

Policy Brief

# Advancing SDG 16.3.2 by investing in prison paralegals to cut the number of unsentenced detainees in low-income countries

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*Taking people-centred justice to scale: investing in what works to deliver SDG 16.3 in lower-income countries*

## Key messages

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Globally, 12 million people are in prison, with 3 million prisoners unsentenced. On average, the proportion of unsentenced prisoners in low-income countries (46%) is twice the proportion in OECD countries (24%). Data from Malawi and Uganda shows how paralegals could provide a cost effective and affordable mechanism to substantially reduce the proportion of unsentenced prisoners in low-income countries to OECD levels.

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The costs of investing in criminal justice paralegals in low-income countries to achieve this, are relatively low - estimated at \$9 million a

year (\$20 per prisoner), across all low-income countries. The investment would deliver a potential cost-saving of over \$28 million a year, three times the costs.

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Benefits of such investment would include: getting people out of prison who shouldn't be there; reducing prison overcrowding; reducing human rights abuses; and freeing up funds for investment in hard-pressed justice systems. It would demonstrate meaningful and visible progress on providing access to justice for all (SDG16.3) and in particular on indicator SDG16.3.2 (number of unsentenced detainees as a proportion of overall prison population).

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Low-income countries could only afford to pay a small proportion of the \$9 million, and would require external donor investment. The learning from other service delivery sectors is that this would be most effectively delivered if donors moved away from bilateral programming to a multilateral approach, investing in country-led and context specific national programmes.

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## About the publication

This is the first in a series of four planned papers on “Taking people-centred justice to scale: investing in what works to deliver SDG 16.3 in lower-income countries”. The research project focuses on practical, cost-effective and realistic ways to deliver sustainable justice services at scale which offer lessons both for lower-income countries and donor programming. The project runs until September 2023.

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# 1 Introduction and summary

This paper focuses on ‘reducing the number of unsentenced detainees’ – that is, people who are in prison for extended periods, often without being tried or sentenced. This focus is reflected in the globally agreed Sustainable Development Goal (SDG) indicator for improving the access to justice (SDG 16.3.2).

Globally 3 million people are detained before and/or without trial (Heard and Fair, 2019).<sup>1</sup> They may not have committed a crime, but they are held under the same (and sometimes worse) conditions as people who have been found guilty. The numbers of detained people are moving in the wrong direction: the number of unsentenced prisoners has risen by 15% since 2000, with the biggest increases in Oceania, the Americas and Asia (Ibid.). The poorest countries, mostly in Africa, have the highest numbers as a proportion of total prisoners. Currently, the proportion of unsentenced prisoners in low-income countries averages 46%, twice the OECD (Organisation for Economic Co-operation and Development) average. If all countries matched the OECD average,<sup>2</sup> then globally the number of pre-trial detainees worldwide would be reduced by almost 1 million.<sup>3</sup>

The number of unsentenced prisoners both stems from and is a powerful indicator of the growing justice gap. The detention of 3 million people without trial can be seen as a human rights abuse (see box below).

## International human rights commitments relevant to pre-trial detention

- **International Covenant on Civil and Political Rights 1976:** *Article 9(3). Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in*

<sup>1</sup> This does not include people held in immigration detention.

<sup>2</sup> The proportion of unsentenced prisoners is much lower in some OECD countries e.g. 12% in Japan and 16% in England and Wales.

<sup>3</sup> To be more precise 915,000 would be released – see Manuel et al. (2019).

*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.*

- **The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988:** *Principle 38 - A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial. Principle 39 - Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.*
- **The UN Standard Minimum Rules for Non-custodial Measures, 1990** (the 'Tokyo Rules') and the **UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, 2010** (the 'Bangkok Rules') encourage a wide range of non-custodial measures to avoid the unnecessary use of imprisonment.

There are also relevant regional instruments including **The African Charter on Human and Peoples' Rights, 1981:** *Article 7 - Every individual shall have the right to have his cause heard. This comprises...: The right to be tried within a reasonable time by an impartial court or tribunal.*

This paper makes the case for spending the modest sum of money required to support low-income countries to halve their unsentenced prisoner rate to the OECD's level. It focuses on the efficiency argument – that the savings and broader benefits of reducing the unsentenced prisoner population outweigh the costs of achieving this. The argument is illustrated using quantitative evidence from long-running programmes in Malawi and Uganda.

## 2 Background and context

Globally nearly 12 million people, including 800,000 women and 410,000 children, are held in prisons across the globe – an increase of 25% since 2000 (UNODC, 2021). Of these, 3 million are held without sentence. There will always be some proportion of prisoners who have yet to be tried, and if found guilty, sentenced. But large numbers of unsentenced prisoners result in potentially innocent people being held in prison for lengthy periods of time. It implies a dysfunction in the criminal justice system: SDG indicator 16.3.2 measures not only the number of people in prison awaiting trial, but also how speedy the criminal justice procedures are – for the guilty and the innocent. Justice actors and systems can never be flawless – mistakes will be made and the innocent locked up, creating disproportional impact and injustice in the lives of people affected. SDG indicator 16.3.2 is concerned with how long these injustices last for, and how are they dealt with. The call for reducing the proportion of unsentenced prisoners is a response to the lack of progress globally over the past 20 years, with the proportion remaining between 29% and 31% (UNODC, 2021).

Poorer countries have much higher rates of unsentenced prisoners, with the proportion averaging 46%, twice the OECD's 24%.<sup>4</sup> In some low-income countries the proportion of unsentenced prisoners is as high as 73% (see Annex A for details). The result is that prisoners can be held without sentence for prolonged periods. In Uganda, for example, 29% of all unsentenced prisoners are held for longer than a year (UNODC, 2017). Delays in the system mean that unsentenced prisoners can be held for even longer than the maximum sentence for the crime of which they are accused. Pre-trial detention rates vary hugely within regions. The length of pre-trial detention also varies greatly. In 2014, detainees were held for an average of approximately four months in the 27 Council of Europe countries, compared to a reported average of three years in Nigeria (Penal Reform, 2021c).

### 2.1 Impact of high levels of unsentenced prisoners

High levels of unsentenced prisoners results in multi-dimensional impacts: on the individuals concerned and their families, on prison overcrowding, and on broader society. It creates a range of costs, and undermines the rule of law and due process. Recent research by

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<sup>4</sup> Unweighted country averages



the Institute for Crime & Justice Policy Research (ICPR) has highlighted three key reasons for being concerned about the high proportion of unsentenced prisoners (Heard and Fair, 2019):

### (i) Prison overcrowding

High levels of unsentenced prisoners are a direct cause of prison overcrowding. As Catherine Heard, the Director of the Institute's World Prison Research Programme, has noted: 'Harsher sentences and over-use of pre-trial detention are among the root causes of prison overcrowding, which now affects two thirds of countries worldwide' (ICPR 2021). She goes on to note that 'prison overcrowding damages the health and the rehabilitation prospects of prisoners; it also carries grave risks for public health'.

The impact of prison overcrowding is particularly marked in low-income countries where prisoner numbers are 180% of prison capacity (see Annex A).

Prisoners are especially vulnerable to cramped living conditions, lack of hygiene supplies and poor health status. HIV transmission can also be an issue (Jolofani and DeGabriele, 1999), and the health situation has been exacerbated by Covid-19 (Penal Reform International, 2021a). Covid-19-related arrests have both increased the numbers of people held in pre-trial detention (Ibid.) and increased the already poor health of detainees. A reported 3,931 people in prisons in 47 countries have died due to Covid-19. More than 532,100 people in prison have tested positive in 122 countries, but this is likely to be lower than the true number (Penal Reform International, 2021 a). One reaction to this has been the introduction of emergency release mechanisms with more than 700,000 people globally being authorised or considered eligible for release since March 2020 (UNODC, 2021).

### (ii) Human rights abuses

As well as the specific human rights listed in the box above, the ICPR paper (Heard and Fair, 2019) highlights how high levels of unsentenced prisoners affects four related fundamental human rights:

- The right against torture and inhuman and degrading treatment: this will be infringed if conditions are unsafe, insanitary or violent.
- The right to liberty: everyone has the right not to be detained arbitrarily or for excessive periods.
- The right to private and family life: even a short period in detention disrupts family and private life and the ability to earn a living.
- The right to a fair trial and the presumption of innocence: in prison it is harder to consult a lawyer, challenge detention or prepare for

trial – and easier to be pressured into confessing or accepting plea deals

Concerns about human rights abuses are elevated in low-income countries where there are high reported levels of perceived police corruption and hence greater risk that prisoners awaiting trial and sentence have been unjustly arrested due to arbitrary or discriminatory action, as well as capacity issues.

### (iii) Economic and social harm

Prison is expensive. High numbers of unsentenced prisoners represent a burden on the government, particularly on low-income country budgets stretched to breaking point by Covid-19. As will be discussed below, there are potentially very significant savings that could be reaped by reducing the numbers of people held in prison unnecessarily. Thus, reducing the number of unsentenced prisoners has the potential to free up significant resources that could be invested in currently under-funded justice systems. A significant amount of the resources available to the justice sector are being used to produce injustice, rather than justice.

As far as individuals are concerned, detention without trial affects the prisoners themselves including lost income and mental health impacts (Doornenbal and de Langen, 2022 forthcoming), and may have broader social and economic consequences such as affecting their ability to be reintroduced into society.

Prison also impacts directly on prisoners' families, especially children. In Malawi it was noted that '80-90% of the detainees were the breadwinners for families, many of whom were already living close to the poverty'. (UNDP, 2011). Prison reinforces existing patterns of inequality. Prisoners are overwhelmingly likely to be from social groups that lack access to justice – notably, those living in poverty, those who are marginalised, and those who suffer racial and ethnic discrimination (Penal Reform International, 2021b).

A criminal justice system characterised by lengthy periods of pre-trial detention threatens trust in the justice system in general, but particularly among those parts of the population that are over-represented in prison to begin with. Excessive pre-trial detention can create grievances and undermines trust, especially when combined with security sector actors who are able to wield power in an arbitrary or discriminatory manner, especially in repressive environments. A recent United Nations Development Programme (UNDP) study established the link between personal negative interactions with security forces and radicalisation and violent extremism (UNDP, 2017). It suggested that more than 70% of people surveyed pointed to 'government action' including 'killing of a family member or friend' or 'arrest of a family member or friend' as the incident that prompted them to join groups associated with violent extremism.

# 3 Reducing the number of unsentenced prisoners is possible

## 3.1 Overview of experience over the past 20 years

Reducing the number of unsentenced detainees can be addressed in various ways: (1) reducing the inflow into the criminal justice system – including enabling appropriate cases to be dealt with through alternative dispute resolution, and providing legal assistance to those accused of crimes at the point of arrest; (2) increasing the number of prisoners released pending trial – including using measures such as bail, forfeiture of travel documents, or periodic reporting to police or other authorities; and (3) increasing the number of trials and then, for those prisoners found guilty, the rate of handing down sentences.

The measures used should be context-specific and depend on the underlying challenges within the criminal justice system. The challenges may be complex and could include: police/security organisations exercising their powers of arrest oppressively; insufficient judiciary to try cases; security laws that allow the state to hold people in preventive detention without trial for long periods; bail provisions or practices that inhibit bail being granted (e.g. requiring large ‘bail bonds’).

Despite these underlying challenges, there has been a growing recognition that it is possible to reduce the proportion of unsentenced prisoners relatively cheaply and with straightforward, largely uncontroversial reforms in policy and practice. ODI research into the political economy around the issue reveals the potential for buy-in for reform at the national political level, and for targeted reforms to reduce the number of overstaying detainees once the prosecution process has started (Domingo and Sudaryono, 2016).

The increase in unsentenced prisoners over the past 20 years has sparked a range of new approaches. In the US public support has been harnessed through crowd-funded bail bonds to enable prisoners to be released on bail pending trial.<sup>5</sup> In low-income countries (the focus of this paper) there are a growing number of successful examples of initiatives to support unsentenced

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<sup>5</sup> See for example: [www.fundedjustice.com/abolitionistbailfund?ref=ab\\_1LoIQ44XLMa1LoIQ44XLMa](http://www.fundedjustice.com/abolitionistbailfund?ref=ab_1LoIQ44XLMa1LoIQ44XLMa) and <https://nomoremoneybail.org>

prisoners to apply for bail, and represent themselves at trial through advice and more general assistance provided by prison paralegals (Manuel and Manuel, 2018), mainly employed by civil society organisations.

The use of prisoner-focused paralegals was first taken to scale in Malawi in 2000 with UK support. By 2010 a similar approach was applied in Benin, Kenya, Uganda, Niger, Bangladesh, Sierra Leone and Liberia. Funding has been provided by donors including Austria, Denmark, the EU, France, Germany, Ireland, Netherlands, Norway and Sweden as well as philanthropic foundations. A more recent example is the Dutch-funded International Development Law Organization detainee release programme in the Sahel region. There are also multiple examples of donors supporting paralegals more generally including Canada and the US.

Precise ways of working are locally developed, and context-specific but tend to focus on helping prisoners to prepare for court appearances and to request bail through training, workshops, coaching and role-play, usually within the prison, as well as supporting prisoners during their court appearances.<sup>6</sup> Often the focus is not only on working in prisons, but also across the whole criminal justice chain. Additional support can include linking prisoners up with their families and facilitating bail payments or surety to address the risk of flight. This is a particularly important role for prisoners who do not have roots in the local community, including migrants.

If there is sufficient political space, paralegals can also support systemic improvements in the criminal justice system. In some contexts, they may be able to call attention to underlying issues, even if they cannot change them. Uganda is a good example (The Law & Development Partnership, 2011): paralegals have played a key role in the Justice Law and Order Sector's nationwide Chain Linked Committees – a low-cost initiative that brings together all the players in the criminal justice chain to speed up the flow of cases. Prison paralegals have had a significant impact on practices within the criminal justice system – for example, working with magistrates to undertake case backlog disposal initiatives and (although not related to pre-trial detention), working with the judiciary on the increased use of non-custodial sentences such as community service orders. They can also have an important oversight role – particularly when, as in Uganda, they are embedded throughout the criminal justice chain (in police stations, courts, juvenile detention centres, as well as prisons). Similarly, Malawi's prison paralegal service has been credited with initiating the use of 'camp courts' where magistrates hold sittings within prisons and grant bail to appropriate prisoners (DFID, 2011). But in Uganda, while there have been successes in changing practices on the ground, paralegals have had only limited ability to

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<sup>6</sup> Based on authors' interviews with officials in Dutch Ministry of Foreign Affairs [Wiesje Elfferich and Willemijn van Lelyveld] in October 2021.

change national policy and address the root causes of problems within the sector (The Law & Development Partnership, 2011).

Prison-focused paralegals are not a panacea: there will be complex underlying problems in the criminal justice system that they cannot address, particularly in repressive regimes. How they operate should and will vary from context to context. But overall, there are now a number of examples of positive benefits deriving from this basic approach – of providing prisoners and others caught up in the criminal justice system with basic legal advice and associated assistance and support. This paper focuses on the efficiency argument for the approach – that it is low cost, and its benefits far outweigh those costs, making it an attractive investment prospect for donors. But beyond the efficiency argument, in low-income countries where the vast majority of prisoners do not have access to any legal advice or assistance, there is a clear human rights and rule of law case for funding an effective, low-cost model of providing prisoners with at least a basic level of legal advice and support that they are entitled to.

More detailed examination of two examples of successful and long-running initiatives in sub-Saharan Africa are provided below.

### **Malawi – Paralegal Advisory Services Institute**

The clearest example of the efficiency and low cost of using prisoner-focused paralegals is in Malawi. The Malawi Paralegal Advisory Services Institute (PASI) was the first major effort to use the approach and started in 2000. By 2005 it had 37 paralegals working in the 13 prisons which held 84% of the prison population. It also worked in the five main police stations and the four main court centres (DFID 2011).

PASI's work is associated with remarkable reductions in the proportion of unsentenced prisoners in Malawi. During PASI's initial five years of operations from 2000 to 2005 the proportion of prisoners in Malawi who were unsentenced and awaiting trial fell from 50% to 30% (DFID, 2011). The service continued to expand and the unsentenced proportion fell to 22% in 2010. Between 2011 and 2016, PASI on average secured the release of 14,767 detainees a year (DFID, 2018). Unsentenced rates have continued to remain below 20% in Malawi since 2010 with latest data showing just 18% (2018) (UNODC, 2018), well below the OECD rate of 24%.

## Uganda – Paralegal Advisory Services

The Uganda Paralegal Advisory Services initiative (PAS) began in 2005 on a pilot basis in four magisterial areas.<sup>7</sup> From 2007 to 2010 it expanded to six more sites. By 2011 it was deploying 38 paralegals in 38 prisons, which accounted for 57% of all prisoners. It also was working in 22 other justice institutions, including police stations and courts.

A 2011 multi-donor evaluation (The Law & Development Partnership, 2011) noted innovative approaches used by PAS, such as training social workers employed by the Ugandan Prison Service to work as paralegals and providing them with motorbikes and mobile phones to help prisoners to connect with their families. In 2011 PAS was working with as many prison social workers as it employed as paralegals. PAS was credited with filling gaps where the criminal justice system operated in a dysfunctional manner, for example, finding lost files, and identifying cases that had been waiting longest for trial so that they could be heard as a priority.

Unfortunately, we do not have data that tracks PAS interventions against unsentenced prisoner numbers over a significant time period. However, the 2011 evaluation considers data available over an 11-month period in 2010/11. During that period, the evaluation assessed that PAS contributed to reducing the number of unsentenced detainees by 24,200 across various stages of the criminal justice system. The evaluation report illustrates how paralegal interventions can operate at various stages of the criminal justice system (see table 1).

**Table 1 PAS interventions in Uganda (August 2010–June 2011)**

Uganda PAS intervention	Numbers affected
Follow-up with justice institutions resulting in cases dismissed, discharged and acquitted	8,182
Sensitisation enabling detainees to request bail or pay fine (paid by relatives upon linkages created by paralegals)	6,247
<b>Sub-total number of unsentenced prisoners released</b>	<b>14,429</b>
Securing community service orders through sensitisation of detainees and discussions with magistrates (NOTE: this intervention does not contribute to SDG)	2,465

<sup>7</sup> The cost and impact of using paralegals was explored in detail in Uganda, by a multi-donor evaluation (The Law & Development Partnership, 2011). This was led by one of the authors (Clare Manuel) and was reviewed by donors at the time. While the full evaluation has yet to be published, many of the key numbers, including the unit costs and the return on investment, were cited in a published paper for the UN Asia and Far East Institute (UNAFEI) in 2011 that was presented by the National Coordinator for the Paralegal Advisory Service (UNAFEI, 2011).



16.3.2 as it is concerned with sentenced prisoners)

<b>Sub-total number of prisoners released</b>	<b>16,894</b>
Support to obtain police bond through sensitisation and tracing of sureties	8,527
Cases settled out of court (e.g. through mediation)	1,245
<b>Total all types of prisoners released and individuals not imprisoned</b>	<b>26,666</b>

The reduction in the proportion of unsentenced prisoners in Uganda was smaller than in Malawi. It fell from 63% in 2005 to 55% to 2010, with latest data showing only limited further progress to 46% (2018) (World Prison Brief, n.d.). The reasons for Uganda's failure to reduce its proportion of unsentenced prisoners further are unclear: it may be related to other issues in the criminal justice chain and/or to factors external to it – more research is needed. It is however of note that while the numbers of paralegals deployed and detainees released in Uganda were similar to that in Malawi, Uganda is a much larger country with a larger prison population. It is possible that a scaling-up of PAS could have achieved more significant results.

## Malawi and Uganda – paralegal costs and benefits

The experiences of criminal justice paralegals in both Malawi and Uganda show not only the efficacy of the approach, but also its cost-effectiveness. In both examples, the unit costs of an intervention to prevent an individual being imprisoned or detained, or to secure the release of a prisoner, was very low (around \$20).

**Table 2 Malawi and Uganda – paralegal interventions – unit cost per individual intervention**

	Unit cost as per initial evaluation	2021 figure (adjusted for inflation and exchange rate changes)
Malawi	\$20*	\$26.6
Uganda	\$20**	\$20.4

Note: \* Average cost of each release facilitated by Malawi's PASI during 2011–2016 was £15 (\$20) with average number of releases of 14,767 a year. This figure compared with £49 for the same service delivered by a lawyer. PASI also provided legal advice/services that cost an average of £3 per case with an average number of advisory/service cases of 66,580 a year. Source: DFID (2018)

\*\* 2011 total Uganda PAS budget \$540,000 (for the full 12 months) implying a cost of \$20 per individual successful intervention. This is likely to overstate the unit cost as the PAS budget also funds advisory support that does not necessarily lead to a successful prevention of imprisonment or a release of a

prisoner. In the absence of a more disaggregated study, we assume there is no significant difference between the unit costs of working with someone in a police station or a prison. Source: The Law & Development Partnership (2011).

In Uganda, PAS interventions resulted in the release of unsentenced prisoners including on bail or by acquittal (see table 1 above). The \$20 cost of preventing an imprisonment or achieving the release of a prisoner is equivalent to the cost of keeping a prisoner in prison for just two weeks. The evaluation noted that if PAS were able to bring forward the release by six weeks, the benefit to cost ratio would be 3:1. If the economic benefit of the work that the released prisoner would undertake were also valued, that ratio would increase to 4:1.

In addition, as well as these direct benefits, in both Uganda and Malawi paralegals have been credited with delivering broader benefits within the criminal justice system such as dealing with the problem of prisoners being lost in the system, and introducing new working practices. At a more strategic level, paralegals enhance accountability in a sector where the inherent power imbalances mean accountability is often weak.

One issue that may deserve further research is the potential for negative outcomes of prisoner releases on bail. Prisoner releases may have the potential to lead to perceptions of injustice, to affect social cohesion and even lead to mob justice. This does not appear to have been the case in the Uganda and Malawi examples, and indeed in Malawi, concern about mob justice has been seen as a 'pretext' for the judiciary's failure to make use of laws allowing suspects to be released on bail (UNDP, 2017).

## **3.2 Broader experience with paralegal approaches in low-income countries**

### **3.2.1 Growth of the paralegal movement**

The success of paralegals within the criminal justice system is part of the wider growth in the paralegal / justice defender movement over the past 40 years. In contrast to the targeted prisoner-focused approach needed to reduce the unsentenced prisoner population, paralegals more generally tend to be community-based, working at the grassroots, and focused on civil (rather than criminal) justice. One example is DEME SO, a local NGO in Mali that has been working for more than 10 years and now has 678 community-based paralegals based in seven regions (DEME SO, 2014; Goff, 2015; IDLO 2021). The global Legal Empowerment Network, a platform for paralegal / justice defender organisations now has more than 2,000 member organisations.

Recently, some low-income governments have started to incorporate paralegals into their own structures and funding arrangements, including in Malawi, Uganda and Sierra Leone. The Sierra Leone Legal Aid Board is a notable example, because, rather than relying



on donor support, it receives most of its funding from the government. The Board now employs 60 paralegals with offices in every district in the country and handles 60,000 cases a year. It handles community-based issues, and also supports unsentenced prisoners. The Board is well regarded with 47% of the population rating its performance as excellent.<sup>8</sup> Civil society organisations in Sierra Leone, funded by donors also deploy paralegals, but, as will be explored in more detail in the section below, their small-scale operations limit their ability to reap the benefits of scale. Working in collaboration does seem to lead to savings, as the Open Society Foundation's project with five NGOs in 2010 demonstrated (Manuel et al, forthcoming). But even then, their average unit costs were five times more than those achieved by the Legal Aid Board. It is also striking that the Legal Aid Board is managing more than 10 times more cases than the NGOs although it has a similar number of lawyers and paralegals.<sup>9</sup>

### 3.2.2 Funding paralegals

Despite the growth in the paralegal movement, and emerging evidence of its efficacy, funding is problematic, especially in low-income countries (Manuel and Manuel, 2021). Even in Uganda, where there is a long history of community-based grassroots organisations deploying paralegals, the current number of cases covered is 67,000 representing only 8% of the estimated demand of 884,000 clients a year (Democratic Governance Facility, 2019; Manuel and Manuel, 2021). Most non-state grassroots organisations are small and financially fragile. Even before the Covid-19 crisis, one-third reported that they may not be able to operate in the following year due to lack of funding. As noted above, Sierra Leone is an exception, with the government providing more than half of the funding for the new Legal Aid Board that deploys many paralegals. Even though costs per client are just \$22 and the government spends twice the proportion of its budget on legal aid that OECD countries do, funding constraints mean that it is still only able to reach one-third of the population (Manuel and Manuel, 2021).

Scaling up is critical to cost-effectiveness. In small-scale organisations, the average cost per client successfully supported is between \$120 and \$500, compared to \$20 to \$26 achieved in scaled-up programmes in Uganda, Malawi and Sierra Leone (Ibid.: 35). Scaled-up approaches can be achieved both by government (Sierra Leone) and by civil society organisations (Malawi and Uganda). While the recently announced scaling up of the global Legal Empowerment Fund is most welcome, it is currently focused on providing critically needed support to very small grassroots organisations rather than scaling up national initiatives (although over

<sup>8</sup> See Manuel and Manuel, 2021 (Box 2, page 31) for a summary of the story behind the creation of Sierra Leone's Legal Aid Board; and Manuel, M. et al. (forthcoming) for fuller analysis.

<sup>9</sup> The consortium of NGOs deployed 70 paralegals. Total Legal Aid Board staff (including administrative staff) is 91: 58 on payroll plus 33 paralegals funded externally.

time it would be hoped that these organisations would be able to scale up). Another potential source of funding for some low-income countries may be the UN Peacebuilding Fund.

## 4 Estimating the indicative cost of scaling up action

As Malawi most clearly shows, where there is long-term, fully scaled-up funding for prisoner-focused paralegal work, the proportion of prisoners who are awaiting trial can be cut dramatically and low levels then sustained. The costs of fully funding such work in all low-income countries are likely to be modest as the unit costs are small. Despite this, prison paralegal work remains chronically underfunded.

### **4.1 Reducing the number of unsentenced prisoners in low-income countries**

Reducing the proportion of unsentenced prisoners in all low-income countries to the OECD average rate of 24% implies reducing the average number of unsentenced prisoners by 57,000 across all low-income countries each year (see Annex A for details). With a constant movement of people in and out of prison, it is not straightforward to determine what changes in the rates of inflow (imprisonments averted) and outflows (i.e., the number of releases of unsentenced prisoners) are needed to achieve a particular continuous number of unsentenced prisoners. This challenge arises in other flow/stock analytical problems and would merit further research to take into account rates of inflow (rates of arrest and detention) and the length of time it takes to bring prisoners to trial.

In the meantime, the figures from Malawi and Uganda provide some indication of the level of effort needed to bring down unsentenced prisoner incarceration rates across all low-income countries. The Malawi experience is likely to overstate the level of effort needed as the programme there brought the proportion of unsentenced prisoners down to 17%, below the target rate of the OECD average of 24%. The Uganda experience is likely to understate the effort required, as it only brought the proportion of unsentenced prisoners down to 55%. The numbers released each month were just a fraction of the number remaining in prison.

## 4.2 Estimated total costs and feasibility

While further research is needed to model the flows, and gather more information on costings, for the purpose of this paper we have made an indicative estimate of the cost of scaling up to reach all low-income countries, using the average of the costs of replicating the Malawi and Uganda programmes. Taking the average of these two programmes - one of which is likely to have overstated the costs, and one of which is likely to have understated - suggests that the total costs would be \$9.2 million a year, implying a \$46 million total budget over five years. The full calculation is set out in Annex B.

Raising \$9.2 million a year to reach 24 low-income countries<sup>10</sup> should be feasible for a group of donors. Many individual donors already have justice projects of \$10 million or more that support just one country (e.g. the US in Mali, UK in Pakistan and Sweden in Uganda) or just a few countries (e.g. the Netherlands in Sahel). A small group of philanthropic funders and international NGOs recently raised \$20 million for the new global Legal Empowerment Fund. Around \$10 million a year would represent just 3% of what all official donors currently spend on justice in low-income countries.

Table 3 below shows how the \$46 million could be divided between the top donors, based on their shares of aid to the justice sector.

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<sup>10</sup> As only 24 of the 27 LICs have prisoner data – see Annex A for details.

**Table 3 Donor shares of possible multi-donor initiative**

Top justice donors (providing more than \$10 million in at least one year)	Justice aid (\$m pa)	Share of top donors' justice aid	Share of multi-donor initiative (\$m)	Annual spend (\$m pa)
United States	1529	59.4%	27.3	5.5
EU Institutions	343	13.3%	6.1	1.2
Japan	159	6.2%	2.8	0.6
Germany	132	5.1%	2.4	0.5
Australia	124	4.8%	2.2	0.4
United Kingdom	64	2.5%	1.1	0.2
Netherlands	41	1.6%	0.7	0.1
Canada	35	1.4%	0.6	0.1
Norway	32	1.2%	0.6	0.1
Denmark	23	0.9%	0.4	0.1
Sweden	21	0.8%	0.4	0.1
UNDP	17	0.6%	0.3	0.1
Italy	15	0.6%	0.3	0.1
Switzerland	15	0.6%	0.3	0.1
World Bank (IDA)	9	0.3%	0.2	0.03
New Zealand	9	0.3%	0.2	0.03
France	8	0.3%	0.1	0.03
<b>Total</b>	<b>2,577</b>	<b>100%</b>	<b>46.0</b>	<b>9.2</b>

Source: Justice aid figures are taken from the OECD Development Assistance Committee's database, code 15130: Legal and judicial development. This encompasses projects supporting judiciary, police and prisons, and legal aid. It does not include support for security sector reform. Aid shares in the table are based on figures cited in Manuel and Manuel (2018) and refer to average aid flows in 2014–2016. While aid shares tend to change slowly, it would be good to check against latest aid numbers.

### 4.3 Potential for low-income countries to contribute

If the Ugandan direct costs for keeping a prisoner locked up (\$41 each month at current prices and exchange rates) are a reasonable guide to costs in other low-income countries, this implies the potential long-term budget savings of reducing the number of prisoners by 58,000 would amount to \$2.38 million a month, \$28.5 million a year. Such savings are nearly three times the direct costs of incarceration (and do not take into account the broader costs to the economy and society of excessive pre-trial detention discussed above).

However, a large part of the savings would only be realised by reducing the number of prison staff and closing prisons. As the number of prison officers is already low (three times less than OECD levels per prisoner) and prisons are overcrowded, it may be more appropriate to allow the ratio of prison staff to prisoner to increase, and to reduce prison overcrowding – thus reducing costs and improving outcomes.

As part of the policy discussion around any donor support, donors might want to discuss with the governments how some of these potential long-term savings could be best deployed either within the prison system, or across the justice system more broadly, to reduce human rights abuses and to increase access to justice.

#### **4.4 Structuring and monitoring possible programme of support**

In our earlier research (Manuel and Manuel, 2018) we set out the case for the justice sector to modernise its aid funding architecture. We noted that other sectors such as health and education have achieved massive scale-ups in service provision, based in part on donor funding shifting from individual country bilateral programmes, to pooled multi-country funding of service provision.

That analysis suggests that probably the best way to kick-start implementation of a scaled-up SDG 16.3.2 initiative, would be the creation of a multi-donor results-based pooled fund that offers funding to low-income countries, based on their own plans to reduce their unsentenced prisoner populations. Learning from other sectors, key design features should include:

- A demand-led context-specific model, with low-income countries invited to submit their own plans for halving the number of unsentenced prisoners. The precise model and approach would be for each country to decide, including the balance between state and non-state actors.
- A strong emphasis on cost-effectiveness and scaling up: \$25 per prisoner released would be a possible benchmark.
- A results-based focus: as the number of unsentenced prisoners is already one of the agreed SDG indicators, the outcome of this support would be independently and transparently tracked and it would be possible to compare performance across all countries – both those with and without such support.
- Governance structures that involve funders, low-income country governments and civil society organisations including those representing the voice of people working in prisons, prisoners and ex-prisoners.

- Ensuring full transparency, to ensure appropriate financial management and treatment of human rights.
- A strong research element focused on investigating what works and maximising the impact of investments, and thus building the investment case.

The results focus is a key concern for many donors, and in this case the planned intervention delivers high impact on an important aspect of the criminal justice system. The support provided would have immediate direct benefits – the prisoners released and the reduction of prison overcrowding. It also has the potential to achieve more general improvements in the justice system. In addition, the support would have wider longer-term benefits in terms of donor engagement with justice: such an investment would show how external funding can be effectively used to improve access to justice, would deepen understanding of how the overall justice system was working, and would strengthen accountability.

While on average the highest rates of unsentenced prisoners occur in the poorest countries, some lower-middle-income countries also have high rates e.g. Bangladesh 81% (UNODC, 2020; World Prison Brief, n.d).<sup>11</sup> So there would be a case for extending any programme to include some of these countries. Working out the need for external finance would require further research. While unit costs are likely to be higher in countries which are not classified as low-income, the need for external finance is likely to be less, as these countries can finance a larger proportion of the costs from their own resources.<sup>12</sup>

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<sup>11</sup> UNODC supplemented by World Prison Brief

<sup>12</sup> Manuel et al. (2019) estimated that unit costs for paralegals providing basic legal assistance (both civil and criminal) were on average six times higher in middle-income countries than in low-income countries (reflecting the difference in average levels of GDP per person). However some of the unit costs could be covered by the governments, as middle-income countries have much higher level of domestic resources per person, on average 100 times greater (see Manuel et al., 2020)

## 5 Conclusion

Prison is expensive, both in financial and wellbeing terms. Already poor conditions in prison are exacerbated by the numbers held in custody before trial – for as long as three years in some countries. Prevailing conditions and overstaying also undermines normative commitments to rights, due process and commitments to strengthen justice and the rule of law undertaken in SDG 16.3.2.

There are cost-effective responses in the form of locally grown paralegal detention-release initiatives, which could be scaled up with relatively limited funding. This paper has presented the case for donor investment in scaled-up provision of paralegals who work within the criminal justice system in low-income countries. The argument is framed around the relatively low cost of such an investment – and its potentially high returns. This investment of \$9.2 million a year could potentially save low-income countries \$28.5 million a year – funds which could be invested in their hard-pressed justice systems.

Given the savings to national budgets delivered by reducing prison numbers, there is longer-term potential for funding this from national budgets, as has partially been done already in Sierra Leone. This would reduce the cost to funders. ODI research has explored in the past what would be a fair level of contribution from national governments and this could be explicitly factored into the cost estimates.

Criminal justice paralegals are not presented as a panacea – and they clearly cannot address complex underlying systemic challenges in criminal justice systems, particularly where they are denied political space to become involved in these deeper issues. But as well as the efficiency argument there is also a human rights case – at the very least paralegals represent a low-cost and potentially sustainable mechanism to provide prisoners with access to at least some basic legal advice and assistance, while also having the potential to provide some accountability and oversight of the actions of actors within the criminal justice system.

Scaling up the work of prison paralegals also aligns with ODI's political economy assessment of justice reform.

*Pre-trial detention is a relatively discrete justice issue that is clearly identifiable and can be addressed before escalation, presenting an important opportunity for policymakers (from*



*ministries and donor agencies) to engage in reform. It is also diagnostic in relation to broader justice challenges and state–society relations, making it a useful gauge of other blockages within the justice sector.*

(Domingo and Denney, 2013. p 2)

While further work would be needed to establish precise costs, setting aside a small portion of donor funding to support locally driven prison paralegal work would seem to be a highly cost-effective investment that would have a clear immediate impact, including by:

- getting people out of prison who shouldn't be there
- reducing prison overcrowding
- reducing human rights abuses.

This investment would also build local capacity and demonstrate how external funding can be well used to improve access to justice more broadly. It would also provide insight into how the overall justice system is functioning. It would directly contribute to delivering one of the three access to justice SDG indicators.

Finally, it is argued that once the benefits of reducing the prison population are seen in budgets and prison conditions, this has the potential to create the economic and political space for wider prison reform.

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# Annex A

**Table A1 Key prison statistics in low-income countries**

Low-income countries	Prison population	as % of capacity	% unsentenced prisoners	Number of unsentenced prisoners	'Excess' unsentenced prisoners (above 24%)
Afghanistan	28240	180	31.3	8,839	1,304
Burkina Faso	7,621	157	41	3,125	2,422
Burundi	11,673	278	48	5,603	351
Central African Republic	764		70	535	3,120
Chad	8,700	232	63	5,481	10,070
Democratic Republic of Congo	20,550		73	15,002	-
Ethiopia	110,000		14.9	16,390	359
Gambia	543	173	56	304	1,152
Guinea (Republic of)	3782	157	60	2,269	86
Guinea Bissau	196	102	68	133	973
Liberia	2,620	222	68	1,782	6,915
Madagascar	27,600	245	57	15,732	-
Malawi	14,500	207	17.6	2,552	2,344
Mali	7,000	223	69	4,830	1,164
Mozambique	18,378	232	30.4	5,587	3,323
Niger	9,187	88	56	5,145	-
Rwanda	71,000	125	9.7	6,887	271
Sierra Leone	3,808	160	30	1,142	-
South Sudan	7,000		29	2,030	325
Sudan	21,000		20.4	4,284	-
Syria	10,591	255	50	5,296	2756
Togo	4,117	66	62	2,553	1,846
Uganda	65,000	151	46.4	30,160	12,109

Yemen	14,000	345	70	9,800	6,440
<b>Total</b>	<b>467,870</b>			<b>155,459</b>	<b>57,330</b>
<b>Unweighted average</b>	<b>19,495</b>	<b>189</b>	<b>48</b>	<b>6,477</b>	<b>2,389</b>
<b>Median</b>	<b>9,889</b>	<b>180</b>	<b>53</b>	<b>4,987</b>	<b>1,158</b>
Data not available for Democratic Republic of Korea, Eritrea and Somalia					

Sources: World Prison Brief (prison population, % of capacity and % unsentenced), accessed 22 October 2021. Authors' calculations (number of unsentenced prisoners and excess unsentenced prisoners)

**Table A2 Indicative costings of scaling up to reach all low-income countries (LICs)**

	Estimates based on	
	Malawi 2011–2016	Uganda 2010–2011
Numbers released per year	14,767	29,090
Unit cost @ 2021 prices	26.6	20.4
Cost \$ million pa	0.39	0.59
Population – million	19.1	45.7
Prisoner population	14,500	65,000
\$ cost per person	0.021	0.013
\$ cost per prisoner	27.09	9.13
<b>Scaling up to reach all low-income countries (LICs)*</b>		
Population in LICs	589.4	589.4
\$ million pa		
Prisoners in LICs	467,970	467,870
<b>Estimated costs all LICs \$ million pa</b>		
Population-based costing approach	12.1	7.7
Prisoner-based costing approach	12.7	4.3
Average two approaches	12.4	6.0
<b>Average of Malawi and Uganda estimate</b>		<b>9.2</b>
*excluding three low-income countries without prisoner data		