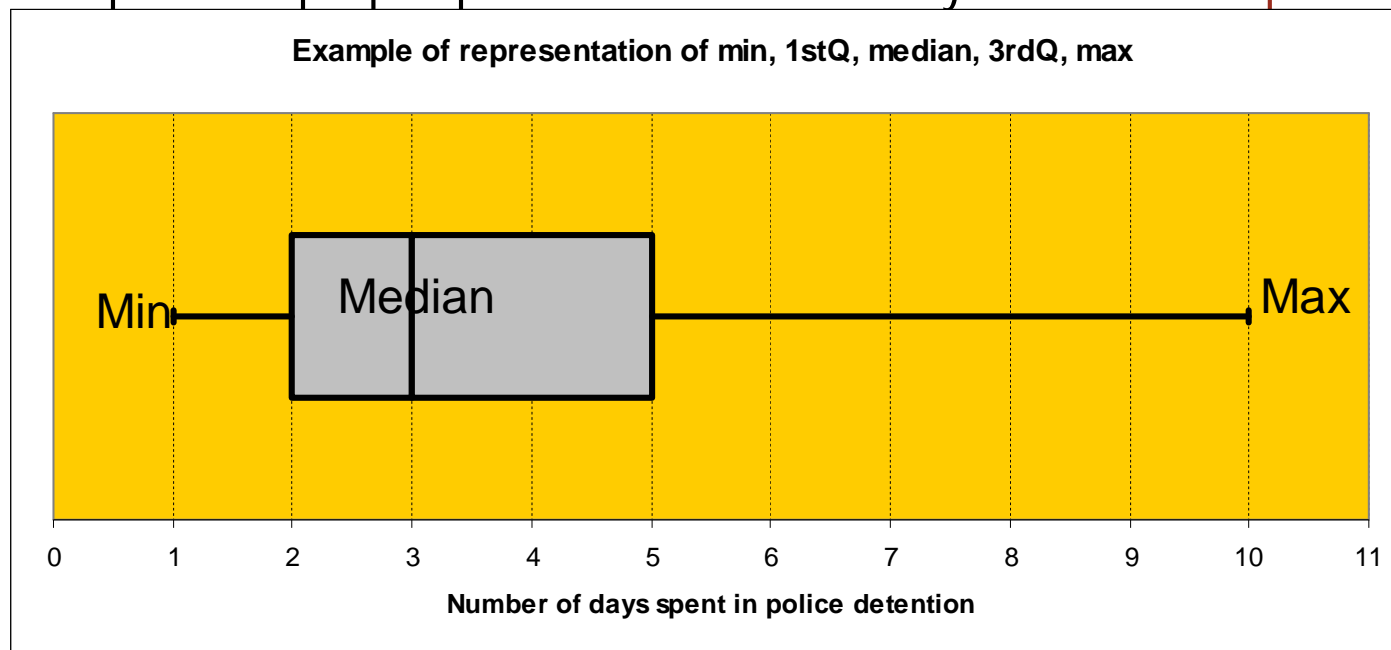
- **How did we collect the data?**
 - From the registers of the targeted institutions, a random sample of 40 observations from each year 2006-2011 were targeted for selection
 - In the courts it was necessary to locate the relevant case files for each selected entry to establish much of the information required, while in the prisons the relevant warrants had to be perused
- **Who collected the data?**
 - Fieldworkers from the four organisations were trained over one week on random sampling and data collection and then carried out the fieldwork after piloting

High exposure of Malawi population to remand

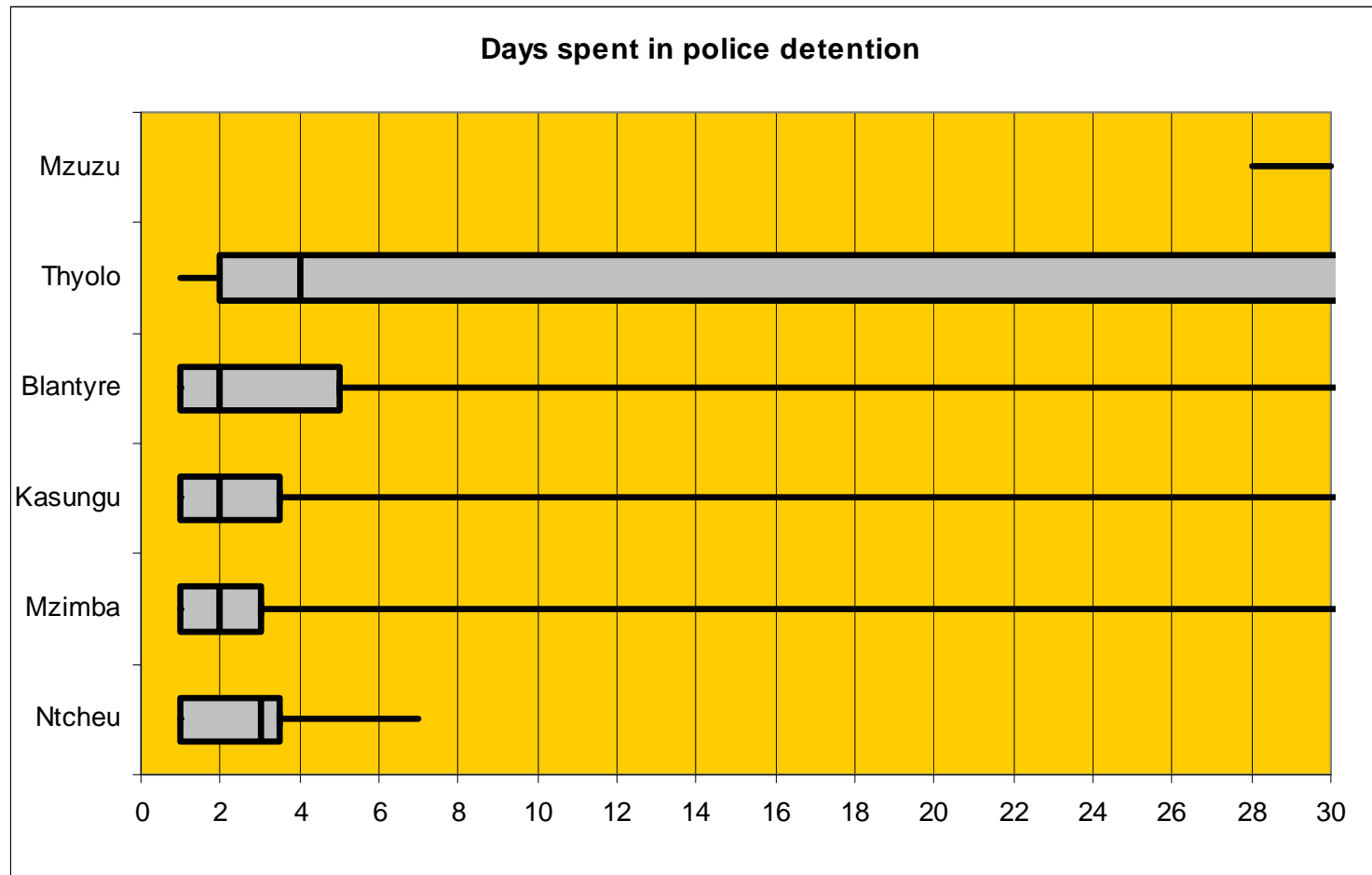
- From the registers we can determine how many people enter the six prisons each year
- The six adult prisons admit approx. 8000 people each year, and Kachere 6000 children
- Given that the male population of Malawi over 15 comprises 3.5 million, this suggests 1 in every 250 enter these prisons each year
- Given that there are 23 prisons in Malawi, but that these are the larger prisons, this suggests the actual population entering remand **each year** may be as high as 1 in 100

Explanatory note on time periods

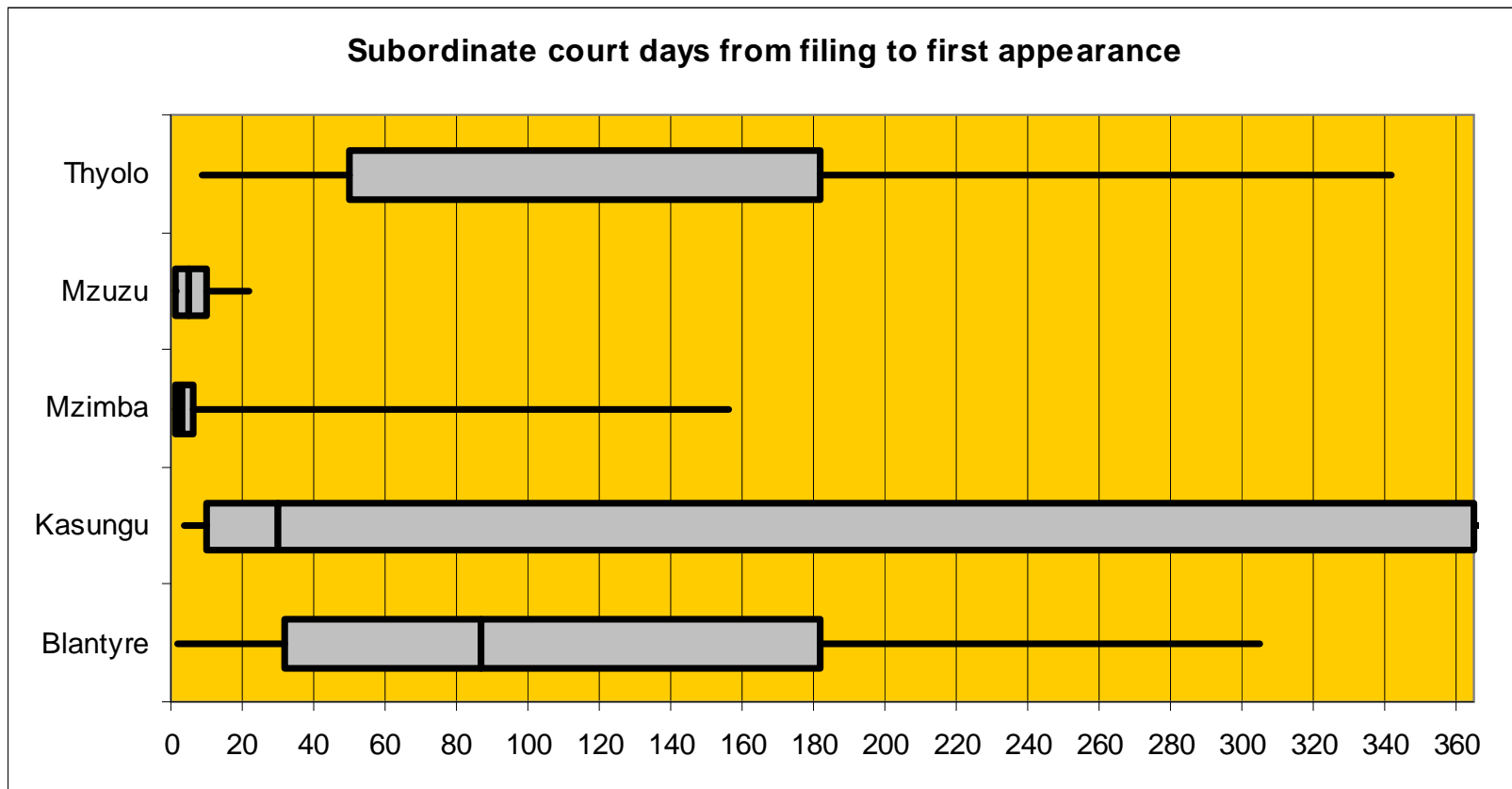
- The **minimum** is the shortest time spent in custody spent by any one person
- The **median** is the middle time spent in custody – the number of people spending less time in custody than the median is equal to the number of people who spent longer than the median
- The **maximum** is the longest time in custody spent by any one person
- A quarter of people spent less time in custody than the **first quartile**
- A quarter of people spent more time in custody than the third **quartile**



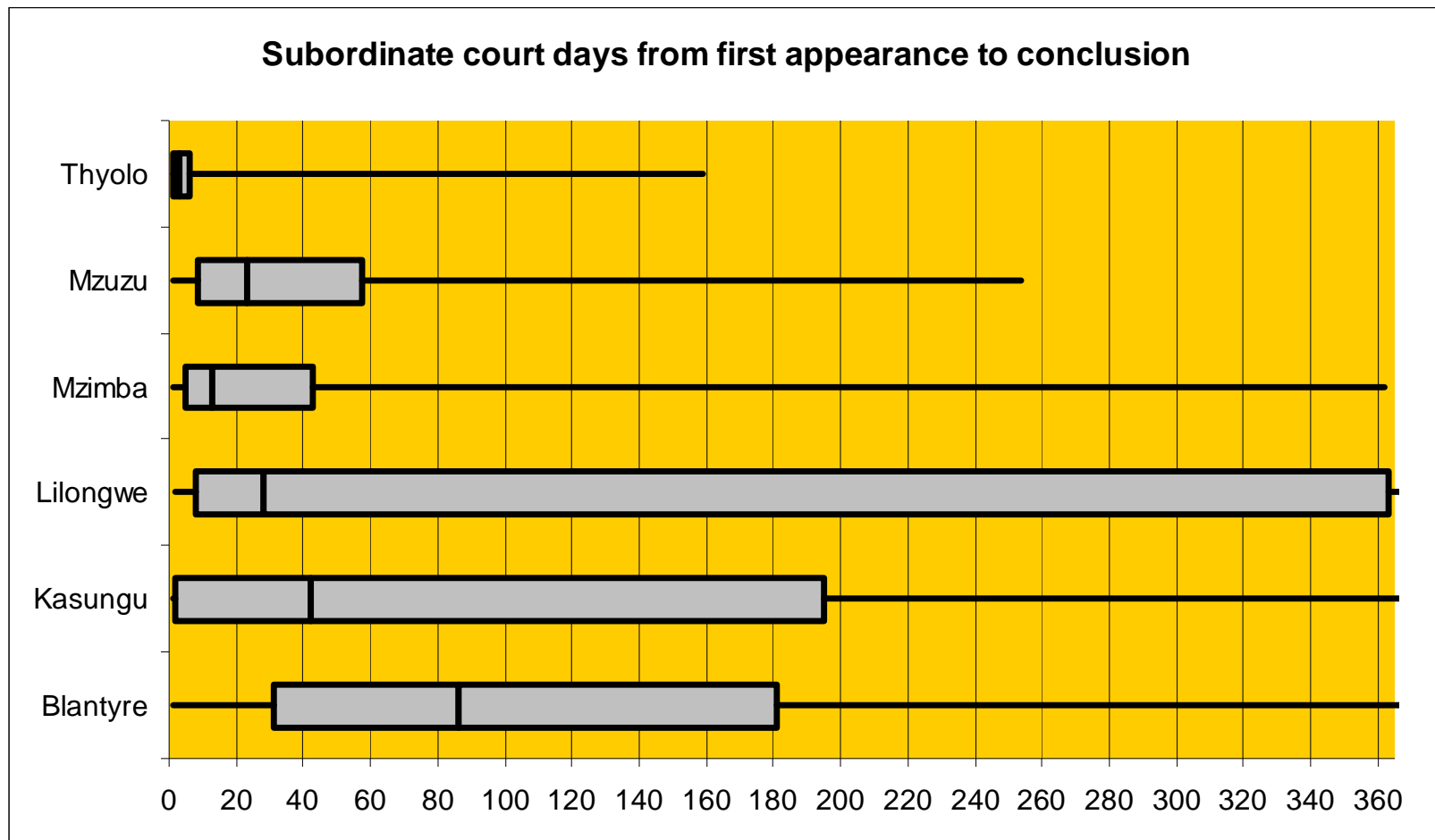
Days in police detention



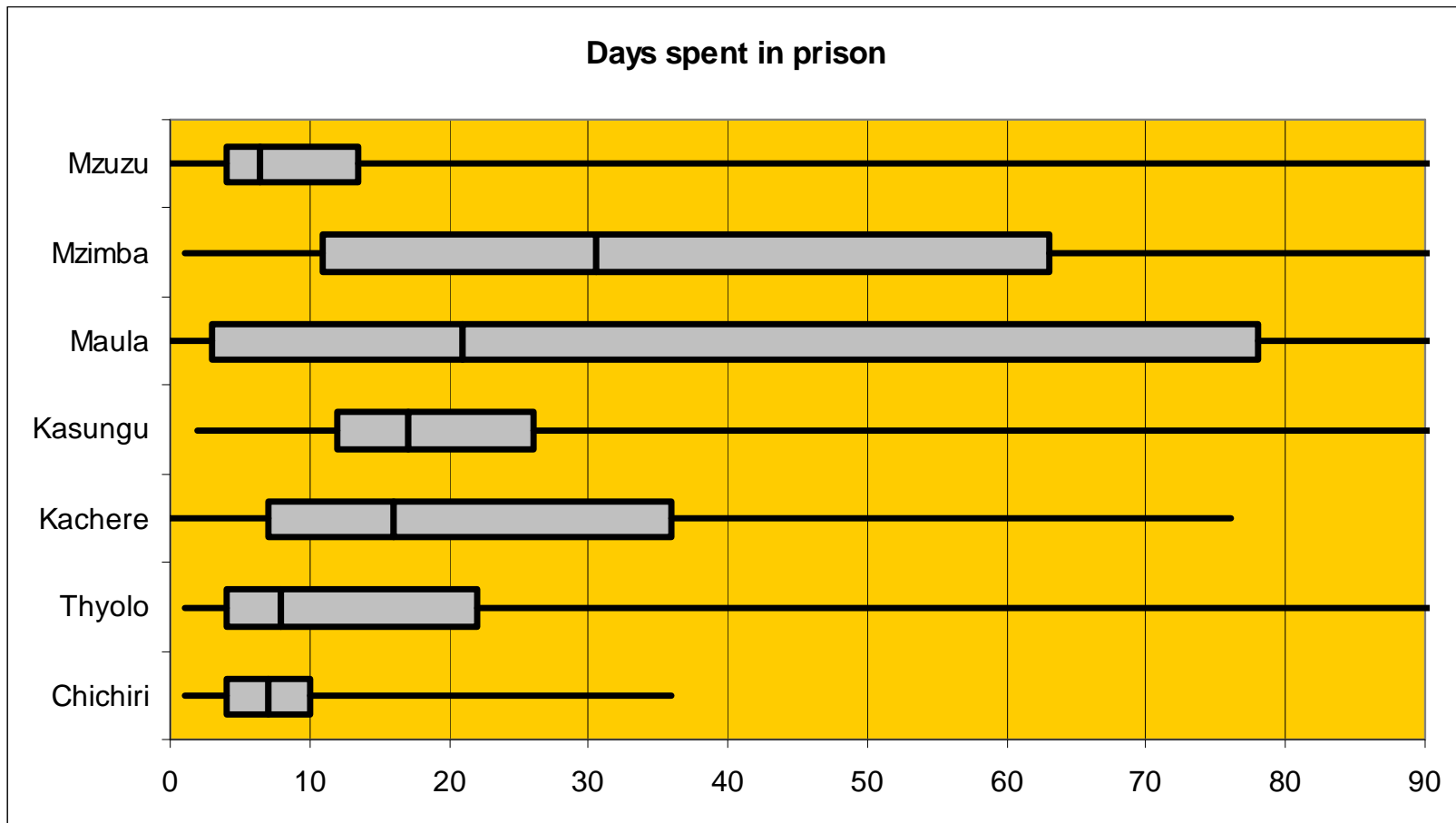
Days to court process



Days in court process



Days on remand



Blantyre



- Half of people spend more than two days in police detention in Blantyre
- A quarter of detainees spend more than five days in police detention in Blantyre
- The earliest admission date among remandees not yet released dated back to 2007 (suggesting more than 1000 days on remand)
- Remand estimates not reliable and must be compared to court estimates
- Half of cases take more than 886 days (2 years 5 months) at Blantyre High Court

Blantyre	Average turnover	Time Measure	Obs.	Mean	Min	1/4	Median	3/4	Max
Police	1333	Detention to release	83	14	1	1	2	5	371
Sub. Court	1267	Filing to first appearance	68	23	2	32	87	182	305
Sub. Court	1267	First appearance to conclusion	25	97	1	2	42	195	371
High Court	134	Filing to first appearance	17	974	113	379	886	1451	2054
High Court	134	Committal to Conclusion	10	140	6	16	41	223	567
Chichiri Prison	2994	Admission to Release	41	9	1	4	7	10	36

Kasungu

- Half of people spend more than two days in detention at Kasungu police station
- A quarter spend more than five days in police detention
- In the sample for (92%) it was not known whether they had been released or not (88%) or they had not yet been released (4%) at the time the data was collected (May 2011). The earliest admission date among these remandees dated back to 2007 (more than 1000 days on remand)
- Court time period data appears to be more reliable
- Longer delay from filing to first appearance than other courts

Kasungu	Average turnover	Measure	Obs.	Mean	Min	1/4	Median	3/4	Max
Police	5231	Detention to release	46	6	1	1	2	5	122
Sub. Court	834	Filing to first appearance	195	6	4	10	30	365	731
Sub. Court	834	First appearance to conclusion	156	21	1	5	13	43	349
Kasungu Prison	516	Admission to Release	15	37	2	12	17	26	252

Lilongwe

- Subordinate court and Maula prison estimates of similar magnitudes
- Among all remandees in the sample of 240, some 22 (9%) of remandees admitted over the last six years had not yet been released at the time the data was collected (May 2011). The earliest admission date among these remandees was May 2009 (two years on remand).



Lilongwe	Average turnover	Measure	Obs.	Mean	Min	1/4	Median	3/4	Max
Sub. Court	1160	Filing to first appearance							
Sub. Court	1160	First appearance to conclusion	16	43	2	10	24	59	231
Maula Prison	2979	Admission to Release	46	61	0	3	21	78	529
Kachere Prison	6333	Admission to Release	24	23	0	7	16	36	76

Mzimba

Among all remandees in the sample, for some 124 (53%) it was not clear whether they had yet been released at the time the data was collected (May 2011). The earliest admission date among these remandees dates back to 2006

Mzimba	Average turnover	Time Measure	Obs.	Mean	Min	1/4	Median	3/4	Max
Police	804	Detention to release	101	3	1	1	2	3	31
Sub. Court	225	Filing to first appearance	126	16	1	2	3	6	156
Sub. Court	225	First appearance to conclusion	66	51	1	7	17	28	358
Mzimba Prison	343	Admission to Release	87	73	1	11	31	63	639

Mzuzu

- Data was available from all the relevant institutions
- The most pertinent information appearing from the Mzuzu data is the apparently long periods spent in police detention
- The earliest admission date among remandees not discharged was January 2010 (more than 500 days on remand), higher than the maximum (323 days).
- This strongly suggests that the time periods presented are an under-estimate as they reflect the time periods spent in custody by remandees both admitted *and already released* since January 2010 (only 2010 and 2011 data)

Mzuzu	Average turnover	Time period measure	Obs.	Mean	Min	1/4	Median	3/4	Max
Police	3371	Detention to release	30	41	28	30	31	61	243
Sub. Court	84	Filing to first appearance	23	3	1	2	5	10	22
Sub. Court		First appearance to conclusion	13	15	1	10	15	57	115
High Court	34	Filing to first appearance							
High Court		Committal to Conclusion	26	56	1	6	87	37 5	635
Mzuzu Prison	1010	Admission to Release	20	26	0	4	7	14	323

Thyolo

- Police detention, and filing to first appearance, of most concern in Thyolo
- Among all remandees in the sample of 200, for some 34 (17%) of remandees it was not clear whether or not the remandee had been released at the time the data was collected (May 2011).

Thyolo	Average turnover	Measure	Obs.	Mean	Min	1/4	Median	3/4	Max
Police	1322	Detention to release	71	24	1	2	3	30	183
Sub. Court	769	Filing to first appearance	127	1	9	50	182	182	342
Sub. Court	769	First appearance to conclusion	50	32	1	7	31	87	365
Thyolo Prison	495	Admission to Release	29	21	1	4	8	22	142

The impact of local factors

- The results presented above indicate a great deal of variation amongst the various sites in Malawi
- Trends are strongly determined by local conditions and not by factors having application across the entire country, such as the impact of legislation or policy
- Local human resource capacity and staff skills levels may also play a role e.g. access to legal aid and paralegals, which is not evenly distributed across the country

High court delays

- The extremely long delays for a case to reach the High Court in Blantyre suggest that the major delays are occasioned in serious cases in the transfer of matters to the High Court
- Committal process and range of institutions involved contributes to delays

Failure to meet time limits

- Apparent failure to meet time limits appears to be systematic and applicable to a large proportion of cases, not isolated instances e.g. Blantyre and Kasungu had median time periods from filing to first appearance in excess of 30 days in the subordinate court
- The current way in which records are kept does not lend itself to the easy identification of inordinate delays in the system and of triggering release where time limits have been exceeded.
- It is unclear which institution is responsible for monitoring compliance with the custody time limits and, moreover, what steps must be taken by whom when the limit is exceeded.

Missing records

- Incomplete records and lost files are the most serious findings coming from the study. A person on remand whose records or files have been lost has little hope without external help of getting out of the system. Without rigorous record-keeping serious miscarriages of justice may occur.
- There is a need for an overhaul of the nature and form of information kept in the criminal justice system and for its systematic implementation across the country. This is particularly so in the light of the custody time limits introduced by the Malawi legislature.
- A further consequence of poor record-keeping is that it limits the extent to which any intervention aimed at improving case-flow management can be monitored and assessed to determine if it is having the desired effect.

Characteristics of remand admissions

- Age profile shows 20-29 over-represented compared to Malawi population
- Most offenders held on only one offence
- Theft most common offence
- Wide variation across sites
- Mzimba and Thyolo seem to have a higher proportion of violent offences
- Mzuzu has a high proportion of "system" offences
- Small but significant categories such as illegal immigrants, "rogue and vagabonds" and touts.

Offence	Chichiri admissions (%)
Theft and burglary	43
Robbery	9
Illegal immigrant	4
Murder	2
Touting	2
Assault	2
Other	38

Offence	Maula admissions (%)
Theft	38
Prohibited Immigrants	13
Robbery	6
Murder	4
Other	39

Offence	Mzuzu admissions (%)
Theft or burglary	33
Assault	10
Prohibited immigrants	10
Rogue and vagabond	8
Contempt of court	6
Other	33

Offence	Mzimba admissions (%)
Theft or burglary	34
Murder	13
Assault or grievous harm	9
Robbery	5
Rape	4
Other	35

Offence	Thyolo admissions (%)
Theft or burglary	39
Assault or grievous harm	22
Robbery	6
Murder	4
Other	29

Minority status

- Maula: Chewa tribe (which comprises 70% of the population of the central region) was under-represented among admissions to Maula, with only 45%; Yao were over-represented at 13%, compared to their share of only 6% of the population; Lomwe, also from the south were also over-represented at 9% compared to only 3% of their share
- Mzuzu: Tumbuka slightly under-represented while the Chewa were slightly over-represented at 10%. The proportion of foreign nationals was twice as large as predicted by the population of the Northern region.

Outcomes in court sample

- Blantyre High Court at least 15% of charges in the sample were ultimately withdrawn (50% of the data missing)
- Kasungu 41% were convicted, while 30% of cases were withdrawn, and 13% were acquitted or discharged
- Lilongwe 58% of cases resulted in a conviction, while 28% resulted in an acquittal, discharge or withdrawal
- Mzimba only 26% resulted in conviction
- Mzuzu subordinate court a third convicted, a quarter transferred
- Mzuzu High Court 30% convicted 16% acquitted
- Wide range of sentences even in High Court

Police and Court Bail

- Blantyre police 47% released on bail
- Kasungu police 45% released on bail a further 10% on “free bail”
- Mzimba police 35% of released on bail
- Mzuzu police 43% bail 21% transferred to prison
- Thyolo police 31% released on bail
- A third of accused at Lilongwe subordinate court denied bail while remainder unclear whether bail was granted or not.

Recommendations

- Identify local factors affecting the speed and application of criminal justice
- Streamline the process of referral to the High Court
- Develop a consistent national system of record-keeping and archiving in all institutions relating to criminal justice.
- Develop a mechanism to trigger the release of persons on remand where custody time limits are exceeded which will be implemented nationally
- Review offences in the Malawi Criminal Code with the view to decriminalise certain acts.