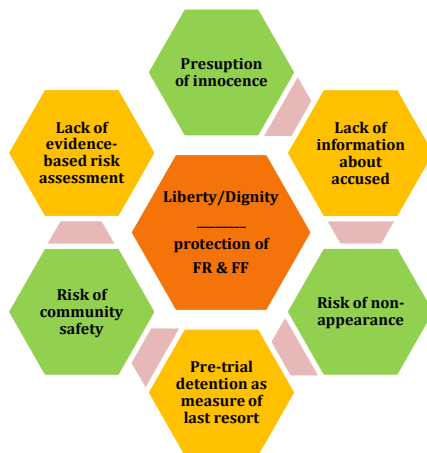


Rethinking Pre-trial Detention (PTD) in Namibia

A research project by Hennie Bruyns & Stefan Schulz © 2021

The documentation following below refers to a project proposal the beginnings of which date back to the initiative by Dr Bruyns, who began to gather data pertaining to the broader issue of pre-trial detention in 2013. Then, together with 3rd year students of correctional management, a first data set was created, shedding some light on the conditions and experiences of offenders awaiting trial detained in correctional facilities in the Namibia.



Pre-trial release and detention decisions: a balancing act

Another initiative from about the same time by Dr Schulz brought about the idea of criminal justice section anchor projects, broader in nature, which would integrate criminal justice honours students' honours projects. Students under the theme of the anchor project would prepare research proposals, which would cover one or more research objectives of the anchor project.

Following the data collection for the anchor project, in which students would participate under supervision of their supervisors as student research assistants, a sample of data from the entire data set would be provided to participating students, who after analysis and interpretation of the data would prepare their criminal justice honours mini-thesis. This would create win-win situations, because institutional ethical clearance procedures and the application for a research permit from the National Commission of Science Research and Technology (NCRST) would only be necessary in respect of the anchor project; stakeholders would benefit from one broader and deeper investigation and have to only focus on one project instead of multiple smaller project with little benefit in terms of progress of actionable scientific knowledge; with the support of student research assistants, resources required for the execution of the project would be at hand. Finally, in 2021 Drs Schulz and Bruyns put pen to paper and crafted the anchor project *Rethinking Pre-trial Detention (PTD) in Namibia* in parallel with 23 honours students working on their proposals under the same theme. The product is hereto attached. It has been submitted with an application for the issuing of a research permit to NCRST.

Windhoek, 28 July 2021

Dr Stefan Schulz / Dr Hennie Bruyns



ANNEX 1

RESEARCH PROPOSAL

Title

Rethinking pre-trial detention in Namibia

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Student Research Assistants

See ANNEX PTD-1: Preliminary student (research assistants) list

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SECTION I

INTRODUCTION AND FRAMEWORK OF THE STUDY

1.1 Introduction

Worldwide it has been found that police holding cells are overcrowded. It is apparent that all persons who are detained in these facilities, struggle to maintain their self-respect and emotional stability – factors which are exacerbated by violence, exploitation, extortion, and lack of privacy. Pre-trial detainees are more likely to starve, and be denied access to medical care or exercise facilities, to be exposed to diseases and infections. Arguably, these diseases and infections may be introduced into their communities when released. Family ties and employment are lost because of lengthy periods of pre-trial detention, which have a direct impact on detainees, their family and communities. The deplorable conditions and treatment imposed on pre-trial detainees often reflect the problems of an underfunded criminal justice system (Association of Chief Police Officers (ACPO), 2012; Dugmore, 2018; Open Society Foundations (OSF), 2014; Human Rights Watch, 1998; Human Rights Watch, 2010). Several factors make the conditions under which pre-trial detainees are held worse than those for sentenced offenders do. Many facilities do not make provision for the categorisation and separation of pre-trial detainees according to their risks and needs. Many pre-trial detainees are young adults who are detained with violent and abusive offenders. In developing countries, authorities often fail to provide basic needs to detainees such as food, water, clothing, bedding, toiletries or facilities to make phone calls (Walters, 2006). Clarity on who are responsible for taking care of detainees and the deliberate abuse of pre-trial detainees to persuade declaration of guilt and guilty pleas are also a major concern (African Commission on Human and Peoples' Rights (ACHPR), 2014; Heard & Fair, 2019; Huber, 2013; OSF, 2014). The arbitrary and excessive use of pre-trial detention plays a vital role in the decisions to detain a person for an alleged offence. International human rights treaties and documents, and notably so the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) (UNODC, n.d.), make the distinction between people who have been found guilty, convicted by a court of law, and sentenced to prison, and those who have not. This distinction is based on the presumption of innocence, and thus the law views offenders awaiting trial or awaiting the outcome of a trial, also known as awaiting trial offenders (Orjiakor et al., 2017) differently from those found guilty. The presumption of innocence is universal, and to treat a detainee as anything other than presumed-innocent is to violate international human rights norms (Coyle & Fair, 2018; Macovei, 2002; OSF, 2014) and the domestic law (Mapaure et al., 2014, p. 254). International standards require that countries only use pre-trial detention when reasonable grounds exist to believe that an arrestee has been involved in the commission of the alleged offence, and there is a noticeable risk that the person concerned will abscond, interfere with the course of justice, or commit a serious offence (United Nations Congress, 1990). These standards also mandate the widest possible use of alternatives to pre-trial detention (The Tokyo Rules, 1990). Further, as stated by Neuman (2014), and with reference to the UN Human Rights Commission, "The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law¹, as well as elements of reasonableness, necessity, and proportionality." (para. 12). Past reports on the reality on the ground in Namibia suggest that its criminal justice system contributes to the deplorable state of affairs globally.

Although the perspective of the detainee has been, and understandably so, in the foreground, issues related to detention, especially overcrowding, often also lead to insurmountable challenges for staff

¹ The references made in this citation have been omitted.

members with assigned roles in pre-trial detention facilities. Much as those detained, those staff members render their service mostly behind bars, as part of fulfilling an occupation. Inherently, they are expected to deal with many demanding issues, beginning with the need to work in a closed environment with limited freedom, minimal exposure to outdoor environment, and, as a consequence, lack of natural lighting (Brower, 2013, p. 5). Over and above, working with persons who are deprived of their liberty presents several challenges, pertaining to general safety and well-being of staff members. These challenges arise from carrying out duties such as enforcing detention rules, searching for contrabands and resolving violent disputes amongst detained persons (Ferdik & Smith, 2017, p. 1). The perpetuity of safety and wellness threats² as part of the work reality of correctional and police officers working with awaiting trial detainees causes administrative and operational issues. Unsurprisingly, these risks correlate with high rates of use of administrative sick leave, and voluntary resignations (Ferdik & Smith, 2017, p. 13). Where, as is the case with the Namibian Police Force, understaffing is a persistent problem, incidents of administrative sick leave, and voluntary resignations add to the problem of poor inmate-to-staff ratios, exacerbated by the fact that in most cases the number of staff members attached to these facilities remains the same irrespective of whether there is an increase on the number of detainees or not. A further headache for administrators, highlighted by Qureshi, Lambert, and Frank (2019, p. 56) in their article titled *“The relationship between stressors and police job involvement”* is that overwhelmed employees are more likely to experience mental fatigue which may cause a high number of mistakes at work.

1.2 Background of the study

At Independence our courts' approach was to merely determine whether an accused if released on bail will stand trial and nothing else. Following the Acheson case (which involved a prominent SWAPO member who was killed), the Criminal Procedure Amendment Act 5 of 1991 came into place, which amended section 61 of the Criminal Procedure Act (CPA) and brought the concept of the refusal of bail based on public interest and interest of the administration of justice. Whereas the legislature did not define what constitutes public interest or administration of justice, this was left in the discretion of the courts, and ever since the presiding officers became concerned with the question whether or not there is a 'rational connection' between the deprivation of liberty (in this case, remand detention) and 'some objectively determinable purpose'. As a matter of fact, the court found, too often, that there is 'just cause' for the deprivation of liberty,³ without giving too much attention to the question, whether the use of remand detention is a measure of last resort. Accordingly, in the years after the amendment the number of accused in police holding cells increased, which led to a deplorable situation at many police stations across the country. During 2006, the Ombudsman visited police cells throughout the country, which culminated in a Special Report that was submitted to Parliament in November 2006. The visits to the police cells were prompted, inter alia, by the constitutional and statutory duty to investigate matters in regard of which the Ombudsman had reason to suspect that the fundamental rights and liberties were diminished or violated which constituted a contravention of the spirit of the Namibian Constitution. The ombudsman expressed the view that conditions in more than 80% of the police stations visited were unacceptable. Poor sanitary conditions, overcrowding, insufficient food supplies, unsafe infrastructure, stagnant water, lack of access to medical care facilities and potable

² The prejudicial working conditions in detention facilities lead to a plethora of deplorable outcomes, i.e. excessive alcohol consumption or substance abuse (Ferdik & Smith, 2017, p. 14; Bierie, 2012, p. 92). Besides such self-destructive activities Ferdik & Smith (2017, p. 13) report physical health problems, for instance high cholesterol, knee and back injuries, chronic neck and heart disease, but also irregular sleep patterns. Brower (2013, pp. 10, 11) highlights psychological and emotional disorders, such as post-traumatic stress disorders (PTD), sleep difficulties, memory impairment, anxiety and depression.

³ For a detailed review of the legal framework and the law on pre-trial detention as pronounced by the Namibian courts, see Konga (2019).

water, and insufficient bathroom and shower facilities were prevailing issues at police cells throughout the country (Ruppel & Groenewaldt, n.d., p. 16). In follow-up investigations, it was revealed that some vast improvements occurred, while the issues highlighted in the 2006 report had generally remained unchanged at the 20 police stations, which were identified as the worst cases in the 2006 report (Ombudsman Namibia Annual report, 2008, p.27). In a 2012 report, the Office of the Ombudsman found that many police holding cells remained unsuitable for human habitation (Human Rights Report, 2014) and it was confirmed that conditions in police holding cells remained poor in consecutive reports (Namibia Human Rights Report, 2020, p.2; Ombudsman Namibia Annual report, 2019, p.43-48). Since then close to 10 years have passed, and there are no contemporary data available on the prevailing circumstances. The sheer number of pre-trial detainees currently in police custody, which come close to 5000, and exceeds the inmate population of convicted offenders in the custody of the Namibian Correctional Service (NCS) by far.⁴ The situation is similar for many countries in the developing world (Orjiakor et al., 2017, p. 1). However, this gives rise to concerns that the situation has not changed to the better overall. These unacceptable pre-trial detention conditions and ill-treatment subsists notwithstanding the fact, among others, that: a) the Namibian law proscribe arbitrary arrest and detention as provided for in article 11 of the Namibian Constitution; b) the Criminal Procedure Act 51 of 1977, in terms of section 38, encourages the utilisation of less intrusive methods of securing attendance of accused person in court, such as issuance of summons and through written notice. The assumption is that if these less intrusive methods are effectively adopted, implicitly, arrest and indictment may only be adopted under extreme circumstances. Mapaure et al (2014) argued that the rationale for the provision of these less intrusive methods of securing attendance of accused persons in court is to ensure, among others: “the reduction of pre-trial detainees in police custody and reduce the interference with the detainees right to liberty” (p. 168). It is important to note that Namibia is a signatory to various international and regional legal instruments, inter alia, the UN Declaration on Human Rights, the Mandela Rules of 2015, and Principle for the Protection of All Person under any Form of Detention or Imprisonment of 1988. These instruments place a positive duty on states to adopt measures that promote the rights of detainees.

1.3 Statement of the problem

Despite the various reports (supra) there are no regular systematic follow-ups, and the current figures of close to 5000 detainees in police custody are not regularly featuring in published reports. The numbers, however, seem to have risen since an earlier estimation of 2016. Then it was estimated that approximately 3,650 unsentenced persons were detained in Namibian police holding cells against a number of about 3,750 sentenced offenders detained in correctional facilities (World Prison Brief Data, n.d.). If these numbers had been approximately correct, it would mean that the already disproportionally high use of incarceration, with a rate of about 300/100 000⁵ citizens then,⁶ further climbed to the current rate of 330/100 000. The comparatively high rate would easily explain the dated findings of the Ombudsman. Where criminal justice systems are fraught with high rates of pre-trial

⁴ Whereas the number of offenders in correctional custody has been stable with hovering around 4000 at any given day, the Office of the Inspector General of the Namibian Police Force, in a letter dated 2 July 2021, to one of the principle researchers (Schulz), put the current number to 4804 pre-trial detainees in police custody.

⁵ The imprisonment rate is calculated as prison population / general population x 100 000. In 2020 the total population estimate for Namibia was about 2.6m, of whom 1.15m were children, i.e. persons below the age of 18 (Worldometer, n.d.). A rate of 330/100 000 compares unfavourably with other countries; e.g. the rates for Belgium, Germany, Lithuania, Ireland, Austria, Rumania, Netherlands range from 12.5 for Ireland, and 49.9 for Lithuania, with the remaining countries lying somewhere in between those extremes (Hammerschick & Reidinger, 2017).

⁶ Namibia is signatory of the UNCRC. Latest since the running out of the Juvenile Justice project during the first decade of the 3rd millennium, in principle detained children are not kept in police holding cells, but are referred to places of safety in terms of s. 71 CPA (see MGEWCW, 2013).

detainees, there is the question whether the arrest as a method of securing the presence of the suspect in court is indeed used as the ultima ratio - the last resort - as required (implicitly) by the constitutions of democratically constituted countries, including Namibia (Mapaure et al., 2014, p 168; Martufi, 2020, p. 153). Where pre-trial custody is not justifiable as measure of last resort, there is always a violation of constitutional rights involved. In the Namibian context the right to liberty (Art. 7 of the Namibian Constitution) is concerned. The boundaries of the law on pre-trial detention have been fairly well delineated by the Namibian superior courts,⁷ with *S v Acheson*⁸ being one of the earliest cases in point. This judgement had however only a limited effect on the reality on the ground. The traction which had been made came to naught with the advent of the Criminal Procedure Amendment Act 5 of 1991. The option to refuse bail if it is in the “interest of the public or the administration of justice that the accused be retained in custody pending his or her trial,”⁹ was confirmed even recently by the High Court,¹⁰ without however settling the question as to what constitutes these concepts. While the number of arrests for serious crime is generally smaller than for non-serious crime, the question whether even in the latter case the Namibian courts are using pre-trial detention as a last resort, has not been investigated, and the fact remains that the quality of decisions on pre-trial detention is not known.

On the one hand, this question appears to be technical, as it refers to the appropriate application of the law only. At the same time, however, each decision on custody, before or during criminal proceedings at court, represents the story of real people who need to live the dire consequences. Due to a lack of research into this question, there are no or only few data available for Namibia. However beginning with the report of the Special Rapporteur of the ACHPR, Namibia’s history is punctuated by subsequent reports about the deplorable state of affairs of pre-trial detention in the country. Already in 1999 the Special Rapporteur called for “a general re-examination of the conditions of detention in the national police establishments...with the objective of establishing detailed and up-to-date standards for these places of detention” and “improvement of conditions of detention in police stations without delay” (ACHPR, 1999, p, 48). Subsequent reports by the Ombudsman (supra) nothing but confirmed this call.

The message of all these reports has been clear all the way: Some policy intervention must happen to recalibrate the system with the objective to reduce not only technical violations of legal principles, but also the sheer unimaginable dimension of suffering of those who are concerned by the status quo, including the detainee and his family, but equally the staff tasked with the execution of custodial decisions. For the criminal justice system to operate effectively, it is important that those who performs duties within this specific sector are physically safe, in good health and in the right state of mind, and accordingly, pre-trial detention as part of the larger criminal justice system presents another interwoven reasonable angle of inquiry on issues of officers’ safety, health and mental wellbeing. Ever since, notwithstanding improvements benefitting the one or other police station, no substantial action has been noted, no progress been made. Although the empathy with offenders, or in this case legally presumed to be innocent, but actually presumed to be guilty actors,¹¹ is never high, the question

⁷ Supreme Court in terms of art. 79 and High Court in terms of art. 80 NC of the Namibian Constitution.

⁸ *S v Acheson* 1991 NR 1 (HC).

⁹ Section 61 of the Criminal Procedure Amendment Act No. 5 of 1991.

¹⁰ The bail application ruling in *Awaseb v State* (CC 8/2017) [2018] NAHCMD 128 (16 May 2018) at para 14-16, the court considered the seriousness of the offence in denying bail to the applicant. The court stated that completed investigation, fixed address and deteriorated health condition do not address the issue of public interest or interest of the administration of justice and bail can still be denied on the fact that it is not in the public interest to release applicant on bail.

¹¹ For a very apt conceptual exposition of this antagonism see the seminal paper *Two Models of the Criminal Process* by Herbert L Packer (1964), which has not lost any of its appeal ever since.

lingers why all these reports have fallen on deaf ears among policy makers. But scientifically, these reports are explorative at best, as they do not describe quantitatively or qualitatively the experience of those who must cope with the consequences of pre-trial custody. These studies also do not systematically cover the consequences on the state, families and communities, the individual detainee, and eventually police officers and other staff with assigned roles in pre-trial detention. Although extant reports raise burning contemporary issues they are far from providing data which could be understood as a baseline study¹² for the purpose of identifying the starting points for a programmatic intervention in the future.

If this is the unacknowledged background for political inertia in point, there is a need to describe the social consequences of pre-trial detention in Namibia. Conceptually speaking, these consequences cover a wide range of experience. The overreliance on pre-trial detention lends itself to a demand for space in police holding cells, and correctional facilities, respectively, in excess of the available capacity. This social phenomenon is also known as ‘overcrowding’ (UN Office on Drugs and Crime (UNODC), 2013, p. 8). Deplorable conditions and treatment imposed on pre-trial detainees often reflect the problems of an underfunded criminal justice system, which appears not to have adequate staff and resources to meet the basic needs of their often-vulnerable detainees anyway (Walters, 2006, p. 5). Overcrowding due to the over use of pre-trial detention only exacerbates the situation, as it affects the resources available per inmate. The more inmates are admitted over capacity, the fewer resources there are to distribute. The amount of resources continues to reduce as more detainees are admitted.

A range of consequences that have become prevalent in the world today can be listed:

- Poor health care (Massoglia & Remster, 2019)
- Increase in individual mental health issues (Porter & DeMarco, 2019)
- Violence and other safety related issues affecting inmates and staff (Brower, 2013; Goulette & Wooldrege, 2018)
- Spread of disease (Tomasini-Joshi, 2014)
- Staff stress / wellbeing (Qureshi, Lambert, & Frank, 2019)

The paucity of any systematic data on the use of pre-trial detention in Namibia constitutes a major challenge for the development of evidence based, informed interventions to redress a pervasive problem.

1.4 Purpose

The purpose of this study is to develop a quantitative and qualitative picture of the current state of affairs in the use of pre-trial detention, its consequences at state, community and individual level, i.e. a baseline study for future reference.

¹² A baseline refers to the starting point against which future progress can be assessed or comparisons made. A working definition of a baseline study describes it as “An analysis of the current situation to identify the starting points for a programme or project” (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Baseline_study).

1.5 Objectives

1. Describe (provide a description) the reality of pre-trial detention at participating police stations and correctional facilities against the backdrop of international standards in terms of safety, security, legal entitlements, as well as wellbeing of detainees and police officers.
2. Describe the population of pre-trial detainees in terms of demographic, ethnical, socio-economic and other criteria.
3. Describe the commonalities of experience of pre-trial detainees in police custody at selected police stations and correctional facilities.
4. Describe the commonalities of experience of police officers and other staff with assigned roles in pre-trial detention at selected police stations and correctional facilities.
5. Provide an understanding of meanings and behaviours associated with magisterial decisions leading to remand custody, especially where pre-trial detention does not appear having been the last resort to secure the presence of the suspect in court.
6. Assess magisterial decisions of selected districts on remand custody in terms of the due process guarantees under the Namibian Constitution.

1.6 Limitations

This study will be first negatively affected by a lack of resources, i.e. a lack of funds, limited time and personnel presents a serious obstacle to the realisation of the project. Second, access to participants might be limited due to unforeseen circumstances such as Covid-19 restrictions and non-availability of pre-trial detainees (i.e., police investigations, court appearances, legal consultations and health care). These barriers can be overcome by including all detainees at participating police stations and correctional facilities. Undergraduate students who are unemployed and employed by NAMPOL and NCS will with the permission of the participating institutions be used to administer the surveys provided that all safety protocols are complied with. The precise impact on this project will be known after the stakeholders and data hosts have made known their resources and capacity to support this project.

1.7 Delimitations

The design of this project reduces the impact of its limitations (above) by selecting the sites (police stations, correctional facilities, courts) for data collection to those sites, which – at face value – may yield the highest probability of relevant data. This selection will be finalised in line with the data mining by virtue of the accompanying desk study. Furthermore, the proposed study is limited in the sense that custody, carried out by the Namibian Defence Force through its Military Police in house custody centres, will not be investigated.

1.8 Significance

The researchers are of the opinion that this study will contribute to a better understanding of the challenges experienced by pre-trial detainees and by police officers in the administration of pre-trial detainees. Strategies that move the criminal justice system away from, if it were, reliance on monetary bail and toward greater use of pre-trial release, facilitated by supportive pre-trial services, hold promise for reducing the pre-trial detention. These changes may benefit not only the people who are held in pre-trial detention, their families and the communities which they come from, but may also bring about substantial cost savings for the criminal justice system. Investigating, further, issues of safety, health and welfare of staff members responsible to overlook or manage pre-trial detention facilities would further set ground and encourage action for future research.

1.9 Theoretical and conceptual framework

The Veldsman (1994) model for managing large-scale change will be used as theoretical framework in this study. The best way of determining the efficacy of the pre-trial (remand) system is to determine how the configuration of the system supports its strategies and to what extent the configuration meets the needs of the internal (criminal justice system) and external (public) environment. The relationship between the criminal justice system (CJS) and the external environment should therefore continually be defined and redefined. Therefore this study is focused on aligning the pre-trial system with best practices worldwide. The theory selected for this study will offer a conceptual basis for understanding, analysing, and designing ways to investigate the arbitrary and excessive use of pre-trial detention. This said, the research literature will rely on best practices associated with the arbitrary and excessive use of pre-trial detention and its consequences at state, community and individual level. Literature on core human rights principles, international and national best practices, standards and norms will therefore serve as the conceptual framework for this study.

SECTION II

PRE-TRIAL DETENTION: CONTEMPORARY ISSUES IN THE LITERATURE

2.1 Introduction

Pre-trial detention is a custodial measure, which is widely used by criminal justice systems the world over (UNODC, 2013, pp. 19f). It either serves to secure the presence of the accused in court, if there is evidence of a flight risk, or the interest of the administration of justice, if there is a risk of interference by the accused with investigations, or, eventually, if there is a risk of harm to the community (see: Konga, 2019, pp. 10 - 20).

The possibility to place accused persons in remand custody is – *nolens volens* – linked to the contemporary fact that huge numbers of accused overpopulate remand facilities (UNODC, 2013). This phenomenon gave rise to concerns not only about the right understanding of the legal framework which guides pre-trial custody in Namibia, i.e. articles 7, 8, 11 and 12 of the Namibian Constitution, and the question whether a suspect is entitled to bail (Konga, 2019), but also about the use of pre-trial detention as the decision of choice for securing attendance of accused person in court in bail proceedings, and the question whether the legal framework for bail was being adhered to (see below).

Whereas the above concerns connect with the analysis of the normative horizon of - and for - the concept, another strand of research focuses on the social aspects associated with pre-trial detention. The social science interest in pre-trial detention is empirical and aims at describing the very many facets of pre-trial detention from various perspectives. The (realist) post-positivist aspect of the pertaining social reality guided the focus on pre-trial detainee populations, which became measured in terms of demographic, ethnical, socio-economic and other criteria. Equally located in this ontological camp (see: Korstjens & Moser, 2017, p. 277) can be found studies which focus on the nominal aspects of legal entitlement, safety, security, as well as wellbeing of both detainees and police officers and other staff with assigned roles in pre-trial detention. However, another ontological perspective requires a relativist approach, with the aim to capture the experience (see: Korstjens & Moser, 2017, p. 277) of pre-trial detainees, and police officers and other staff with assigned roles in pre-trial detention. In the same (relative) vein stands the quest for understanding of meanings and behaviours associated with magisterial decisions leading to remand custody, especially where pre-trial detention does not appear having been the last resort to secure the presence of the suspect in court.

2.2 Studies on bail

There is a dearth of empirical studies of bail decision-making and most of them have been retrospective studies (Allan et al., 2011). Whereas the above finding was stated in respect of North America, it is also true with regard to local and regional studies on bail. There are various studies on the conditions of pre-trial detention in Namibia (*supra*), however, there is only one study by Konga (2019) with the focus on bail refusal. This (legal) study did however not include an analysis of bail decisions at magisterial level, instead dealt with the normative horizon of bail decisions and whether the 'refusal of bail based on public interest or administration of justice is consistent with the Namibian Constitution'.

Various South African studies on the use of bail have been conducted between 1998 and 2018. These studies provide different angles from which to structure the subject of inquiry, offer insight into the effectiveness of research techniques, and highlight once more the significance of the issues under scrutiny.

The only South Africa study on bail which analyses bail decisions on a large scale is the OSF-SA13 study 'between a rock and a hard place': bail decisions in three South African courts (2008), which built on an earlier baseline study conducted in 1997 (Paschke, 1998). In respect of the three courts Mitchells Plain, Durban and Johannesburg, the overall findings of the study were:

- Being held in custody awaiting trial was the norm;
- Judicial officers were more likely to grant bail for less serious offences, and
- With respect to serious offences, there was a very low release rate.

The study also found that bail alone appeared insufficient to secure an accused's attendance in court and that the majority of accused brought before the three courts under review were never ultimately tried. The study used approximately 27 000 electronic records describing who had appeared before courts in the three metropolitan areas in 2007 and reflecting the age, crime type, outcome and bail and custody status of closed cases. Bail receipt records (*the bail amounts dataset*) complemented this information.¹⁴ The study provides the basis for the analytical frame of the intended analysis of bail decisions crafted for this study (ANNEX PTD-2).

Other South African studies on bail are more recent, with a broader focus, eclipsing the study of bail decisions at court level. The most recent study is the study with the title 'Study on the use of bail in South Africa' (Ruiter & Hardy, 2018). The mixed method study, consulted primary and secondary sources. The semi-structured interviews were conducted with key role players in the South African criminal justice system. Secondary sources covered legislation, judicial precedent and international documents, academic papers, articles, and research reports; and statistics and reports of government departments. The study found, that the South African Police Service (SAPS) arrests prematurely and before a prima facie case is established through proper investigation (p. 27), and that the provisions in the CPA that provide for alternatives to bail are not sufficiently utilised by police and the courts (p. 28).

The concern of another earlier paper is the implementation of the 2014 ACHPR Luanda Guidelines (Edwards & Stone, 2016). Some of the review's findings were: Unwillingness on the part of the police to grant bail and practical barriers to the granting of police bail; amount of bail set is too high; and frequent postponement of bail proceedings due to unavailability of information. Another study 'Barred (In) justice' (2014) was conducted by the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand. This study was concerned with the impact of bail proceedings in respect of remand detention in Gauteng. Selected magistrate's courts were monitored to determine whether the legal framework for bail was being adhered to. The research found, among other things: A high rate of postponements to verify the address of the accused before granting bail; a lack of information available to the prosecution to decide whether to oppose bail; the failure of the courts to conduct a two-stage bail inquiry; quality and availability of court interpreters were lacking; varying bail amounts set by different courts, despite the offences and accused's means being the same. Finally, there is the study 'Bail and Remand Detention: Entry Points into Evaluating Gauteng's Court Stakeholders' (2012) by the Wits Justice Project on bail and remand detention in Gauteng courts. The study deplored systemic issues in the criminal justice system, especially pertaining to the administration of bail. The report called for further research into the role of the police in the use of bail, for instance regarding the problems with verifying the identity and physical address of the accused. Another issues

¹³ Open Society Foundation for South Africa

¹⁴ Interesting in this regard, and potentially limiting any bail study is the observation of "inconsistent data entry", which prevented linking many records to case details.

highlighted was the inability of accused to afford bail, as well as the lack of personnel to implement the review of bail in terms of section 63A of the CPA (South Africa), and issues with the 'reverse-onus' provision for serious offences.

2.3 Standards for monitoring human rights of people in pre-trial custody

The reality of pre-trial detention at police stations and correctional facilities is relevant in terms of international standards for safety, security, legal entitlements, as well as the wellbeing, both of detainees and their custodians (e.g. Brower, 2013; Bierende, 2012). Contemporary international standards have been provided for instance by the United Nations (UN) with the Standard Minimum Rules for the Treatment of Prisoners. These rules have been adopted against the backdrop of regional and international human rights treaties, and emphasise the dignity of the human person (Schulz, 2020a). These standards, including the concept human dignity, are social artefacts, to which individuals and social entities relate against the backdrop of their specific experience, contexts and life-worlds, and amount to an independent social reality, "which can be objectively and potentially fully described" (Fox, 2008, p. 7).

In this perspective, various reports of the Namibian Ombudsman to the National Assembly¹⁵ highlighted the discrepancy between status quo of pre-trial detention in police custody, and the UN Standard Minimum Rules for the Treatment of Prisoners (1955/1957).¹⁶ This set of minimum standards was applied at face value, without technically subsuming facts under the elements of specific entitlements. The reports did not provide an inspection framework underlying the reported data, and thus did also not provide a normative analysis of the observations at the inspected police stations either, neither a quantitative nor a qualitative measure of the data obtained for these reports. Implicitly, and importantly, though, these reports create a nexus to any detainee's right to dignity, protected under article 8 (1) of the Namibian Constitution,¹⁷ which makes dignity in police custody an important end in itself. When a person is deprived of personal liberty, such as in the case of pre-trial custody,¹⁸ one aspect of human dignity comes to the fore,¹⁹ that is, the autonomy to determine one's residence (personal liberty as *habeas corpus*). However, being difficult if impossible to be negotiated substantially where detention is deemed to be required, other autonomy limiting experiences, namely excessive coercion, threatened coercion, poor material conditions and inadequate access to health or mental health care come into perspective. Placing the focus on the practices of actors in prison and police custody, these three themes can be found in judgement by the European Court of Human Rights (ECtHR).²⁰ For a more systematic description of the reality of pre-trial detention, these aspects have

¹⁵ Walters (2006; 2008)

¹⁶ The Walter reports referred to the initial version of the SMR; the latest version of the UN Standard Minimum Rules for the Treatment of Prisoners, which are a leap frog from the 1955 (1957) rules, has been adopted in their current form by the UN General Assembly only on 17 December 2015.

¹⁷ The Mandela Rules, in comparison with the SMR 1955 (1957) bring about a new human rights focus, which was absent before. Although the initial set of SMR were adopted on the back of UN Charter and Universal Declaration of Human Rights (UDHR), these rules refer to "dignity as human beings" only once, namely in the then SMR 60 (1). In turn with the Mandela Rules the "human being" - and her "inherent dignity" - has been placed centre-stage; mentioned specifically in rr 1, 5, 50, 58, 72 and 76), and this motif, following r1, connects with each subsequent specification, each subsequent rule (Schulz, 2020b).

¹⁸ In relation to the police, this notion has been usually discussed in the context of police-citizen encounters on the street, where dignity has been regarded as one aspect of procedural justice,¹⁸ which is seen as a critical antecedent of police legitimacy and cooperation by citizens with legal authorities (Mazerolle et al., 2013; Jackson et al., 2013; Jonathan-Zamir et al., 2015, pp. 10–11).

¹⁹ One may tend to think that this is not the challenge with police custody, because it is meant to be short lived and only to last until the further decision by the magistrate. However, with extended periods of pre-trial custody in Namibia (Walters, 2006, p. ?), this aspect of dignity is quickly invoked, especially because the length of pre-trial detention is not set at its beginning, and the deprivation of liberty is fraught with uncertainty

²⁰ For details, compare: Council of Europe (2021a, 2021b).

been used to produce toolkits/checklists with standardised criteria whose presence or absence, or degree, can be operationalised as nominal or ordinal variables (Black, 2003, 52). One such toolkit was provided following a joint investigation by the Office for Police Integrity (OPI) and the Ombudsman Victoria (Australia) into the conditions for people in custody, which found that conditions for detainees were unsatisfactory in several areas (OPI, 2008). This toolkit was based on standards set out in the UN Charter, other United Nations instruments and publications, considering studies of police cells and custody conditions in other Australian and international jurisdictions (Office of Police Integrity, 2008). Another checklist for monitoring human rights of people in police lockups (Hounmenou, 2010), crafted against the background of various UN documents, such as the Universal Declaration of Human Rights of 1948, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, and the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, covers eight main areas: detainee safety; detainee accommodation; detainee medical/mental health; food; detainee psychological well-being; detainee discipline and restraint; treatment of detainees with specific needs; and awareness of lockup facility staff about detainees' human rights (p. 2). Similarly, Her Majesty Inspectorate of Prisons (2012, 2015) did thematic reviews on the treatment and conditions, individual rights and health care of remand prisoners. Together, these samples provide a rich source from which to draw insight for the crafting of checklists for this study (ANNEX PTD-3.1-3.2).

2.4 Pre-trial detention as experiential world

Measuring human rights compliance at pre-trial detention facilities as objective, as rendered by the various reports by Walters (2006; 2008) provides only a technical perspective, which the observers, or readers, must match against their own notion of concepts contained in, and represented by, the various standards and entitlements. This comes with a distance toward the lived experience of the pre-trial detainee, and a degree of sterility, which can only be overcome by records of the subjective accounts of pre-trial detainees.

2.4.1 Human dignity and wellbeing as experienced by pre-trial detainees

With the UN human rights framework, which became hinged on a partially developed universal concept of (inherent) human dignity (Schulz, 2020a, p. 30), and the concept of human dignity being a central element of the Namibian Constitution (Schulz, 2010, pp. 180f.), research into understanding pre-trial detainees' experience in custody lends itself to be guided by a conceptualisation of human dignity against extant pattern and regularities found in the narratives of detainees in police custody. In their study which provides the basis for their article "Treat them as human beings", Skinns, Sorsby and Rice (2020) conceptualised their examination of how dignity can be understood in police custody, focusing primarily on dignity rooted in feelings of equal worth. Their quantitative analysis²¹ of predictors of (experienced) dignity in police detention found that detainees' sense of equal worth was integral to the detainee experience. Material conditions were significant to feelings of equal worth, as well as perceived autonomy.²² The authors surmise that the three predictor variables autonomy, public decency, and material conditions may be seen as other dimensions of dignity, or again, to

²¹ Albeit, the quantitative analysis is 'grounded' in the subjective perspectives of participants.

²² They report that the relationship between material conditions and equal worth was moderated by perceived autonomy. Better judgements of material conditions were associated with more favourable views about equal worth. However, higher perceived autonomy resulted in weaker relationships between material conditions and equal worth; where autonomy was considered to be limited, the relationship between material conditions and equal worth was considerably stronger (Skinns et al., 2020, p. 1681).

perceive them together with equal worth as over-arching dimensions of dignity (p. 1683). With objective 3 (above) of this study in mind, various themes can be extracted from the study by Skinns, Sorsby and Rice (2020), e.g. fairness and equal worth, physical conditions, governance and accountability, and views on the occupational culture, which provide guidance for in-depth interviews. Although such a strategy has an initially limiting effect as to the associative range opened for the subjects of the inquiry, this comes with the advantage of in-depth interviews, which provide much more detailed information about their lived experience than what is available through other data collection methods, such as surveys (Korstjens & Moser, 2017, p. 277). Incidentally, various aspects of the above themes have been covered by Orjiakor et al (2017) who explored the lived experiences of pre-trial detainees held in custody for extended periods. Their qualitative study used focus group discussions to elicit detainees' take of their status and how their conditions have affected their wellbeing. The researchers highlight the potential of the Good Lives Model (GLM) (Ward, 2002; also: Ward, & Stewart, 2003) for building an inclusive framework to accommodate pre-trial detention interventions (Orjiakor et al., 2017, p. 12).

2.4.2 Safety, health and wellbeing of police officers and other staff in pre-trial detention

Issues of correctional or detention officers' safety, health or wellness attracted interest from scholars in the past, and with due reason. For the criminal justice system to operate effectively, it is however necessary that those who perform duties within this specific sector are physically safe,²³ in good health and in the right state of mind. The latter is especially important, because overwhelmed employees are more likely to experience mental fatigue which may cause a high number of mistakes at work - a point highlighted by Qureshi, Lambert, and Frank (2019, p. 56). In this respect fathoming stress among staff, behavioural and psychological responses,²⁴ and importantly so, causes of work related stress, especially in terms of organisational (Queirós et al., 2020) and operational characteristics (Queirós et al., 2020),²⁵ becomes important.

²³ The physical environment in which detention takes place is often associated with danger. Danger can emanate from disorder among inmates, the threat of violence, and the actual experience of violence (Dembo & Dertke, 1986). Although there are no local statistics for Namibia, according to Konda, Reichard and Tiesman (2012), in the USA assault and violent acts were the leading occupational injury events for correctional officers. Due to the constant possibility of violence, scholars have included danger as a stressor for correctional officers, typically measured as the correctional officer's perception of danger while on the job (Cullen et al., 1985).

²⁴ An early, thorough measurements of stress was developed by Gross et al (1994). As objective workplace outcomes they included for instance sick leave used, as objective health outcomes blood pressure; subjective workplace outcomes measured emotional exhaustion, and subjective health outcomes included headaches. Among personnel with specific roles in detention, high annual turnover averages and increased absenteeism are said to be problematic, because "these institutions rely heavily on staff to function" (Archambeault & Fenwick, 1988; Stohr et al., 1992; on job stress in relation to turnover, turnover intent, and absenteeism see for instance Lambert, 2001b; Lambert, Edwards, Camp, & Saylor, 2005; Minor, Dawson-Edwards, Well, Griffith, & Angel, 2009; Mitchell et al., 2000; Slate & Vogel, 1997; Slate, Vogel, & Johnson, 2001).

²⁵ Wellness issues give rise to various administrative and operational issues (supra). Albeit it is a primordial question for the organisation responsible for pre-trial detention to put leverage at those specific organisational characteristics, which contribute to work related stress, such as job danger, role strain, role overload, and social support (e.g. supervisory support, organisational support) (Dowden & Tellier, 2004; Schaufeli & Peeters, 2000).

SECTION III

RESEARCH METHODOLOGY

3.1 Research approach

We take a decidedly post-positive stance (Creswell, 2009; Blanche and Durrheim, 1999), holding that this framework is appropriate in light of the multiplex research problem. This stance then informs our take on epistemology, ontology and methodology (Saunders et al., 2019, p. 54), which we understand to be directional in the sense that “ontology logically precedes epistemology which logically precedes methodology” (Hay, 2002, p. 63).

Whereas research paradigms can be discerned in respect of their position regarding the nature of social reality (ontology), all frameworks other than positivism share the notion that the appearance of an objective reality is the result of the sense making work of human beings. These results come about through ongoing and intersubjective production of knowledge. In respect of our objectives 1, 2 and 6 above, we approach the setting from a realist position rooted in Berger and Luckmann’s phenomenological position (1966 / 1991), where social reality has a dual character. There, besides social reality being the outcome of an inter-subjective achievement, the world gains some degree of common sense reality, with layers of institutionalisation, tradition, and socialisation, and an appearance of objective reality, which – within specific life-worlds – limits the meanings that can be attributed to its objects. Within this perspective our inquiry deals with an as if independent social reality, which can be described and studied objectively. With objectives 3, 4 and 5 we are less interested in the continuities within the social order, instead we deal here with the fluidity of meanings held by the targeted social actors, and the context-specificity of their knowledge. Thus in respect of objective 3 and 4 a phenomenological investigation will assist in shedding light on how both pre-trial detainees and their custodians, i.e. police officers, make sense of the conditions (Rasmussen, 1998, p. 559) of pre-trial detention, and provide insightful accounts of their subjective experience. Objective 5 in turn requires an ethnographic take which is expected to assist in understanding the meanings and behaviours (Korstjens & Moser, 2017, p. 277) associated with decision making in bail hearings, as well as the experience of police, prosecutors and magistrates within their experiential world or ‘life-world’ of criminal justice professionals. With a view on the multifaceted research problem, a mixed research approach (qualitative/quantitative-descriptive) approach will be used. A mixed method approach, as adopted in this study, is hinged on a theoretical frame which presupposes that a qualitative study extracts much detailed lived experiences and in-depth data from the respondents. This approach is suitable for this study, as it helps the study to transcend beyond statistical mechanics, to include obtaining data on subjective assessments of attitudes and opinions of the respondents (Flick, 2009, p.128). Equally, the quantitative approach refers to any type of research that produces findings arrived at by statistical procedures or other means of quantification (Strauss & Corbin, 1998, p11). A mixed method approach, specifically the quantitative approach, and from an ontological viewpoint would help to exact objectivity, material and structural aspects of the study. On the other hand the qualitative approach would underscore the subjective, mental, and personal construction of the research objectives/questions. The other vantage point for adopting the mixed method lies in the enriched epistemological perspective, which convergence relativism and realism (Tashakkori & Teddlie, 2003).

3.2 Research design / strategy

To the extent that research design refers to, among others, a sanctity plan on how best to address the research objective, including setting out specific details of the inquiry (Babbie et al., 2008), in this context, research design refers, inter alia, to exploratory, evaluative, explanatory, descriptive, correlational, causal-comparative, and participatory action, required to address the diverse aspects, driven by the objectives (above) of this case.

3.3 Research methods

The methods selected for this study are commensurate with the structural differentiation of the research problem and are aligned with the purpose to produce a baseline data for future assessment of progress. In this context, the study reflects the following aspects (below): research setting; population; sample and sampling techniques; data collection techniques; data analysis; dependability, validity, and reliability of data.

3.4.1 Research setting

The study will be conducted in Namibia, specifically, within Police Stations, and within Lower Courts (District Courts, Regional Courts). The determination of the specific locations shall be addressed by the principal researchers and the Namibian Police Force as per the Research **Work-Plan I** in ANNEX PTD-4, and the Judiciary and the Prosecutor General, respectively, as per the Research **Work-Plan II** in ANNEX PTD-5.

3.4.2 Research populations

The study will deal with different research populations, that is, all the observations which are of interest to the study (Burns & Burns, 2008, p. 84; see also Gray, 2010, p. 148). The relevant populations will be determined jointly by the principal researchers and the Namibian Police Force, the Judiciary, and the Prosecutor General, respectively; each population will be tallying with the need for empirical data in relation to the objectives of this study, and thus consist of:

- a) participating police stations, including custodial areas;
- b) pre-trial detainees in custody at participating police stations at the time of data collection;
- c) police officers and other staff with assigned roles in pre-trial detention deployed at participating police stations at the time of data collection;
- d) decisions on pre-trial release and detention in the districts, falling within the assessment period at participating lower courts;
- e) magistrates and prosecutors, respectively, dealing with pre-trial decisions at the participating magistrate courts (d).

3.4.3 Research sample and sampling techniques

For data in respect of the above mentioned populations, different samples will be drawn, and different sampling techniques will be used. Working with research samples, in relation to research populations, aims at the representation of the population as a whole (Babbie, 2008), and sampling becomes a necessity, if it is not possible to study the whole population due to its size or inaccessibility. However, owing to casing as the design choice, the emerging populations for this study are mostly limited in size, if not comparatively small – especially where probability sampling is required – a call for the adoption of census sampling (Martínez-Mesa et al., 2016).

Therefore, where as in respect of populations referred to above under a), b) and c) sampling serves the quest for knowledge in the guise of quasi-objective appearance, i.e. where quantitative sampling

methods would be required (Babbie, 2012); the samples will be total population samples. In these instances, the size of random samples in comparison with the total population samples would be marginal smaller only (see: Bartlett et al., 2001). However, where other aspects of the research problem require comprehension and understanding of the experiential world of human beings are being addressed – as in respect of other aspects of populations b), c), and e) –, qualitative sampling methods, namely purposive sampling (Babbie, 2012) until saturation will be applied. In respect of the population referred to under d) the total population will be processed, i.e. all decisions of the courts on custody and pre-trial detention falling within the defined time period.

3.4.4 Data collection and techniques

The study will adopt multiple data collection techniques, including the use of questionnaires, interviews, and document analysis.

3.4.4.1 Documentary analysis:

Existing documentary sources, such as inspection reports, field records, statistics and data (e.g. ANNEX PTD-6 and PTD-7) will be analysed against the backdrop of the research problem, and international benchmarks. In respect of court decisions on pre-trial release and detention, also called here bail study, the study's documentary analysis will focus on court records of concluded cases of the Windhoek and other districts still to be selected, covering the period January – December 2020; or as determined by the principal researchers and the Judiciary (see above). This study will look into the details pertaining to bail decisions. These details will be drawn from the various electronic and/or manual recording systems and analysed against the law pertaining to bail (54ff CPA). The bail analysis will be driven by the details of interest (ANNEX PTD-2).

3.4.4.2 Visual inquiry / on-site approach: observation at police holding cells

On-site data collection at all participating police stations shall facilitate the exploration and active use of physical and visual dimensions in this study. On-site observations will be guided by policing and human rights standards checklists (ANNEX PTD-3).

3.4.4.3 Ethnographic and phenomenological inquiry

a) Prosecutors / Magistrates – following the bail study, and against the backdrop of its findings, in-depth interviews and focus group discussions with prosecutors and magistrates of the Windhoek and other districts are intended to provide the basis for understanding the meanings and behaviours (Korstjens & Moser, 2017) associated with decision making in bail hearings, especially bail decisions in which pre-trial detention does not appear having been the last resort to ensure the appearance of the suspect at court proceedings (see interview schedules driving this inquiry in ANNEXURES PTD-8 and PTD-9).

b) Inmates (pre-trial detainees) - in order to fathom the experience of pre-trial detainees within their experiential world or 'life-world' of the pre-trial detention facility (police holding cell), in-depth interviews and focus group discussions will be conducted. The interview schedule driving this inquiry will be crafted against the need for qualitative data arising from the survey questionnaire administered to pre-trial detainees in police holding cells of participating police stations.

c) Police officers / staff with assigned roles in pre-trial detention – in order to fathom the experience of police officers and other staff with assigned roles in pre-trial detention within their experiential world or 'life-world' of the pre-trial detention facility (police holding cell), in-depth interviews and

focus group discussions will be conducted. The interview schedule driving this inquiry will be crafted against the need for qualitative data arising from the survey questionnaire (below 3.4.4.4) administered to police officers and other staff with assigned roles in pre-trial detention of participating police stations.

3.4.4.4 Survey

Questionnaires (self-administered) for pre-trial detainees as well as police officers²⁶ and other staff with assigned roles in pre-trial detention, and criminal justice professionals engaged in pre-trial release and detention decision making, such as magistrates and prosecutors, will be used to collect quantitative and qualitative data generated by the respondents under their impression of pre-trial detention conditions. The data collection tools administered will be survey questionnaires (ANNEX PTD-10 – PTD-13).

3.4.5 Data analysis and interpretation

The multiplex approach adopted is hinged on the thematic review reported on by Her Majesty's Inspectorate of Prisons (HMIP, 2012). Legal research and analysis, i.e. a specific form of documentary analysis²⁷ will provide insight into the discretionary margin for non-custodial decisions in bail proceedings.

3.4.5.1 Quantitative data analysis

The study will make use of SPSS (Version 23) to analyse the quantitative data aspects of the study, especially the various surveys envisaged for this project.

3.4.5.2 Qualitative data analysis

The study will employ the use of thematic content analysis, i.e. the examination of common themes, to analyse qualitative data (Kothari, 2004, p. 97). The study intends to make use of *ATLAS.ti* as a workbench for the *qualitative analysis* of the collection of textual, graphical, audio and video data.

3.5 Ethical considerations

The study will include pre-trial detainees in Namibian police holding cells and police officers who are responsible for the daily care of pre-trial detainees to ensure a high construct validity and insider perspective. This objective is balanced against the ethical classification that places research concerning vulnerable persons (i.e., offenders, inmates and pre-trial detainees) as high-risk research.

Here, the just application of moral principles that guide the behaviour of the research in relation to the study participants (Burns and Burns, 2010, p. 133) is highly important. With this awareness, the collaborative and participatory nature of the research design will minimise suspicion and distrust of the research with an associated increase in trust and credibility. The researchers are aware of ethical considerations such as the authenticity of the data sources; access to information, participants and police holding cells; confidentiality of information; and sensitivity of survey questions. These ethical aspects will be cautiously managed and attended to as indicated below and in the informed consent form (ANNEX PTD-14).

²⁶ Standardised questionnaires with a bearing on organisational and operational characteristics, developed by McCreary and Thompson (2006), will be used.

²⁷ Documentary analysis features as a form of qualitative research that uses a systematic procedure to analyse documentary evidence and answer specific research questions.

3.5.1 Statement on ethical clearance

To minimise harm or discomfort to participants the researchers will adhere to the Namibia Research, Science and Technology Act 23 of 2004 and Research Science and Technology Regulations 2011, the National Commission on Research Science and Technology (NCRST) and the Namibia University of Science and Technology (NUST) research policies and ethical procedures. The research team will ensure that the criminal justice sector (police, courts and correctional services) policies and directives related to institution and documentary access as well as safety and security measures are adhered to. Ethical considerations for research involving inmates as suggested by Gostin, Vanchieri and Pope (2007) will be observed. The research team will take responsibility for the welfare of the participants within the research context and the potential benefits and risks of the research will be clarified with participants. Fieldworkers will be sensitised on the likelihood that harm, discomfort or inconvenience might occur and that they should deal with feelings of worthlessness, distress, guilt, anger or fear which relates to the disclosure of sensitive or embarrassing information, or the devaluing of personal worth such as being humiliated, manipulated or treated disrespectfully or unjustly.

3.5.2 Principle of beneficence

The researchers are well aware that research is ethically acceptable only when its potential benefits justify any risks involved in the research. The principle of beneficence supports a number of moral rules to protect and defend the rights of others, prevent harm, and remove conditions that will cause harm. This implies an obligation on the researchers to do no harm or cause discomfort to participants and to do research that will most likely benefit participants or the wider community. These benefits may include gains in knowledge, insight and understanding, improved social welfare and individual wellbeing, and gains in skills or expertise for researchers or institutions. Some ethical issues may come into play in this study such as participants not disclosing information or providing incorrect information on sensitive matters to avoid embarrassment in the presence of researchers or repercussions from third parties. It might also happen that illegal activities are disclosed by participants in confidence which researchers may feel morally obliged to disclose. To avoid these barriers the researchers will ensure that they keep a distance from participants in the completion of research instruments and that any identifiable information provided by participants are removed from research instruments. Participants will also be informed not to incriminate themselves and should this happen, the researchers will have no choice than to disclose such illegal activities that might pose a threat to an individual, property, institution or government. Protocols for physical distance under the regulations pertaining to the COVID-19 pandemic, will be observed, strictly.

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Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

Research Objective 6: Assess magisterial decisions of selected courts on pre-trial detention and remand custody in terms of the due process guarantees under the Namibian Constitution.

Data Host: Magistrate Courts

Liaison Officer: [enter surname/name]: _____

Contact: tel/m/e-mail: _____

Date: [dd.mm.year]

Namibia continues to struggle both with high rates of crime and overcrowded pre-trial detention (PTD) facilities. By beginning of July 2021, more than 4800 detainees have been in police custody. This exceeds the number of sentenced offenders in the custody of the Namibian Correctional Service (NCS), which at the same time was about 3800 inmates, by far. Decisions on remand custody for trial awaiting accused, including bail decisions, are thought to be a key factor affecting the actual numbers of detainees in police holding facilities. Whereas the public often perceives that accused are released, and especially bail is granted, too easily in respect of violent offences (with those released on bail thought to commit further violent acts), there is also a perception, especially among accused and their families, that magistrates set bail amounts too high for lesser offences (with a high proportion of accused thought to be unable to afford their bail). These numbers invoke the basic principle underlying our law on bail, namely that bail is not a punishment and that an accused is entitled to bail, or released otherwise, where the interests of justice permit. This principle is a direct consequence of the principle within our adversarial criminal justice system, that an accused is innocent unless proven guilty at trial.

Against the backdrop of studies on the subject, answers to the questions listed hereafter, are expected to contribute to a comprehensive assessment. These questions include for instance to what extent our system is able or unable to try the vast majority of its accused; whether there is a correlation between the punishment to meted out and the variation in the extent to which the accused remains in the system 'awaiting trial'; the affordability of bail amounts, etc. The study focus is on 'finalised / closed / completed' cases because outcomes in relation to bail decisions and reasons for postponements issues cannot be explored using only information available at first appearance.

Based on the aggregate data extracted from the sample of cases (see below: PRE-TRIAL DETENTION DATA-EXTRACTION-SHEET) various questions are hope to be answered.

#	PRE-TRIAL DETENTION: DATA & INFORMATION ON FINALISED CASES AT VARIOUS MAGISTRATE COURTS
A	
01	What kind of people are appearing before the courts?
02	What kind of cases are appearing before the courts?
03	What are the trends on outcomes of cases before the courts (see: ANNEX 2)?
04	What proportion of cases were granted release on warning, into the care of guardian, and/or bail on first appearance?
05	What is the distribution of offences for which release on warning, into the care of guardian, and/or bail on first appearance was granted?
06	What proportion of cases were granted release on warning, into the care of guardian, and/or bail later on?
07	What is the distribution of offences for which release on warning, into the care of guardian, and/or bail was granted later on?
08	For which offences was release on warning, into the care of guardian, and/or bail granted or denied in the long term?
09	Bail amounts (minimum; maximum; average; median), and ability of accused to pay
10	Do release on warning, into the care of guardian, and/or bail ensure the return of accused persons to court?
11	Are there trends (in between courts) regards release on warning, into the care of guardian, and/or bail?
12	Does legal representation (legal aid; independent) affect the likelihood of being released on warning, into the care of guardian, and/or bail?
13	What is the relationship between bail amounts and age of the accused?
14	What is the relationship between bail amounts and crime categories?
15	What is the relationship between bail amounts and warrant of arrest rates?
16	What is the relationship between custody status and case outcomes?
17	What are specific trends from one dataset to another (by court)?
18	
19	
20	

Principal Researchers: Dr HJ Bruyns/Dr S. Schulz (m: 081 2560 820 e-mail: sschulz@nust.na)

POLICE BAIL (s.59 CPA 51 of 1977): [YES/NO] **DATE:** [dd.mm.year] **FAILURE TO RETURN TO COURT:** [YES/NO]

BAIL BY 1ST APPEARANCE: [YES/NO] **DATE:** [dd.mm.year] **FAILURE TO RETURN TO COURT:** [YES/NO]

BAIL GRANTED AT LATER STAGE [YES/NO] **DATE:** [dd.mm.year] **FAILURE TO RETURN TO COURT:** [YES/NO]

BAIL AMOUNT: [N\$_____] **PAID:** [YES/NO] **DATE:** [dd.mm.year]

RELEASE

ON WARNNIG: [YES/NO] **DATE:** [dd.mm.year] **FAILURE TO RETURN TO COURT:** [YES/NO]

CARE OF GUARDIAN/S: [YES/NO] **DATE:** [dd.mm.year] **FAILURE TO RETURN TO COURT:** [YES/NO]

OUTCOMES

Outcome not specified [] Finalised/completed [] Case withdrawn [] Struck off the Role []

Final custodial Status [] in custody [] out of custody

Guilty (enter the number of outcome/s as listed in **ANNEX 5**) [] Acquitted [] **DATE:** [dd.mm.year]

Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

ANNEX 1

[illegible]

ANNEX 2

	OFFENCE	NUMBER OF CASES	% OF CASES
01	ABDUCTION		
02	ABORTION		
03	ABSCONDING/ESCAPE		
04	ALL OTHER		
05	ANIMAL CARE		
06	ARMS OFFENCE		
07	ARSON		
08	ASSAULT		
09	ASSAULT GBH		
10	BRIBERY/CORRUPTON		
11	CHILD CARE		
12	CONSPIRACY		
13	CONTEMPT OF COURT		
14	CONTRABAND		
15	CRIMEN INJURIA		
16	CULPABLE HOMICIDE		
17	DRUG		
18	DRIVING UNDER INFLUENCE		
19	EXTORTION		
20	FRAUD/FORGERY		
21	HARBOUR REGULATION		
22	HOUSEBREAKING		

ANNEX 3

Principal Researchers: Dr HJ Bruyns/Dr S. Schulz (m: 081 2560 820 e-mail: sschulz@nust.na)

ANNEX 4

S/N	REASON FOR POSTPONEMENT	% OF FINALISED) CASES
01	APPLICATION FOR LEGAL AID	
02	BAIL APPLICATION	
03	DOCKET MISSING / NOT IN COURT	
04	FURTHER INVESTIGATION	
05	CONTINUANCE	
06	PLEA	
07	PLEA AND TRIAL	
08	SENTENCE	
	TOTAL	

ANNEX 5

S/N	OUTCOME	% OF FINALISED) CASES
01	ACQUITTED	
02	WARRANT OF ARREST	
03	COMMUNITY SERVICE	
04	CORRECTIONAL SUPERVISION	
05	DIVERTED	
06	FINALISED (BUT OUTCOME NOT SPECIFIED)	
07	FINE ONLY	
08	GUILTY (BUT SENTENCE NOT SPECIFIED)	
09	IMPRISONMENT WITH OPTION OF FINE	
10	IMPRISONMENT	
11	IMPRISONMENT: PARTLY SUSPENDED	
12	IMPRISONMENT: FULLY SUSPENDED	
13	IMPRISONMENT SUSPENDED (PROPORTION NOT SPECIFIED)	
14	'SENTENCE POSTPONED'	
15	ACCUSED WARNED	
16	CASE WITHDRAWN / STRUCK OFF	
17	TOTAL	100.0

Questionnaire number			
Police Station			

SURVEY: PRETRIAL DETAINEES HUMAN RIGHTS

Dear Participant,

Purpose of the research

The purpose of this research project is to assess the treatment you receive in police holding cells as pretrial detainees and the conditions in which you stay. The information that you provide in this questionnaire will be used together with international human rights standards to identify areas which need improvement at police holding cells and to provide detainees a better and safer place to stay in.

Depending on the outcome of the assessment, improvements could mean:

- Alignment of treatment and conditions in police holding cells with International Human Rights Standards
- Alternatives to pretrial detention
- support to make release of detainees into the community easier.

Participation & confidentiality

- Do not write your name on the questionnaire as we do not want to identify or expose you in any manner, nor do we want to publish or share your personal details with anyone.
- Your participation in this research project is not compulsory. You may withdraw from participating in the research at any time. We will not hold it against you if you do not want to complete the questionnaire.
- In order to provide feedback to the Criminal Justice stakeholders it is important that you provide honest and accurate information to enable the staff members to develop and provide quality services.

Questionnaire instructions

- Read every question carefully before answering it.
- If there are questions that need a written answer and you cannot write, ask the researchers to write the answer down for you.
- It will take you approximately 40 minutes to complete the questionnaire.
- The researchers will guide you in completing the questionnaire.
- Do not hesitate to ask questions if you are not sure about anything regarding the questionnaire. Feel free to stop the researcher(s) if they move too fast for you.
- Answer all the questions correctly and honestly.
- Use only the pencils provided by the researchers to complete the questionnaire and return the pencil with your completed questionnaire to the researchers.
- Erasers will be provided to correct errors. Erase errors completely.
- All your answers should be indicated with a cross in the tables. See example below:

Example

1.	Were you treated well by the police officers on admission at the police station?	Yes	No	N/A Not applicable
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Thank you in advance for your participation in this very important research project!

The Principal researchers

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Section 1: Admission at the police stations

1.	When you arrived at the police station:	Yes	No	N/A
1.1	Were you treated well by the police officers?			
1.2	When you were searched, was this carried out in a respectful way?			
1.3	Did you see someone from health services (e.g., doctor, nurse, psychologist)?			
1.4	Did you experience any problems? If yes, provide a brief description below.			

2.	In the first 24 hours at the police station, did a police officer ask you if you needed help/support with the following:	Yes	No	N/A
2.1	Problems with loss of personal belongings during arrest			
2.2	Problems gaining access to phone numbers			
2.3	Problems contacting family			
2.4	Problems contacting employers			
2.5	Problems ensuring dependants/children were looked after			
2.6	Problems with feeling depressed or suicidal			
2.7	Health problems			
2.8	Problems about money			
2.9	Problems in needing protection from other detainees			

3.	On your day of arrival, were you offered information about any of the following:	Yes	No	N/A
3.1	What was going to happen to you (orientation)			
3.2	How to make a request or complaint			
3.3	Your rights to visits			
3.4	Health services			
3.5	Religious services			
3.6	Support was available for people feeling depressed or suicidal			

4.	On your day of arrival, were you offered any of the following:	Yes	No	N/A
4.1	The opportunity to have a shower			
4.2	The opportunity to make a free telephone call			
4.3	Something to eat			

5.	Within the first 24 hours did you:	Yes	No	N/A
5.1	Meet a chaplain or a religious leader			
5.2	Meet someone from health services (e.g., doctor, nurse)			
5.3	Meet someone listening to your concerns (e.g., lawyer, social worker)			
5.4	Have access to a canteen/shop			
5.5	Feel safe on your first night in the police cells			
5.6	Have you been on an induction course			

Section 2: Legal rights and respectful custody

6.	In terms of your legal rights, is it difficult or easy to:	Difficult	Easy	N/A
6.1	Obtain legal advice?			
6.2	Communicate with your legal representative (lawyer)?			
6.3	Attend legal visits?			
6.4	Obtain bail information?			

7.	In the police cells where you are detained:	Yes	No	N/A
7.1	Are you generally able to have a shower every day?			
7.2	Do you receive clean bedding/sheets at least once every week?			
7.3	Are you normally offered enough clean, suitable clothes for the week?			
7.4	Do you often get cleaning materials to clean your cells?			
7.5	Is it quiet enough for you to be able to relax or sleep in your cell at night time?			
7.6	Can you get your stored property at the police station, if you need it?			
7.7	Do police officers react timely when they are called in emergencies?			

8.	For those of you who made a request or complaint:	Yes	No	N/A
8.1	Are your requests/complaints been dealt with fairly?			
8.2	Are your requests/complaints been dealt with on time or reasonable time span?			
8.3	Have you ever been asked to withdraw a complaint whilst detained by the police?			
8.4	Are you informed on how to report police officers who do not attend to your requests/complaints?			
8.5	Is the system/procedures to report police officers who do not attend to your requests/complaints working?			
8.6	Are you allowed to speak to an independent person (who is not a police officer) about problems you might encounter in the police cells?			

9.	In the police cells where you are detained:	Yes	No	N/A
9.1	Do most police officers treat you with respect?			
9.2	Is there a police officer that you can turn to for help if you have a problem?			
9.3	Are you able to speak to a police officer at any time, if you want to?			
9.4	Do you feel your religious beliefs are respected?			
9.5	Are you able to speak to a religious leader of your choice in private if you want to?			
9.6	Have you spent a night or more in a single cell (in isolation)?			
9.7	Have any police officer physically restrained you (e.g., used hand cuffs/leg irons)?			

10.	In the police cells where you are detained:			
10.1	Is the food that you get:	Bad	Okay	Very nice
10.2	Does the shop/canteen sell a wide enough range of goods to meet your needs?	Yes	No	N/A

Section 3: Safety

11.	In the police cells where you are detained:	Yes	No
11.1	Have you ever felt unsafe?		
11.2	Do you feel unsafe at this time (currently)?		
11.3	Have you ever felt threatened or intimidated by another detainee or detainees?		
11.4	Have you ever felt threatened or intimidated by a police officer?		

12.	Since you have been in the police cells, has another detainee:	Yes	No
12.1	Made insulting remarks about you, your family or friends?		
12.2	Hit, kicked or assaulted you?		
12.3	Sexually abused you?		
12.4	Taken your personal property?		
12.5	Ever bribed you to obtain favours, money or any other goods?		
12.6	Given you any unauthorised item (cell phone, money, drugs, etc.)?		
12.7	Victimised you because of your race or ethnic origin?		
12.8	Victimised you because of drugs?		
12.9	Victimised you because you were new here?		
12.10	Victimised you because of your sexuality?		
12.11	Victimised you because you have a disability?		
12.13	Victimised you because of your religion/religious beliefs?		
12.14	Victimised you because of your age?		
12.15	Victimised you because you were from a different part of the country/world?		
12.16	Victimised you because of your alleged offence/crime?		
12.17	Victimised you because of gang related issues?		

13.	Since you have been in the police cells, has a police officer:	Yes	No
13.1	Made insulting remarks about you, your family or friends?		
13.2	Hit, kicked or assaulted you?		
13.3	Sexually abused you?		
13.4	Taken your personal property?		
13.5	Ever bribed you to obtain favours, money or any other goods?		
13.6	Given you any unauthorised item (cell phone, money, drugs, etc.)?		
13.7	Victimised you because of your race or ethnic origin?		
13.8	Victimised you because of drugs?		
13.9	Victimised you because you were new here?		
13.10	Victimised you because of your sexuality?		
13.11	Victimised you because you have a disability?		
13.12	Victimised you because of your religion/religious beliefs?		
13.13	Victimised you because of your age?		
13.14	Victimised you because you were from a different part of the country/world?		
13.15	Victimised you because of your alleged offence/crime?		
13.16	Victimised you because of gang related issues?		

14.	For those who have been victimised by a police officer or detainees, did you report it to the authorities?	Yes	No
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15.	If your answered 'Yes' to question ??, what was the outcome of the complaint? (Indicate only one answer)	
15.1	The police officer/detainee was reprimanded (Given a warning)	
15.2	The police officer/detainee was formally charged and found guilty	
15.3	The police officer/detainee was formally charged and found not guilty	
15.4	Nothing happened	
15.5	Indicate any other outcomes:	

16.	If you answered 'No' to question ??, indicate the reason for not reporting the incident.		
16.1	There is no reporting (complaint procedure in place at the police station)		
16.2	Police officers do not listen to complaints or do nothing about our complaints		
16.3	I am afraid of being victimized in the future		
16.4	Indicate any other reasons:		

Section 4: Health services

17.	How easy is it to see one of the following people?	Very easy	Dificult	Not possible	Don't know
17.1	Medical doctor				
17.2	Nurse				
17.3	Dentist				
17.4	Optician (eyes)				
17.5	Social worker				
17.6	Psychologist				

18.	If you have been to any of the health services below, indicate your satisfaction with the services received	Bad	Good	Excellent	N/A
18.1	Medical doctor				
18.2	Nurse				
18.3	Dentist				
18.4	Optician (eyes)				
18.5	Social worker				
18.6	Psychologist				

19.	Indicate if you currently experience any of the following health issues:	Yes	No
19.1	Emotional distress		
19.2	Dipression		
19.3	Feelings of committing suicide or self-injury		
19.4	Problems with the use of alcohol		
19.5	Problems with the use of illegal drugs/substances (e.g., dagga, ecstasy, solvents)		

20.	Indicate if you have any of the following benefits at the police holding cells:	Yes	No
20.1	Are you allowed to excercise inside the cell three or more times a week?		
20.2	Do you go outside the cell for exercise three or more times a week?		
20.3	Do you have access to a telephone to call family or friends?		
20.4	Are you allowed visits by family or friends during the week?		
20.5	Are you allowed visits by family or friends over weekends?		
20.6	Are you allowed to receive food, toiletries or letters from family or friends?		

21.	How are you and your family/friends treated by police officers during visits?	Bad	Good	Excellent	N/A
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POLICE AND HUMAN RIGHTS STANDARDS CHECKLIST

Police station: _____

Date completed: _____

Signature (Officer in Charge): _____

Rank: _____

Surname and Initials: _____

Purpose of the checklist

The purpose of the policing and human rights standards checklist for police cells (hereafter referred to as 'the checklist') is to ensure that:

- The highest ethical and professional standards are maintained,
- Police corruption and serious misconduct is detected, investigated and prevented, and
- The Namibian Police and the general public are educated about police corruption and serious misconduct.

Checklist instructions

1. The checklist should be completed by the officer in charge of a police station in collaboration with police officers working at police holding cells and the researchers/research assistants.
2. The appropriate answer (Yes, No, NS = Not sure or N/A = Not Applicable) to each statement in the checklist should be indicated with a cross (✕) in the applicable space provided.
3. If there are questions that needs clarification, ask the researchers to explain what is required.
4. Answer all the questions correctly and honestly.
5. It will take you approximately 60 minutes to complete this checklist.

Thank you in advance for your participation in this very important research project!

The Principal researchers

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#	Detainees safety	Yes	No	NS	N/A
1	The lockup facility complies with health, life and fire safety codes.				
2	Prior to admission into a police cell, detainees are assessed in relation to risks such as mental health, suicide, criminal history and potential for sexual violence, and vulnerability for victimisation.				
3	Detainees are provided with information in a format they can understand about the reason for their detention and their rights and responsibilities.				
4	Detainees are notified of their right to be safe while in custody as well as the prohibited acts and ways to report allegations.				
5	Security and wellness checks of detainees are conducted on a regular basis.				
6	A surveillance arrangement of detainees (guarding, inspecting, clear visual line-of-sight, etc.) is in place, and police officers are regularly checked to ensure duties are done correctly.				
7	Close circuit cameras (video/audio monitoring) are used to ensure the safety and security of detainees and is not used to violate the personal privacy of detainees.				
8	The close circuit cameras are used in addition to, and not as a substitute for, actual physical visits to cells by police officers on their regular rounds.				
9	Cells in which audio and video recordings are made are clearly marked on a cell wall with the following warning, "YOU ARE BEING AUDIO AND VIDEO RECORDED."				
10	Detainees who shows any intent toward suicide are closely monitored and medical staff, psychologists, etc. are available on short notice should their services be required.				
11	There is an adequate number of holding cells to separate detainees for their safety.				
12	The holding facilities are equipped with functional fire suppression equipment (fire hydrants, hosepipes, fire extinguishers) approved by local authorities.				
13	Emergency evacuation route signs that comply with the Fire Safety Regulations are posted and clearly visible in the lockup facilities.				
14	A system for detainees to alert employees of an emergency is available and known to detainees.				
15	There is a zero tolerance policy for staff sexual misconduct with detainees, and sexual contact or violence between detainees.				
16	Prior to the admission of a detainee in a holding cell, an attempt is made to determine if the suspect is under any prescribed medication, and to ensure that sufficient medication is available to cover the anticipated time in the lockup.				
17	No detainees are held in police cells beyond the length of time permitted by legislation.				

#	Detainees accommodation	Yes	No	NS	N/A
18	Holding cells are clean, kept at a comfortable temperature and well ventilated.				
19	Heating systems in the holding facility are capable of maintaining a range of temperature between 18 and 29 degrees Celsius.				
20	All multiple-occupancy cells have at least 4m ² (2 x 2 meter) of living space per detainee and at least 2.5 meter between the floor and the ceiling.				
21	All single-occupancy cells have at least 6m ² (3 x 2 meter) of living space and at least 2.5 meter between the floor and the ceiling.				
22	Detainees have access to natural light during the day and access to artificial lighting in the evening.				
23	Cells are clean and free from dangerous objects to commit wrongdoings such as assaults, sexual activities and self-harm or hanging points to commit suicide.				
24	Detainees have access to drinking water and a toilet during the day, which are in working order.				
25	Detainees who need a shower for decency and good hygiene reasons are able to take daily warm showers in clean conditions that allow for privacy				
26	Items to meet detainees' basic needs such as toilet paper, soap, toothpaste, bath towels and other sanitary products are provided by the state and are regularly available.				
27	Detainees must provide their own sanitary products such as toilet paper, soap, toothpaste bath towels and other products.				
28	Female detainees are routinely provided with suitable sanitary items.				

#	Detainees accommodation (Continued)	Yes	No	NS	N/A
29	Detainees held for more than 24 hours are allowed to receive visits in a welcoming and comfortable environment.				
30	Suitable reading material, including newspapers, magazines, books and religious texts/material in relevant languages are available to detainees.				
31	Immigration detainees are only held in police custody for the minimum period possible.				
32	Each detainee held in excess of eight hours, and for the night, has clean bedding suitable for the climate.				
33	A standard state issue of bedding include an approved mattress, and enough clean blankets to provide comfort under the existing weather conditions.				
34	Detainees with no family or local support who need clothing are offered basic clothes, including a change of underwear.				
35	Efforts are made to ensure that no detainee is transferred from a police station to a court, or elsewhere, without decent clothes.				

#	Detainees medical/mental health	Yes	No	NS	N/A
36	Written policies and procedures for emergency medical and health care services are developed and implemented.				
37	The lockup facilities complies with state and local sanitation and health regulations.				
38	When occupied, the lockup facilities is cleaned on a daily basis in accordance with routines and procedures established by the management of the police station.				
39	Any condition conducive to harboring or breeding rats, flies, mosquitos or other pests are eliminated immediately.				
40	Inspections are conducted periodic to identify any conditions that are unsanitary or conducive to infestation, and timeframes are provided for correction or improvements to rectify problems.				
41	All detainees are asked if they would like to see a doctor on admission.				
42	A doctor examine every detainee who appears to be physically incapacitated due to drug or alcohol intoxication.				
43	Detainees are allowed to continue to receive any prescribed clinical management for drug dependency while in custody.				
44	Psychiatric detainees are transported immediately to the appropriate medical facility, with the supportive documentation.				
45	Detainees held for more than 24 hours have access, for at least one hour a day, to an outdoor exercise yard that provides shelter from the weather?				
46	A first aid kit is available within the holding facilities necessary for emergency medical treatment.				
47	Qualified health practitioners examines a detainee in need of medical attention.				
48	Efforts are made to ensure medical treatment for a detainee, when essential, at the nearest emergency medical facility.				
49	No detainee who has injuries or illnesses that require hospitalisation or attention of a health care professional is booked into a police lockup facility or otherwise held for interrogation or other purposes.				
50	When a detainee is unconscious, every effort is made to restore consciousness and medical assistance is summoned.				
51	The police station has a memorandum of agreement or similar documentation with local emergency medical providers for the care of detainees, and has specific procedures for detainee suicide prevention.				

#	Food	Yes	No	NS	N/A
52	Each detainee is provided at least three (3) meals every 24 hours that meet the recommended basic nutrition requirements.				
53	There are not more than 14 hours between the evening meals and breakfast.				
54	Detainees' food is palatable (tasty and edible), of good nutritional value and supplied in sufficient quantities with additional food available on reasonable request.				
55	Detainees are provided with drinks between meals at least three times a day.				
56	Special dietary requirements including religious, cultural or health needs are catered for.				
57	Food is not used as a reward or punitive action, nor is the menu varied for the same reason.				

#	Detainee psychological well-being	Yes	No	NS	N/A
58	Detainees are treated with dignity and respect.				
59	Detainees are protected from torture and cruel, inhuman treatment.				
60	At all times, custodial officers act professionally and with integrity to maintain and uphold the human rights of detainees.				
61	Female detainees are separated by sight, sound, and touch from male detainees, and a female or other qualified person is called whenever a female detainee is to be searched.				
62	On admission, detainees are given written information about details of visits, fire safety procedures, meals, how to make requests or complaints and other basic entitlements and amenities.				
63	Detainees have access to legal counseling; they have access to their lawyers, without restriction to the number or length of visits.				
64	When a detainee has an appointment with a lawyer, he/she is allowed to consult with the lawyer in a secured area, within the sight of, but not within hearing of an officer assigned for that purpose.				
65	Each detainee has reasonable access to telephones and letter writing facilities to contact legal representatives and family.				
66	As soon as practicable after being taken into custody, each detainee has the opportunity to communicate with his/her family or friends about their whereabouts, or to arrange for release on bail, or to engage the services of an attorney.				
67	Clean rooms are available for visitors to meet privately with detainees.				
68	Where a decision has been made to conduct a bodily search, officers conducting the search respect the privacy and dignity of the detainees.				
69	Detainees who do not read or speak the language in use, or those who are deaf or hearing impaired, have access to translated information or an interpreter and receive information about the reason for their detention and the lockup rules in a format they understand.				
70	At night, police officers try not to wake detainees who are sleeping and refrain from turning on lights and loudly opening or closing doors.				
71	Detainees who want to make a formal complaint about their arrest or treatment are allowed to do so while in custody, and police officers give them the opportunity to do so.				
72	Efforts are made to provide appropriate specialist immigration advice and assistance for immigration detainees.				
78	Whenever possible detainees who are in detention for more than a day are allowed to have access to fresh air for one hour per day, particularly where cells have no access to fresh air and/or natural light.				

#	Detainee discipline and restraint	Yes	No	NS	N/A
79	Efforts are made to ensure that all detainees being held in police cells are aware of the rules and the consequences of breaching them.				
80	Standard information about the police cell rules is displayed in reception areas of the lockup facilities or cells, and is visible to detainees.				
81	Any alleged breach of police lockup rules and procedures is adequately investigated, and a detainee who is alleged to have breached a rule is given the opportunity to be heard in any investigation into the breach. Where an investigation establishes that a breach has occurred, the detainee is dealt with in accordance with the law.				
82	Any restriction on the personal rights or freedom of a detainee is only made after the officer in charge has decided such restriction is necessary for the safety of the individual or others or for the orderly behaviour within the lockup facilities.				
83	A detainee is only subject to restraint if the restraint is authorised by the officer in charge and, if the officer in charge believes restraint is necessary to secure the safe transfer of the detainee; or the officer in charge believes on reasonable grounds that 1) exceptional circumstances exist; or 2) restraint is necessary to prevent an assault or injury to any person or substantial damage to property.				
84	Only restraints authorised for use are applied (e.g., handcuffs or leg irons).				
85	Where a restraint is applied to a detainee, policies and directives are complied with including appropriate recording and documentation.				
86	Police lockup staff do not beat or lay hands on a detainee unless it be in self-defence, to prevent escape or serious injury to a person or property, or to effect detention. In such cases, only the amount of physical force to accomplish the desired result is authorised.				
87	Detainees who are intoxicated or under the influence of a controlled substance are housed separately from other detainees until such time as the medical authority or the supervisor of the holding cells determines their suitability for placement with others.				

#	Treatment of children and young people	Yes	No	NS	N/A
88	Children and young people are detained in police custody as a last resort and for the shortest possible time.				
89	Particular effort is made to contact a responsible family member or lawful guardian of the child or young person and facilitate the attendance at the police station of the family member or guardian.				
90	Children and young people in police custody are segregated by sight, sound, and touch from adult detainees.				
91	Young people under 18 are held in appropriate well-supervised accommodation and dealt with taking into account their legal status and vulnerabilities as children, including an awareness of child protection issues.				
92	The treatment of children and young people go beyond procedural compliance and address more fully the distinctive needs of young people in custody.				

#	Awareness of lockup facility staff about detainees' rights	Yes	No	NS	N/A
93	All police officers working in police cells received formal training in safety and security procedures, holding cell operations, supervision and physical restraint of detainees and other responsibilities deemed necessary.				
94	All police officers who guard detainees in police holding cells are retrained (refresher courses) every three years, in the above duties.				
95	All police officers working in police holding cells are adequately trained in the operation of lockup facilities.				
96	All police officers assigned to police holding cells (full- or part-time) are appropriately trained to prevent detainee suicides, unrests, violence, sexual activities, substance abuse and the like in the lockup facilities.				
97	All police officers assigned to police holding cells (full- or part-time) are appropriately trained in disaster management (e.g., floods, fire, health epidemics such as COVID-19)				

#	Treatment of detainees with health needs	Yes	No	NS	N/A
98	Police officers are familiar with procedures for contacting appropriate health care professionals.				
99	Detainees who become unconscious are referred for immediate medical attention				
100	Detainees, who are considered high risk of harming themselves or others, are immediately transferred to a correctional facility, secure health facility or other appropriate health care facility.				
101	Detainees who require less urgent medical attention and who are waiting for a health examination are monitored at least every 15 minutes, or as otherwise prescribed by a health care professional.				
102	Detainees suffering serious medical or mental health conditions are transferred to an appropriate health care facility.				
	Detainees who are assessed as suffering from a serious medical condition are not held in police cells overnight.				
103	Detainees with pre-existing medical conditions have access to their prescribed medication and, where practicable, access to their current treating medical practitioner.				
104	Detainees who are assessed as suffering from a serious medical condition are not held in police cells overnight.				
105	Detainees requiring medication have access to appropriately prescribed, dispensed and administered medication by a medical practitioner, pharmacist or nurse.				
106	Detainees undergoing any special drug treatment continue to receive treatment administered by an appropriate health care professional.				
107	Medical advice is obtained for detainees appearing to withdraw from drug or alcohol addiction.				
108	Drug or alcohol addicted or affected persons are monitored in accordance with their physical condition and conscious state.				
109	In-cell contact with an intoxicated person or a person withdrawing from drugs or alcohol takes place at least every half hour, until the person responds to verbal prompting and is properly oriented in time and place.				
110	Under no circumstances, will officers whose primary goal was to proceed with the investigation of their case take advantage of drug or substance users' vulnerable state during withdrawal while in detention.				
111	Reasonable accommodations are made for any handicapped detainees.				
112	Any detainee who appears to be mentally ill is monitored continuously until he or she has been examined by a doctor or qualified mental health practitioner.				
113	A register is kept of any in-cell contact, including the time and duration of the contact, the custodial officers involved and the results of observations about the condition of any person who appears to be mentally ill or who is intoxicated.				
114	Detainees with mental health issues is transferred to an appropriate health care facility as a matter of urgency.				

Ooo - Thank you for participating in this survey! - ooo

Work plan I (Pretrial detainee study)

ITEM	ACTIVITIES	RESOURCE	START DATE	END DATE
	PHASE 1: PROJECT INITIATION			
Objective 1: Proposal writing				
1	Compile research proposal (NCRST)	PIs	01/03/2021	20/07/2021
2	Compile research ethical clearance documents	PIs		
3	Develop research instruments (Questionnaires, Human Rights checklist & database)	PIs		
4	Submit proposal and research tools to NAMPOL for evaluation	NAMPOL		
5	Incorporate NAMPOL inputs on research tools	PIs		
6	Obtain IG NAMPOL permission to do the pre-trial research	NAMPOL		
7	Obtain NCRST research permit to do the pre-trial research	NCRST	21/07/2021	16/08/2021
	PHASE 2: PROJECT INCEPTION			
Objective 2: NUST-NAMPOL Project team				
8	Meet with NAMPOL to appoint NAMPOL project coordinator and team members	PT	23/07/2021	16/08/2021
9	Clarify research parameters and develop detailed research/fieldwork plan	PT		
10	Finalise NUST-NAMPOL research agreement	PT		
11	NUST-NAMPOL sign research agreement	IG		
Objective 3: Desktop study				
12	Gather pre-trial detention (PTD) policies, directives, strategic plans, budget, stats, etc.	PIs	17/08/2021	30/09/2021
13	Review all documents and do situational analysis	PIs		
14	Set-up meetings with NAMPOL project coordinator, management and others	PIs		
15	Interview subject matter experts/stakeholders (NAMPOL)	PIs		
16	Compile and submit desktop study report	PIs		
17	NAMPOL review the desktop study report	NAMPOL	01/10/2021	11/10/2021
18	Incorporate NAMPOL inputs on desktop study report	PIs	12/10/2021	18/10/2021

	Objective 4: Conduct pilot study			
19	Set-up pilot study	PIs	17/08/2021	18/08/2021
20	Train CJ Hons students and others in the administration of research tools	PIs		20/08/2021
21	Administer tools (CJ Hons students & others) - All holding cells in Windhoek area	PIs/Students		27/08/2021
22	CJ Hons students capture, clean and analyse data	PIs/Students		03/09/2021
23	CJ Hons students write up mini-thesis using data sets provided	Students		29/10/2021
24	NUST research team revise research tools (if required)	PIs	30/08/2021	06/09/2021
25	NUST research team compile and submit report on the pilot study to NAMPOL	PIs		
26	NAMPOL review the report on the pilot study	NAMPOL	06/09/2021	13/09/2021
27	Incorporate NAMPOL inputs on pilot study/tools	Pis	14/09/2021	17/09/2021
	Objective 5: Conduct fieldwork			
28	Train fieldworkers	PIs	30/08/2021	31/08/2021
29	Engage participants in survey and manage process throughout Namibia	PIs	04/10/2021	03/12/2021
30	NAMPOL monitor data gathering process (Continuous)	NAMPOL		
	Objective 6: Data processing			
31	Capture data/information on approved database	PIs	24/01/2022	28/01/2022
32	Do data cleaning	PIs	31/01/2022	04/02/2022
33	Analyse/interpret data	PIs	07/02/2022	11/02/2022
34	Write up results/findings chapter	PIs	14/01/2022	18/01/2022
35	NAMPOL review results/findings chapter	NAMPOL	21/02/2022	25/02/2022
36	Incorporate NAMPOL inputs	PIs	28/02/2022	04/03/2022
	PHASE 3: PROJECT COMPLETION			
	Objective 7: Report writing (Integrating Work-Plan I & Work-Plan II outcomes)			
37	Compile draft report	PIs	01/10/2022	28/02/2023
38	NAMPOL, JUDICIARY, PROSECUTOR GENERAL review the draft report	NAMPOL/JUDICIARY & PROSECUTOR GENERAL		
39	Incorporate NAMPOL, JUDICIARY, PROSECUTOR GENERAL inputs on the 1st draft report	PIs		
	Objective 8: Project conclusion			
40	Compile, edit and finalise research report	PIs	01/03/2023	15/04/2023
41	Inform stakeholders about pending publication	NAMPOL/JUDICIARY & PROSECUTOR GENERAL	16/04/2023	29/04/2023
42	Presentation and handover of final report/documents to stakeholders	PIs	13/05/2023	31/05/2023
43	Schedule webinars/workshops with CJS and other stakeholders	PIs	01/06/2023	ongoing

Work plan II (Bail Study)

ITEM	ACTIVITIES	RESOURCE	START DATE	END DATE (estimate)
	PHASE 1: PROJECT INITIATION			
Objective 1: Proposal writing				
1	Compile research proposal (NCRST)	Pls	01/03/2021	20/07/2021
2	Compile research ethical clearance documents			
3	Develop research instruments (Key variables Pre-trial release/detention; Questionnaires; In-depth Interview Guide)			
4	Submit proposal and research tools to JUDICIARY & PROSECUTOR GENERAL for information and evaluation			
5	Application to NCRST for research permit	NCRST	21/07/2021	16/08/2021
	PHASE 2: PROJECT INCEPTION			
Objective 2: NUST-JUDICIARY Project team				
6	Meet with JUDICIARY & PROSECUTOR GENERAL to appoint JUDICIARY/PROSECUTOR GENERAL project coordinator/liaison	PT	21/07/2021	
7	Clarify research parameters and develop detailed research/fieldwork plan (selection of Magistrates' Courts for data-set)	PT		
8	Finalise NUST-JUDICIARY & PROSECUTOR GENERAL research agreements	PT		
9	NUST-JUDICIARY & PROSECUTOR GENERAL sign research agreements	JUDICIARY & PROSECUTOR GENERAL		16/08/2021
Objective 3: Desktop study (Key variables Pre-trial release/detention)				
10	Prepare data-set	Pls	17/08/2021	30/09/2021
11	Extraction of data from court files of selected Magistrates' Courts	Pls		
12	Data-analysis (values of key variables)	Pls		
13	Data-Interpretation (values of key variables)	Pls		
14	Compile and submit desktop study report	Pls	01/10/2021	15/10/2021
15	JUDICIARY review the desktop study report	JUDICIARY	15/10/2021	25/10/2021
16	Incorporate JUDICIARY inputs on desktop study report	Pls	26/10/2021	31/10/2021

	Objective 4: Conduct pilot study (Survey-Questionnaire: Magistrates/Prosecutors)			
17	Set-up pilot study	PIs	17/08/2021	04/08/2021
18	Distribute tools - sub-samples of participating Magistrates/Prosecutors	PIs/Students		25/08/2021
19	Capture, clean and analyse data	PIs/Students		06/09/2021
20	NUST research team revise research tools (if required)	PIs		27/08/2021
21	NUST research team compile and submit report on the pilot study to JUDICIARY	PIs		06/09/2021
22	JUDICIARY & PROSECUTOR GENERAL review the report on the pilot study	JUDICIARY & PROSECUTOR GENERAL	15/10/2021	25/10/2021
23	Incorporate JUDICIARY & PROSECUTOR GENERAL inputs on pilot study/tools	PIs	14/09/2021	31/10/2021
	Objective 5.1: Conduct Fieldwork I (Survey-Questionnaire: Magistrates/Prosecutors)			
24	Distribute tools - samples of participating Magistrates/Prosecutors	PIs	01/11/2021	22/11/2021
25	Engage participants in survey and manage process	PIs	01/11/2021	
26	JUDICIARY & PROSECUTOR GENERAL monitor data gathering process (Continuous)	JUDICIARY & PROSECUTOR GENERAL	01/11/2021	
	Objective 5.2: Conduct Fieldwork II (In-depth Interviews: Magistrates/Prosecutors)			
27	Arrange for online (ZOOM/MS TEAMS) In-depth Interviews Distribute tools - samples of participating Magistrates/Prosecutors	PIs	15/01/2022	31/03/2022
28	Conduct online (ZOOM/MS TEAMS) In-depth Interviews Distribute tools - samples of participating Magistrates/Prosecutors	PIs		
29	JUDICIARY & PROSECUTOR GENERAL monitor data gathering process (Continuous)	JUDICIARY & PROSECUTOR GENERAL		
	Objective 6: Data processing (Fieldwork I)			
30	Capture data/information on approved database	PIs	24/01/2022	28/01/2022
31	Do data cleaning	PIs	31/01/2022	04/02/2022
32	Analyse/interpret data	PIs	07/02/2022	11/02/2022
33	Write up results/findings chapter	PIs	14/01/2022	18/01/2022
34	JUDICIARY & PROSECUTOR GENERAL review results/findings chapter	JUDICIARY & PROSECUTOR GENERAL	21/02/2022	25/02/2022
35	Incorporate JUDICIARY & PROSECUTOR GENERAL inputs	PIs	28/02/2022	04/03/2022

	Objective 6: Data processing (Fieldwork II)			
36	Capture data/information on approved database	PIs	01/04/2022	31/07/2022
37	Do data cleaning	PIs		
38	Analyse/interpret data	PIs		
39	Write up results/findings chapter	PIs		
40	JUDICIARY & PROSECUTOR GENERAL review results/findings chapter	JUDICIARY & PROSECUTOR GENERAL	01/08/2022	31/08/2022
41	Incorporate JUDICIARY & PROSECUTOR GENERAL inputs	PIs	01/09/2022	30/09/2022
	PHASE 3: PROJECT COMPLETION			
	Objective 7: Report writing (Integrating Work-Plan & Work-Plan II outcomes)			
42	Compile draft report	PIs	01/10/2022	28/02/2023
43	NAMPOL, JUDICIARY, PROSECUTOR GENERAL review the draft report	NAMPOL/JUDICIARY & PROSECUTOR GENERAL		
44	Incorporate NAMPOL, JUDICIARY, PROSECUTOR GENERAL inputs on the 1st draft report	PIs		
	Objective 8: Project conclusion			
45	Compile, edit and finalise research report	PIs	01/03/2023	15/04/2023
46	Inform stakeholders about pending publication	NAMPOL/JUDICIARY & PROSECUTOR GENERAL	16/04/2023	29/04/2023
47	Presentation and handover of final report/documents to stakeholders	PIs	13/05/2023	31/05/2023
48	Schedule webinars/workshops with CJS and other stakeholders	PIs	01/06/2023	ongoing

Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

Management & Planning: Namibian Police Force
 Data Host: Office of the Inspector General
 Liaison Officer: [enter rank/name]: _____
 Contact: tel/m/e-mail: _____
 Date: [dd.mm.year]

#	PRE-TRIAL DETENTION: DATA & INFORMATION	
A	PTD FACILITIES IN NAMIBIA	
01	Provide a list (separate) with all Police Stations by name, classification, location and region as currently exist in Namibia (total)	
02	Provide information/data in respect of all Police Stations which serve as pre-trial detention (PTD) by completing the attached excel sheet “PTD Facilities NAMPOL”	
03		
B	HUMAN RESOURCES & STAFF	Number
01	How many staff member (police and civilian employees) are fully deployed with assigned roles in PTD (total Namibia)?	
02	How many staff member (police and civilian employees) are not exclusively (that is partially) deployed with assigned roles in PTD (total Namibia)?	
03	What is the full time equivalent of human resources with assigned roles in PTD (expressed as the number of full time positions)?	
04	Provide samples of comprehensive and exhaustive PTD related job descriptions of staff with assigned roles in PTD	
05	How many Social Workers are employed full time by the Namibian Police Force?	
06	How many Social Workers (employed full time by the Namibian Police Force) have been fully assigned to PTD?	
07	How many Medical Doctors are employed full time by the Namibian Police Force?	
08	How many Medical Doctors (employed full time by the Namibian Police Force) have been fully assigned to PTD?	
09	How many registered Nurses are employed full time by the Namibian Police Force?	
10	How many registered Nurses (employed full time by the Namibian Police Force) have been fully assigned to PTD?	
11	How many Clinical Psychologists are employed full time by the Namibian Police Force?	
12	How many Clinical Psychologists (employed full time by the Namibian Police Force) have been fully assigned to PTD?	

13					
C	PRE-TRIAL DETENTION IN PLANNING/STRATEGIC PLANNING AND MANAGEMENT AT THE NAMIBIAN POLICE FORCE				
01	How does PTD feature in the strategic plan/s of the Namibian Police Force: Provide relevant sections of the current and previous Strategic Plan				Text doc.
02	How is PTD affected by the MISSION and VISION of the Namibian Police Force: Provide relevant sections of the current and previous MISSION/VISION				Text doc.
D	PRE-TRIAL DETENTION AND FACILITY MANAGEMENT (POLICY)				
01	Provide any policy document relating to the management of PTD populations at Police Stations (general)				Text doc.
02	Provide any policy document relating to the visiting times for PTD populations at Police Stations (visits)				Text doc.
03	Provide any policy document relating to the daily time outside the cell for PTD populations at Police Stations (time outside the cell)				Text doc.
04	Provide any policy document relating to the leisure times for PTD populations at Police Stations (leisure)				Text doc.
05	Provide any policy document relating to organized religious programmes /activities for PTD populations at Police Stations (religion)				Text doc.
06	Provide any policy document relating to the provision of healthy/diverse diet for PTD populations at Police Stations (food)				Text doc.
E	FINANCES / BUDGET				
E1	Revenue and Expenses of the Namibian Police Force / financial year (total)				
	TOTALS	YEAR	Revenue	Expenses	Surplus/ Deficit
		2020			
		2019			
		2018			
		2017			
		2016			
E2	Revenue and Expenses of the Namibian Police Force / financial year (pertaining to PTD only+)				
	FINANCES PERTAINING TO PTD (ONLY)	YEAR	Revenue (if any)	Expenses	Surplus/ Deficit
		2020			
		2019			
		2018			
		2017			
		2016			

PTD Facilities, features and services (NAMPOL)

S/N	Region	Police Station Name	Actual number of PTD+H2+E2:AD2+H2+E2:AD+E2:AD2+E2:AD2	No of Holding Cells	Official Holding Capacity	Actual number of PTD	PTD Area in Terms of <u>Surface</u> : m2	PTD Area in Terms of <u>Volume</u> : m3	No of Toilette Facilities (TOTAL)	No of Toilette Facilities (FEMALE)	No of Toilettes Facilities (MALE)	Provision of toiletries for PTD: Yes/No	No of Showers (FEMALE)	# Female Showers: cold/warm	No of Showers (MALE)	# Male Showers: cold/warm	Dedicated Visiting Space: Yes/No	Dedicated Visiting Area <u>Surface</u> : m2	# staff: FULLY assigned to PTD	# staff: PARTIALLY assigned to PTD	Social Worker/s assigned: Yes/No	Health Worker/s assigned: MD/Nurse Yes/No	Mental Health service: Clinical Psychologist / Psychiatrist Yes/No	Gym for PTD: YES/NO	Library for PTD: YES/NO	Safety & Security Contingency Plans: YES/NO	# Fire-extinguishers:	# First Aid Kits:
1	Erongo	Swakopmund Police Station																										
2		Mondesa Police Station																										
3		Walvisbay Police Station																										
5		Narraville Police Station																										
7		Walvisbay Poort Police Station																										

Etcetera....

Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

Interview Schedules Magistrates

Duty Station:		
Position:		
Years of Experience (PTD):		
Age:		
Sex		

Background

When a person is arrested or immediately after, significant issues must be addressed in pretrial release and detention decisions. Those involve rapid decisions addressing key types of risks potentially posed by the arrested person: (1) the risk that the accused will abscond (failure to appear), (2) the risk that the accused will interfere with any witness for the prosecution or with the police investigation, (3) the risk that the accused will pose for community safety or to the safety of specific individuals (pertaining to the interest of the public or the administration of justice)? From a systemic perspective, these decisions require consideration of additional issues, for instance bearing on effective practices or protocols that allow decision makers to make evidence-based decisions that take these risks into account; room for improvement in the processes that magistrates and other justice system decision makers now follow; and eventually problems or build upon strengths to improve the quality and effectiveness of pretrial decision-making.

With the aim to gauge the experience and understanding of issues in pretrial release and detention decisions, the schemes below intended to be covered during in depth interviews with Magistrates:

1. The core principles relevant to pretrial justice practices
2. Magistrates' views on challenges and / or obstacles to pretrial decision making.
3. Magistrates' suggestions on ways to improve existing practices.
4. Perceptions of the national picture and key trends in release or detention decision-making.
5. Views on the need for improvements in pretrial justice and practical steps that can be taken in the near future, consistent with the core principles relevant to pretrial justice practices.

Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

Interview Schedules Prosecutors

Duty Station:		
Position:		
Years of Experience (PTD):		
Age:		
Sex		

Background

When a person is arrested or immediately after, significant issues must be addressed in pretrial release and detention decisions. Those involve rapid decisions addressing key types of risks potentially posed by the arrested person: (1) the risk that the accused will abscond (failure to appear), (2) the risk that the accused will interfere with any witness for the prosecution or with the police investigation, (3) the risk that the accused will pose for community safety or to the safety of specific individuals (pertaining to the interest of the public or the administration of justice)? From a systemic perspective, these decisions require consideration of additional issues, for instance bearing on effective practices or protocols that allow decision makers to make evidence-based decisions that take these risks into account; room for improvement in the processes that magistrates and other justice system decision makers now follow; and eventually problems or build upon strengths to improve the quality and effectiveness of pretrial decision-making. Whereas these decisions are vested in the magistrates and other peace officers, prosecutors play an influential role, too.

With the aim to gauge the experience and understanding of issues in pretrial release and detention decisions, the schemes below intended to be covered during in depth interviews with Prosecutors:

1. The core principles relevant to pretrial justice practices
2. Prosecutors' views on challenges and / or obstacles to pretrial decision making.
3. Prosecutors' suggestions on ways to improve existing practices.
4. Perceptions of the national picture and key trends in release or detention decision-making.
5. Views on the need for improvements in pretrial justice and practical steps that can be taken in the near future, consistent with the core principles relevant to pretrial justice practices.

Police station	
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Questionnaire number			
----------------------	--	--	--

PRETRIAL DETAINEES: A RISK AND NEEDS ASSESSMENT

Questionnaire instructions

1. The questionnaire administrator(s) will guide you in completing the questionnaire which will take you approximately 40 minutes to complete.
2. Do not hesitate to ask questions if you are not sure about anything regarding the questionnaire. Feel free to stop the administrator(s) if he/she is moving along too quickly for you.
3. Answer all the questions appropriately and honestly.
4. The questions are formulated in such a manner that you need only indicate your choice by writing a short answer or placing a cross (X) in the applicable square provided. Use only the pencils provided by the administrator to complete the answer sheet and return the pencils with your completed answer sheet to the administrator. Erase changes/errors completely and select the correct answer.

Example: How to complete questions: Indicate your choice with a cross (x), for example; I am a ☐ Male ☒ Female

5. Read every question carefully before answering it, as some questions may require that you indicate more than one option.
6. If there are questions that need a written answer and you cannot write, ask the administrators to write the answer down for you.
7. It will take you approximately 30 minutes to complete the questionnaire.

SECTION A: BIOGRAPHICAL INFORMATION

In this section, we will ask you to provide some background information about yourself.

1. I'm an awaiting trial detainee who:
 1. ☐ Is awaiting the outcome of a police investigation/Prosecutor-General's decision to prosecute
 2. ☐ is awaiting trial (to be found innocent or guilty)
 3. ☐ has been found guilty but are awaiting my sentence
2. My current age is _____ years (e.g. 27).
3. I am a: Female ☐ Male ☐ Other ☐
4. My country of nationality is (*indicate only one country*):
 1. ☐ Angola
 2. ☐ Namibia
 3. ☐ South Africa
 4. ☐ Zambia
 5. ☐ Zimbabwe
 6. ☐ Other (Specify): _____
5. Do you consider yourself to have a disability? If yes, indicate the disability below.

6. My home language is (*indicate only one language*):

1. ☐ Afrikaans
2. ☐ English
3. ☐ Nama/Damara/Khoekhoegowab
4. ☐ Oshiwambo
5. ☐ Otjiherero
6. ☐ Rukwangali
7. ☐ Silozi
8. ☐ San
9. ☐ Other (specify): _____

7. In which region does your family (partner/children) stay (*indicate only one region*):

- | | |
|--|--|
| 1. <input type="checkbox"/> Erongo | 8. <input type="checkbox"/> Ohangwena |
| 2. <input type="checkbox"/> Hardap | 9. <input type="checkbox"/> Omaheke |
| 3. <input type="checkbox"/> !Karas | 10. <input type="checkbox"/> Omusati |
| 4. <input type="checkbox"/> Kavango East | 11. <input type="checkbox"/> Oshana |
| 5. <input type="checkbox"/> Kavango West | 12. <input type="checkbox"/> Oshikoto |
| 6. <input type="checkbox"/> Khomas | 13. <input type="checkbox"/> Otjozondjupa |
| 7. <input type="checkbox"/> Kunene | 14. <input type="checkbox"/> Zambezi |
| | 15. <input type="checkbox"/> None of the regions |

8. Indicate your current marital status (*choose only one*):

1. ☐ Cohabitation (Stay together)
2. ☐ Married/Customary marriage
3. ☐ Not married (single)
4. ☐ Widowed
5. ☐ Divorced

9. How many children of your own under the age of 18 do you have?

1. ☐ None
2. ☐ One to two
3. ☐ Three to four
4. ☐ Five or more

10. Where/with whom are your children under the age of 18 living during your detention?

1. ☐ By themselves (child headed household)
2. ☐ Foster parent
3. ☐ All with their mothers
4. ☐ Some with their mother/s, others with my family (parents, brother/s, sister/s)
5. ☐ I do not know where my child/children is/are currently

11. Is this the first time you have been detained as awaiting trial offender? Yes ☐ No ☐
12. **Before** placed in police custody were you (*choose only one*):
1. ☐ Unemployed (no job)
 2. ☐ Employed (e.g. private company, government, individual employer, including taxi driver)
 3. ☐ Living from the profits of crime
 4. ☐ Other (specify, e.g., pensioner, gardener, painter): _____
13. When released from police custody will you be (*choose only one*):
1. ☐ Unemployed (no job)
 2. ☐ Employed (e.g. private company, government, individual employer, including taxi driver)
 3. ☐ Living from the profits of crime
 4. ☐ Other (specify, e.g., domestic worker, handyman, welder): _____
14. Indicate what you earned (were paid) before being detained in police cells (*choose only one*):
1. ☐ N\$ 0 – 500 per month
 2. ☐ N\$ 501 – 2,000 per month
 3. ☐ N\$ 2,001 – 5,000 per month
 4. ☐ N\$ 5,001 – 10,000 per month
 5. ☐ N\$ 10,000 or more per month
15. Indicate if you can speak, read and/or write in **English**.
- | | | |
|----------|------------------------------|-----------------------------|
| 1. Speak | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Read | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Write | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
16. If your answers to question 15 is 'yes', indicate your proficiency (ability) under each item.
- | | | | |
|----------|--------------------------|--------------------------|--------------------------|
| | Excellent | Good | Poor |
| 1. Speak | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Read | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Write | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
17. What is the highest educational level that you have completed (*Choose only the highest level completed*)?
1. ☐ No school education
 2. ☐ Primary school (Grade 1 to 7 / Sub A – Standard 5)
 3. ☐ Junior secondary school (Grade 8 to 10 / Standard 6 - 8)
 4. ☐ Senior secondary school (Grade 11 to 12 / Standard 9 - 10)
 5. ☐ Trade / Apprentice (e.g., hairdresser, tailor, electrician, bricklayer)
 6. ☐ Tertiary education (e.g., college, university)

SECTION B: NEEDS ASSESSMENT

In this section, we will ask you questions about your needs.

18. I have problems, or I need help, with the following (*Indicate all items that apply*):

1. ☐ Alcohol misuse/abuse
2. ☐ Accommodation after release (place/home to stay)
3. ☐ Drug misuse/abuse (e.g., dagga, heroin, medication)
4. ☐ Education (e.g. literacy, writing skills, completing school)
5. ☐ Employment
6. ☐ Mental health (e.g. depression, learning disabilities, suicidal tendencies)
7. ☐ Partner/family relationships (e.g. domestic violence, parenting)
8. ☐ Poor health (e.g. High blood pressure, diabetes, cholesterol, TB, sexually transmitted diseases, HIV/AIDS)
9. ☐ Sexual or physical abuse (victim/perpetrator)
10. ☐ Work skills (e.g. hairdresser, secretarial work, tailor, farming)
11. ☐ Other (Specify): _____
12. ☐ I do not have problems or need help in any of the above

SECTION C: RISK ASSESSMENT

In this section, we will focus on a series of questions that are known to relate to potential risk factors for offending behaviour.

19. How long have you been in police custody now? Years: _____ Months: _____

20. What is the bail amount that you have to pay (*indicate only if applicable*)? N\$ _____

21. I am currently detained for (*if detained for more than one offence, mark all the appropriate blocks*)

1. ☐ Cannot pay/afford the bail imposed by the court
2. ☐ Contempt of court/defeat of course of justice
3. ☐ Culpable homicide
4. ☐ Dealing in drugs/drug trafficking
5. ☐ Default of payment of a fine
6. ☐ Fraud/forgery/bribery/extortion
7. ☐ Housebreaking with intent to steal and theft
8. ☐ Illegal immigration
9. ☐ Motor vehicle theft
10. ☐ Murder
11. ☐ Robbery (e.g. banks, shops)
12. ☐ Sexual offence (e.g. rape, buggery, indecency, child abuse)
13. ☐ Substance abuse (drug/alcohol)
14. ☐ Stock theft
15. ☐ Theft
16. ☐ Traffic offences
17. ☐ Violence against persons (e.g. assault, robbery, wounding/assault GBH)
18. ☐ Other (*specify*): _____

22. The victim(s) of the alleged crime(s) is (Choose all items that apply):

1. ☐ an adult female(s)
2. ☐ an adult male(s)
3. ☐ an adult female(s) and male(s)
4. ☐ A female child/children
5. ☐ A male child/children
6. ☐ Several of the above
7. ☐ No victim (if answered 'no' skip question 23)

23. What is the relationship between you and alleged the victim(s)? (Choose all items that apply):

1. ☐ Associate/friend
2. ☐ Brother/sister
3. ☐ Extended family (e.g., uncle/aunt/cousin)
4. ☐ Own children
5. ☐ Parent (father/mother)
6. ☐ Spouse/partner
7. ☐ Stranger/no relationship

24. How many co-accused are involved in the alleged crime(s) you are detained for?

1. ☐ None
2. ☐ One
3. ☐ Two
4. ☐ Three or more

25. When you committed the alleged crime(s) that you are detained for, where you under the influence of the following: (indicate all items that apply)

1. ☐ Alcohol
2. ☐ Illegal drugs
3. ☐ Homemade alcohol (brew)
4. ☐ Medicines (e.g., pills, cough mixture)
5. ☐ None of the above

26. **Before** detention, did you use drugs such as dagga, cocaine, mandrax and 'tik'?

1. ☐ Yes
2. ☐ No

27. Whilst **detained** in the police cells, have you ever [Answer all questions]:

- | | Never | Sometimes | Often |
|---|--------------------------|--------------------------|--------------------------|
| 1. wanted to hurt yourself (e.g., self-injury/mutilation) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. wanted to kill yourself (e.g., suicide) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. suffered from depression. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

28. Whilst in detention, do you [Answer all questions]:

Yes

No

- | | | |
|--|--------------------------|--------------------------|
| 1. Engage in sexual activities | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Commit petty crimes | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Use alcohol, spirits, etc. illegally | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Use drugs illegally | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have a cell (mobile) phone in your possession | <input type="checkbox"/> | <input type="checkbox"/> |

29. Why did you commit the alleged crime (main offence) you are detained for? (Indicate only the main reason)

- | | |
|---|---|
| 1. <input type="checkbox"/> Bored/nothing to do | 8. <input type="checkbox"/> Revenge |
| 2. <input type="checkbox"/> Depression, mental, emotional problems | 9. <input type="checkbox"/> Stupidity/recklessness/messing about/got carried away |
| 3. <input type="checkbox"/> Family problems (e.g., domestic violence) | 10. <input type="checkbox"/> Temptation/thought I would not get caught |
| 4. <input type="checkbox"/> Needed drugs/alcohol | 11. <input type="checkbox"/> To help family or friends |
| 5. <input type="checkbox"/> Needed food or money to survive | 12. <input type="checkbox"/> Was under the influence of alcohol/drugs |
| 6. <input type="checkbox"/> Peer pressure/led on by others | 13. <input type="checkbox"/> Unemployed |
| 7. <input type="checkbox"/> Provoked/self-defence/led on by victim | 14. <input type="checkbox"/> Not Applicable |
| | 15. <input type="checkbox"/> Other (Specify): _____ |

30. When you are released from the police cells, will you:

- | | | |
|---|------------------------------|-----------------------------|
| 1. Have a job? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Go back to school? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Return to the community where you come from? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Have money (savings) to support yourself? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

31. How many times have you previously been found guilty of a crime (previous convictions)?

1. ☐ None
2. ☐ One
3. ☐ Two
4. ☐ Three or more

32. How many times have you been **sentenced** to imprisonment before?

33. Indicate any other information or concern that you would like to share with the researchers.

oo0 - Thank you for your participation - 0oo

Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

Organizational Police Stress Questionnaire

Below is a list of items that describe different aspects of being a police officer. After each item, please circle how much stress it has caused you over the past 6 months, using a 7-point scale (see below) that ranges from “No Stress At All” to “A Lot of Stress”:

No Stress At All			Moderate Stress			A Lot Of Stress
1	2	3	4	5	6	7

1. Dealing with co-workers	1	2	3	4	5	6	7
2. The feeling that different rules apply to different people (e.g. favouritism)	1	2	3	4	5	6	7
3. Feeling like you always have to prove yourself to the organization	1	2	3	4	5	6	7
4. Excessive administrative duties	1	2	3	4	5	6	7
5. Constant changes in policy / legislation	1	2	3	4	5	6	7
6. Staff shortages	1	2	3	4	5	6	7
7. Bureaucratic red tape	1	2	3	4	5	6	7
8. Too much computer work	1	2	3	4	5	6	7
9. Lack of training on new equipment	1	2	3	4	5	6	7
10. Perceived pressure to volunteer free time	1	2	3	4	5	6	7
11. Dealing with supervisors	1	2	3	4	5	6	7
12. Inconsistent leadership style	1	2	3	4	5	6	7
13. Lack of resources	1	2	3	4	5	6	7
14. Unequal sharing of work responsibilities	1	2	3	4	5	6	7
15. If you are sick or injured your co-workers seem to look down on you	1	2	3	4	5	6	7
16. Leaders over-emphasise the negatives (e.g. supervisor evaluations, public complaints)	1	2	3	4	5	6	7
17. Internal investigations	1	2	3	4	5	6	7
18. Dealing the court system	1	2	3	4	5	6	7
19. The need to be accountable for doing your job	1	2	3	4	5	6	7
20. Inadequate equipment	1	2	3	4	5	6	7

Operational Police Stress Questionnaire

Below is a list of items that describe different aspects of being a police officer. After each item, please circle how much stress it has caused you over the past 6 months, using a 7-point scale (see below) that ranges from “No Stress At All” to “A Lot Of Stress”:

No Stress At All			Moderate Stress			A Lot Of Stress
1	2	3	4	5	6	7

1. Shift work	1	2	3	4	5	6	7
2. Working alone at night	1	2	3	4	5	6	7
3. Over-time demands	1	2	3	4	5	6	7
4. Risk of being injured on the job	1	2	3	4	5	6	7
5. Work related activities on days off (e.g. court, community events)	1	2	3	4	5	6	7
6. Traumatic events (e.g. MVA, domestics, death, injury)	1	2	3	4	5	6	7
7. Managing your social life outside of work	1	2	3	4	5	6	7
8. Not enough time available to spend with friends and family	1	2	3	4	5	6	7
9. Paperwork	1	2	3	4	5	6	7
10. Eating healthy at work	1	2	3	4	5	6	7
11. Finding time to stay in good physical condition	1	2	3	4	5	6	7
12. Fatigue (e.g. shift work, over-time)	1	2	3	4	5	6	7
13. Occupation-related health issues (e.g. back pain)	1	2	3	4	5	6	7
14. Lack of understanding from family and friends about your work	1	2	3	4	5	6	7
15. Making friends outside the job	1	2	3	4	5	6	7
16. Upholding a "higher image" in public	1	2	3	4	5	6	7
17. Negative comments from the public	1	2	3	4	5	6	7
18. Limitations to your social life (e.g. who your friends are, where you socialize)	1	2	3	4	5	6	7
19. Feeling like you are always on the job	1	2	3	4	5	6	7
20. Friends / family feel the effects of the stigma associated with your job	1	2	3	4	5	6	7

The Operational Police Stress Questionnaire is provided free for non-commercial, educational, and research purposes.

Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

Magistrates Court:		Questionnaire number:			
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MAGISTRATES: ATTITUDES TOWARD, PERCEPTIONS AND UNDERSTANDING OF PRE-TRIAL DETENTION AND RELEASE DECISIONS

Questionnaire instructions

1. This is a self-administered questionnaire that will take you approximately 40 minutes to complete.
2. Do not hesitate to ask questions if you are not sure about anything regarding the questionnaire. Feel free to contact Dr S. Schulz, the principle researcher responsible for this survey by mobile phone: 0812 560 280, or e-mail: sschulz@nust.na.
3. Answer all the questions appropriately and honestly.
4. The questions are formulated in such a manner that you need only indicate your choice by writing a short answer or placing a cross (X) in the applicable square provided, or select an answer from a scale.

Example: How to complete questions: Indicate your choice with a cross (x), for example; I am a

Male

☐

Female

☒

5. Read every question carefully before answering it, as some questions may require that you indicate more than one option.

SECTION A: BIOGRAPHICAL INFORMATION

In this section, we will ask you to provide some background information about yourself.

1. I am Magistrate in the position of :
 1. ☐ Divisional Magistrate
 2. ☐ Regional Magistrate
 3. ☐ District Magistrate
 4. ☐ Additional Magistrate
2. As Magistrate, I have _____ years (e.g. 5) of experience.
3. My current age is _____ years (e.g. 34).
4. I am a:

Female ☐ Male ☐ Other ☐

SECTION B: CHALLENGES / OBSTACLES TO EFFECTIVE PRE-TRIAL DECISION MAKING

In this section, we will ask you questions about your work and experience related to Pre-trial Detention.

5. Please, share your view / position in respect of the following statements? Make a cross ✕ on the value of your choice in the following table.

Note: On the Likert-scale hereafter, 0 = full rejection of, and 10 = full concurrence with the respective statement.

S/N	Statement	0	1	2	3	4	5	6	7	8	9	10
01	Decision making about pre-trial release or detention of an accused is affected by the scarcity of information about the accused, as mostly I have only the charge, basic facts set out in a police report and/or probable cause affidavit, and perhaps a summary of the accused prior record.	0	1	2	3	4	5	6	7	8	9	10
02	In general, there is little in the way of objective criteria to guide my exercise of discretion in setting bail amounts and other conditions for release.	0	1	2	3	4	5	6	7	8	9	10
03	At this point, we do not make use of evidence-based risk assessment instruments that can provide magistrates with indications of the level or risk posed by an individual accused.	0	1	2	3	4	5	6	7	8	9	10
04	For evidence-based risk assessment instruments to be useful, especially in respect of s. 61 CPA and offences referred to in Part IV of Schedule 2, they should also focus on the risk that an accused will, if released, commit another (violent or other) offence.	0	1	2	3	4	5	6	7	8	9	10
05	Currently, there is a lack of counsel for the accused at first appearance, although defence counsel could often provide information about the accused history, current employment, living situation, roots in the community, health issues, and the ability to function under specific conditions of release.	0	1	2	3	4	5	6	7	8	9	10
06	In Namibia, but also especially in our magisterial district, we have a lack of options for release in the community, especially for accuse with repeated appearances, i.e. there are no effective community based supervision options that magistrates could employ to mitigate potential risk of non-appearance or further pre-trial criminal offences committed by the released accused.	0	1	2	3	4	5	6	7	8	9	10
07	I am working in a high volume court, and my docket is usually overloaded, i.e. I have very limited time to give more attention to information about the accused.	0	1	2	3	4	5	6	7	8	9	10
08	If I were to consider specific risks of release and possible supervisory options, this would likely slow down the process and lead to longer court days.	0	1	2	3	4	5	6	7	8	9	10
09	Under the current circumstances, I foresee no big changes in the status quo of pre-trial release and detention decisions.	0	1	2	3	4	5	6	7	8	9	10
09.1	If the accused is unable to deposit the bail amount, a “quick” disposition of the case may occur, especially in a case involving a relatively minor offense because the accused is eager to get out of custody.	0	1	2	3	4	5	6	7	8	9	10

09.2	Setting bail high enough to make it difficult or impossible for accused to deposit the bail amount or provide surety, is often viewed as providing magistrates and communities with assurance that accused will not be a risk to public safety.	0	1	2	3	4	5	6	7	8	9	10
09.3	Setting a relatively high bail amount avoids the risk of public criticism of the magistrate and prosecutor that can result if a released accused commits a serious offense.	0	1	2	3	4	5	6	7	8	9	10
09.4	Everyone in the courthouse knows the existing system. Changing to a system that involves consideration of more information about risks and possible release options would require learning new procedures and practices and is likely to provoke resistance from some practitioners	0	1	2	3	4	5	6	7	8	9	10
09.5	People are comfortable with what they know, and often don't see clear advantages to changing to a different system. In particular, judges and other practitioners are not likely to be receptive to being told that what they have been doing for many years is wrong or inappropriate.	0	1	2	3	4	5	6	7	8	9	10

SECTION C: WAYS TO IMPROVE EXISTING PRACTICES

In this section, we will ask your opinions regarding ways to improve existing pre-trial justice decision making and practices toward reducing the (unnecessary) use of pre-trial detention, albeit without jeopardising the interest of the public or the administration of justice.

6. Please, share your view / position in respect of the following statements? Make a cross **✕** on the value of your choice in the following table.

Note: On the Likert-scale hereafter, 0 = full rejection of, and 10 = full concurrence with the respective statement.

S/N	Statement	0	1	2	3	4	5	6	7	8	9	10
01	Knowing who is held in the local pre-trial detention facility (Police) is important. Magistrates and judges need to solicit contemporary data about the capacity and population of their local pre-trial detention facilities, because once justice system practitioners have a sense of who is in their holding cells (and why and for how long), they can begin to think of ways to reduce unnecessary use of expensive custody resources.	0	1	2	3	4	5	6	7	8	9	10
02	A clear definition of the problem is required; defining the problem(s) will help to clarify what approaches are likely to be most promising in improving existing practices, reaching from overcrowding in the pre-trial detention facility; unnecessary detention of persons who pose no real risk to the safety of the community; lack of information that a magistrate needs to make informed decisions about detention or release at the outset of the case; to a lack of available supervisory options that would enable safe release of some accused – to mention few.	0	1	2	3	4	5	6	7	8	9	10
03	Develop a collaborative approach to system improvement, i.e. the judiciary working collaboratively with other stakeholders to examine their existing systems and seek improvements.	0	1	2	3	4	5	6	7	8	9	10

04	Learn from practitioners in other jurisdictions – especially about pre-trial justice system improvements that have worked well; e.g. learning more about the risk assessment tools and supervisory options used in jurisdictions that have made progress in improving previously existing practices.	0	1	2	3	4	5	6	7	8	9	10
05	Incremental improvements starting slowly, with the initial steps being the identification of existing practices and comparison with effective practices used in other jurisdictions; once the current situation is understood and the range of potential options is identified, it is possible to design and implement changes that can be tailored to the circumstances of our jurisdiction.	0	1	2	3	4	5	6	7	8	9	10
06	Educate magistrates and judges, as well as other justice system stakeholders (including prosecutors, defence counsel, law enforcement, staff, and local community officials) about the need and opportunity for significant improvements in pre-trial justice policies and practices; education is an essential prerequisite for significant change in existing practices.	0	1	2	3	4	5	6	7	8	9	10

7. Indicate any other information or concern that you would like to share with the researchers.

oo0 - Thank you for your participation - 0oo

Rethinking Pre-trial Detention (PTD) – a baseline study

Department of Social Sciences (NUST): 2021 - 2022

Duty Station / Court:		Questionnaire number:			
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PROSECUTORS: ATTITUDES TOWARD, PERCEPTIONS AND UNDERSTANDING OF PRE-TRIAL DETENTION AND RELEASE DECISIONS

Questionnaire instructions

1. This is a self-administered questionnaire that will take you approximately 40 minutes to complete.
2. Do not hesitate to ask questions if you are not sure about anything regarding the questionnaire. Feel free to contact Dr S. Schulz, the principle researcher responsible for this survey by mobile phone: 081 256-0280, or e-mail: sschulz@nust.na.
3. Answer all the questions appropriately and honestly.
4. The questions are formulated in such a manner that you need only indicate your choice by writing a short answer or placing a cross (X) in the applicable square provided, or select an answer from a scale.

Example: How to complete questions: Indicate your choice with a cross (x), for example; I am a

Male

☐

Female

☒

5. Read every question carefully before answering it, as some questions may require that you indicate more than one option.

SECTION A: BIOGRAPHICAL INFORMATION

In this section, we will ask you to provide some background information about yourself.

1. I am Prosecutor in the position of :
 1. ☐ Control Prosecutor
 2. ☐ Prosecutor
 3. ☐ Other (indicate): _____
2. As Prosecutor, I have _____ years (e.g. 5) of experience.
3. My current age is _____ years (e.g. 34).
4. I am a:

Female ☐ Male ☐ Other ☐

SECTION B: CHALLENGES / OBSTACLES TO EFFECTIVE PRE-TRIAL DECISION MAKING

In this section, we will ask you questions about your work and experience related to Pre-trial Detention.

5. Please, share your view / position in respect of the following statements? Make a cross ✕ on the value of your choice in the following table.

Note: On the Likert-scale hereafter, 0 = full rejection of, and 10 = full concurrence with the respective statement.

S/N	Statement	0	1	2	3	4	5	6	7	8	9	10
01	Decision making about pre-trial release or detention of an accused is affected by the scarcity of information about the accused, as mostly the presiding officer (Magistrate, Judge) has only the charge, basic facts set out in a police report and/or probable cause affidavit, and perhaps a summary of the accused prior record.	0	1	2	3	4	5	6	7	8	9	10
02	In general, there is little in the way of objective criteria to guide exercise of discretion in setting bail amounts and other conditions for release.	0	1	2	3	4	5	6	7	8	9	10
03	At this point, we do not make use of evidence-based risk assessment instruments that can provide indications of the level or risk posed by an individual accused.	0	1	2	3	4	5	6	7	8	9	10
04	For evidence-based risk assessment instruments to be useful, especially in respect of s. 61 CPA and offences referred to in Part IV of Schedule 2, they should also focus on the risk that an accused will, if released, commit another (violent or other) offence.	0	1	2	3	4	5	6	7	8	9	10
05	Currently, there is a lack of counsel for the accused at first appearance, although defence counsel could often provide information about the accused history, current employment, living situation, roots in the community, health issues, and the ability to function under specific conditions of release.	0	1	2	3	4	5	6	7	8	9	10
06	In Namibia, but also especially in our magisterial district, we have a lack of options for release in the community, especially for accuse with repeated appearances, i.e. there are no effective community based supervision options that Prosecutors could employ to mitigate potential risk of non-appearance or further pre-trial criminal offences committed by the released accused.	0	1	2	3	4	5	6	7	8	9	10
07	The courts which I serve as prosecutor, are mostly high volume courts, usually operating under overloaded dockets, i.e. there is usually very limited time to give more attention to information about the accused.	0	1	2	3	4	5	6	7	8	9	10
08	If stakeholders were to consider specific risks of release and possible supervisory options, this would likely slow down the process and lead to longer court days for all.	0	1	2	3	4	5	6	7	8	9	10
09	Under the current circumstances, I foresee no big changes in the status quo of pre-trial release and detention decisions.	0	1	2	3	4	5	6	7	8	9	10
09.1	If the accused is unable to deposit the bail amount, a “quick” disposition of the case may occur, especially in a case involving a relatively minor offense because the accused is eager to get out of custody.	0	1	2	3	4	5	6	7	8	9	10

09.2	Setting bail high enough to make it difficult or impossible for accused to deposit the bail amount or provide surety, is often viewed as providing magistrates, prosecutors and communities with assurance that accused will not be a risk to public safety.	0	1	2	3	4	5	6	7	8	9	10
09.3	Setting and requesting a relatively high bail amount avoids the risk of public criticism of the magistrate and prosecutor that can result if a released defendant commits a serious offense.	0	1	2	3	4	5	6	7	8	9	10
09.4	Everyone in the courthouse knows the existing system. Changing to a system that involves consideration of more information about risks and possible release options would require learning new procedures and practices and is likely to provoke resistance from some practitioners	0	1	2	3	4	5	6	7	8	9	10
09.5	People are comfortable with what they know, and often don't see clear advantages to changing to a different system. In particular, judges and other practitioners are not likely to be receptive to being told that what they have been doing for many years is wrong or inappropriate.	0	1	2	3	4	5	6	7	8	9	10

SECTION C: WAYS TO IMPROVE EXISTING PRACTICES

In this section, we will ask your opinions regarding ways to improve existing pre-trial justice decision making and practices toward reducing the (unnecessary) use of pre-trial detention, albeit without jeopardising the interest of the public or the administration of justice.

6. Please, share your view / position in respect of the following statements? Make a cross **✕** on the value of your choice in the following table.

Note: On the Likert-scale hereafter, 0 = full rejection of, and 10 = full concurrence with the respective statement.

S/N	Statement	0	1	2	3	4	5	6	7	8	9	10
01	Knowing who is held in the local pre-trial detention facility (Police) is important. Prosecutors, magistrates and judges need to solicit contemporary data about the capacity and population of their local pre-trial detention facilities, because once justice system practitioners have a sense of who is in their holding cells (and why and for how long), they can begin to think of ways to reduce unnecessary use of expensive custody resources.	0	1	2	3	4	5	6	7	8	9	10
02	A clear definition of the problem is required; defining the problem(s) will help to clarify what approaches are likely to be most promising in improving existing practices, reaching from overcrowding in the pre-trial detention facility; unnecessary detention of persons who pose no real risk to the safety of the community; lack of information that a magistrate needs to make, and prosecutors to ask for informed decisions about detention or release at the outset of the case; to a lack of available supervisory options that would enable safe release of some defendants – to mention few.	0	1	2	3	4	5	6	7	8	9	10
03	Develop a collaborative approach to system improvement, i.e. the judiciary working collaboratively with other stakeholders to examine their existing systems and seek improvements.	0	1	2	3	4	5	6	7	8	9	10

04	Learn from practitioners in other jurisdictions – especially about pre-trial justice system improvements that have worked well; e.g. learning more about the risk assessment tools and supervisory options used in jurisdictions that have made progress in improving previously existing practices.	0	1	2	3	4	5	6	7	8	9	10
05	Incremental improvements starting slowly, with the initial steps being the identification of existing practices and comparison with effective practices used in other jurisdictions; once the current situation is understood and the range of potential options is identified, it is possible to design and implement changes that can be tailored to the circumstances of our jurisdiction.	0	1	2	3	4	5	6	7	8	9	10
06	Educate prosecutors, magistrates and judges, as well as other justice system stakeholders (including prosecutors, defence counsel, law enforcement, staff, and local community officials) about the need and opportunity for significant improvements in pre-trial justice policies and practices; education is an essential prerequisite for significant change in existing practices.	0	1	2	3	4	5	6	7	8	9	10

7. Indicate any other information or concern that you would like to share with the researchers.

oo0 - Thank you for your participation - 0oo



ANNEX PTD-14

INFORMED CONSENT FORM FOR NONTHERAPEUTIC RESEARCH

Title of the study:

Rethinking pre-trial detention in Namibia

Introduction

The principal researchers, namely Dr Hennie Bruyns and Dr Stefan Schulz, are working for the *Namibia University of Science and Technology (NUST)* and are doing research on pretrial detention in Namibia.

We will be giving you information and invite you to be part of this research. Before you decide to participate in this study, it is important that you understand why the research is being done and what it will involve. This document may contain words that you do not understand. Please ask us to stop as we go through the information and we will take time to explain. If you have questions later, please feel free to ask any of us or the research assistants to explain anything that is not clear or should you need more information regarding the research.

Purpose of the study

The purpose of this study is to develop a holistic view of the current state of affairs in the use of pre-trial detention, its consequences at national, community and individual level, i.e. a baseline study for future reference on how best to respond to the needs of pre-trial detainees and the need for reducing the arbitrary and excessive use of pretrial detention in Namibia.

In view of the above, the researchers intends to investigate how many people are detained in police cells, for what reasons they are detained, what risks they are posing to the community, their needs, and the conditions and treatment under which they are detained.

Your participation in this research will provide valuable information, which will assist the researchers and the criminal justice sector to understand the challenges experienced by persons detained in police cells and by police officers in the management of persons in custody. Strategies that move the criminal justice system away from the reliance on monetary bail and toward greater use of pre-trial release hold promise for reducing the overuse of pre-trial detention. These changes may benefit not only the people who are held in pre-trial detention, their families and the communities which they come from, but may also bring about substantial cost savings for the criminal justice system.

Participant selection

You are invited to take part in this research because we feel that your experience as a person detained in police holding cells or working as a police officer with detainees can contribute much to our understanding and knowledge of your personal problems and frustrations experienced at the police holding cells. It is not possible to ask all persons in pre-trial detention or police officers to participate in this research and we therefore request you to complete the questionnaire to help the researchers to achieve the research goal.

Procedures

You will be asked to complete a questionnaire that will be provided to you by the researchers or research assistants. You may answer the questionnaire yourself, or the survey administrators will be available to assist you in the completion thereof.



The questions are formulated in such a manner that you need only indicate your choice with a cross (X) on the questionnaire. If there are questions that need a written answer and you cannot write, you may ask the survey administrators to write the answer down for you. It will take you approximately 40 minutes to complete the questionnaire.

Confidentiality

As indicated above, a questionnaire will be provided to you by the researchers or research assistants. No one (e.g., researchers, survey administrators, police officers) will be allowed close to you or to interfere without your permission whilst you complete the questionnaire. After completion of the questionnaire, you will be asked to place it into a container.

The information you provide is confidential. Do not write your name or any identifying information on your questionnaire or answer sheet, as you do not need to be identified at all. The survey administrators will take possession of all the questionnaires and no police officer or anyone else (except the researchers) will have access to the answers provided on the questions posed to you.

All hard and soft copies of data collected will be kept in a lockable steel cabinet in possession of Dr Bruyns. An external drive will be used to protect electronic data. Computer passwords, firewalls, anti-virus software, encryption and other measures to protect data from unauthorised access, loss or modification will be used.

The above procedures will ensure that personal information will not be available to any person and no one will be able to identify you or disseminate any information about you to anyone.

Risks

The researchers will ask you to share some personal and confidential information, and you may feel uncomfortable in answering these questions. You do not have to answer any question if you do not wish to do so. You do not have to give any reason for not responding to any question or for refusing to take part in the study.

Sensitive questions that will be posed to you (pre-trial detainees) is, for example, admitting to the use alcohol or drugs, being involved in illegal activities or criminal behaviour or having a feeling of depression, self-injury or suicide.

Do not disclose any criminal or illegal activity that you might be involved in or intend getting involved in. Should you disclose any criminal activity, the researchers will have no choice than to disclose such illegal activities that might pose a threat to other people, property, institution or government.

Voluntary participation

Your participation in this study is voluntary. You do not have to take part in this research if you do not wish to do so, and choosing to participate will not affect your detention in the police cells or your work as police officer in any way.

If you decide to take part in this study, you will be asked to sign a consent form. After you sign the consent form, you are still free to withdraw at any time and without giving a reason. Withdrawing from this study will not affect the relationship you have, if any, with the researchers or their helpers. If you withdraw from the study before data collection is completed, your questionnaire will be destroyed in your presence.



Benefits

There will be no immediate or direct benefit to you for your participation in this research. However, we hope that the information obtained from this research may provide valuable information, which will assist the researchers and the criminal justice system in the future to develop strategies that move the criminal justice system away from the reliance on pre-trial detention, monetary bail and toward greater use of pre-trial release.

This study will also provide the criminal justice system with a better understanding of the nature of alleged crimes committed, and the risks and needs of persons in pre-trial detention. The research findings will assist the police and courts to take informed decisions regarding effective diversion strategies instead of pre-trial detention and unaffordable bail practices.

The broader community can benefit from this study in that they will be able to recognise their role in the support and reintegration of persons who were detained in police cells into the community.

Compensation for participation

Participation in this research project is voluntary. You will not be paid or receive a special reward such as release from custody for participating in this research.

Sharing of research findings

The research findings will be shared with the criminal justice sector (police, courts and correctional services authorities) and community members who can play a role in crime prevention. The research findings will also be presented to the public and on conferences, and published in academic journals, books or on criminal justice or related websites. When the results of the research are published, presented and or discussed with stakeholders, no identifiable information will be used.

Whom to contact

If you have any questions, you can ask them now or later. If you wish to ask questions later, you may contact the **Principal Researchers**:

Dr Hennie Bruyns	Tel: +264 61 207-2988	E-mail: hjbruyns@nust.na .
Dr Stefan Schulz	Tel: +264 61 207-2318	E-mail: ssschulz@nust.na

Requests/complaints

This research proposal has been reviewed and approved by the *Faculty of Human Sciences Research Ethical Committee* (F-REC) which is a committee whose task it is to make sure that research participants are protected from harm. If you have questions, concerns, or complaints about your rights as a research participant or the research in general and are unable to contact the principal researchers, or if you want to talk to someone independent of the research team, please address your requests/complaints to Dr Pilisano Masake (Associate Dean: Research and Innovation). His contact details are:

Tel: +264 61 207-2063
E-mail: pmasake@nust.na

The proposal and ethical clearance application has also been reviewed by the *National Commission on Research Science and Technology* (NCRST) in Namibia, who also approved the research project.



CERTIFICATE OF CONSENT

Statement by the researcher/person taking consent

I have accurately read out the information contained in the consent form to the potential participant(s), and to the best of my ability made sure that the participant(s) understands the content.

I confirm that the participant(s) was given an opportunity to ask questions about the study, and all the questions asked by the participant(s) have been answered correctly and to the best of my ability. I confirm that the participants has not been coerced into giving consent, and the consent has been given freely and voluntarily.

A copy of this consent form has been provided to the Head of the Police station should any participant ask for a personal copy thereof for his/her personal use.

Signature of Researcher:

Name of Researcher:

Signature of witness:

Name of witness:

Date (Day/month/year):



Statement of consent by participant

I have read the foregoing information, or it had been read and explained to me. I understand the provided information and had the opportunity to ask questions. I understand that my participation is voluntary and that I am free to withdraw at any time without giving a reason. My questions have been answered to my satisfaction. I understand that I will be given a copy of this consent form should I request one. I voluntarily agree to take part in this study.

Name of Participant (Print): _____

Signature of Participant: _____

Date (Day/month/year): _____

Statement of consent if illiterate ¹

I have witnessed the accurate reading of the consent form to the potential participant, and the individual has had the opportunity to ask questions. I confirm that the individual has given consent freely.

Name of witness: _____

Signature of witness: _____

Date (Day/month/year): _____

Thumb print of participant:

1 A literate witness must sign (if possible, this person should be selected by the participant and should have no connection to the research team). Illiterate participants should include their thumbprint as well.