TRANSPARENCY INTERNATIONAL Rwanda

The Legal Aid Forum
Working Together For Equitable Access to Justice

POLICY RESEARCH ON THE IMPLEMENTATION OF ALTERNATIVES TO IMPRISONMENT IN RWANDA

CONDUCTED BY: TRANSPARENCY INTERNATIONAL RWANDA
UNDER THE LEGAL AID CIVIL SOCIETY FUND

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Introduction to the Legal Aid Civil Society Fund (LASCF)

The Legal Aid Civil Society Fund (LACSF) under the Legal Aid Forum is a local grant-making fund supported by the Embassy of Kingdom of Netherlands that started in 2008 and still runs up to date. This program financially supports projects implemented by LAF members that aim at providing quality and accessible legal aid services to the vulnerable groups and those that research and advocate for improved access to justice and human rights in Rwanda. Under LACSF, research and advocacy activities that seek to identify ways to improve access to justice in Rwanda are financially supported, and therefore this policy research was supported by LAF under the LACSF.

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LIST OF ACCRONYMS

ECOSOC:	Economic and Social Council
Ed.:	Edition
ILPD:	Institute of Legal Practice and Development
MNIJUST:	Courts and the Ministry of Justice
n°:	number
NPPA:	National Public Prosecution Authority
p.:	page
pp.:	pages
RBA:	Rwanda Broadcasting Agency
RCS:	Rwanda Correctional Services
RES:	Resolution
RIB:	Rwanda Investigation Bureau
TIG:	Travaux d'Intérêts Général
UN:	United Nations
UNODC:	United Nations Office on Drugs and Crime

EXECUTIVE SUMMARY

This report presents the findings of a study on the implementation of alternatives to imprisonment in Rwanda, conducted by Transparency International Rwanda, with support from the Legal Aid Forum. The overall objective of the project of which this study was part was "to promote effective implementation of alternatives to imprisonment for improved access to justice." More specifically, the project aimed to a) conduct a research on alternatives to imprisonment in Rwanda and, based on the study findings, b) advocate for regular use of the alternatives to imprisonment.

The research used both quantitative and qualitative approaches to assess the effectiveness of alternatives to imprisonment, assess the implementation of alternatives to imprisonment and understand the role of alternatives to imprisonment for improved access to justice. This study involved judges, prosecutors and advocates as respondents; the majority of these were advocates (56.55%), followed by judges (31.84%) and prosecutors (11.61%). The prosecutors are the least represented in the study because they were also less represented in the study population. In fact, their number is less than that of judges and advocates at the court level.

There were more male (62.17%) than female (37.83%) respondents and this is also reflected in the study population. This shows the predominance of male practitioners in the legal field. In terms of experience in the legal practice, the survey shows that the majority of respondents (71.2%) possess vast experience, ranging from 6 to 15 years.

This report presents the findings on the following: the availability of alternatives to imprisonment, the role of these in promoting access to justice, the persons qualified to benefit from alternatives to imprisonment, the sanctions for failure to comply with alternatives to imprisonment, the obstacles to the implementation of alternatives to imprisonment, effectiveness of the implementation of alternatives to implementation, the strategies to improve the implementation of alternatives to imprisonment and recommendations.

Availability of alternatives to imprisonment

The study found the existence of various alternatives to imprisonment in Rwanda. For example, at the pre-trial stage, the authorities (investigators, prosecutors and judges) who are empowered to impose alternatives to imprisonment have different alternatives to imprisonment at their disposal. They include bail, compensation, negotiations, fine without trial and other measures such a person being required to meet one or more of these conditions: to remain at a specific address, report on a daily or periodic basis to a specified authority, surrender passports or other identification papers and accept supervision by electronic tagging and tracking. All these alternative measures aim at replacing pre-trial detention. At the sentencing stage, the Rwandan legislation provides for many alternative sanctions which are aimed at replacing prison sentence; they include fine, fully or partially suspended prison sentences, community service and plea bargaining. Furthermore, the offender can also benefit from parole or presidential pardon after sentencing.

In spite of these alternatives, however, the study found that Rwanda is facing a problem of overcrowding in its prisons. The available data shows that the proportion of the number of detainees to the overall prison population is very high. The proportion of pre-trial detainees (for common law offenses only) stood at 18% of all inmates as of May 2022. This situation prevails while the total prison population (for common law offenses only) has slightly decreased (from 66,082 inmates in 2019/2020 to 62,128 inmates as of May 2022). Furthermore, the number of detainees for common law offenses decreased from 34,629 in 2019-2020 to 11,450 as of May 2022. While women prisoners continue to be a minority in prisons, the proportion of the female prison population has increased from 3,537 to 3,968 as of May 2022.

In addition to overcrowding, the National Commission for Human Rights reported that the rights of detainees to a timely and fair trial has not been properly respected. This is because some detainees spend six months and more before being summoned for trial, a situation which violates Article 16 (1) of the Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. The article states that states that "*any case referred to the court must be decided within six (6) months from the date the claim is referred to the Court*". This situation brought Transparency International Rwanda to investigate alternatives measures to imprisonment in Rwanda and how they are enforced in order to reduce the overcrowding in prisons and promote access to justice.

Though there are problems related to overcrowding in prisons and limited access to justice, the study found out that the existing alternative measures to **imprisonment can play justice key role in addressing these problems**. For example, (97.38%) of respondents perceive that the frequent use of alternatives to imprisonment can reduce prison overcrowding, reduce financial costs of imprisonment (98.5% of respondents) and protect the right to be presumed innocent until guilt is proven (95.51% of respondents).

Effectiveness of the implementation of alternatives to implementation

The study analysed the frequency at which the alternatives are used, the consent of the suspect, the authorities empowered to impose the different alternatives, the selection of appropriate alternatives to be applied, the source of information in determining the appropriate alternative sentence and the monitoring of compliance and completion of the alternatives to imprisonment.

In terms of the frequency of the use of alternatives, the study found that available alternatives are sometimes or rarely used at the pre-trial stage. Only 49.44% of respondents confirm the use of bail while 49.06% of them affirm the use of fine without trial and 46.44% of respondents believe on the use of reporting to a specified authority on a daily or periodic basis (46.44%).

Surrendering passports or other identification papers was also used according to (50.94%) of respondents. Negotiations (43.07%) are rarely used as reported by 43.07% of respondents while supervision by electronic tagging and tracking is never used as revealed by (66.29%) of

respondents. The study found out that the use of electronic is quasi impossible because the order of the Minister in charge of justice determining the modalities through which a suspect may be monitored through technology is not yet to come into force.

With reference to available alternatives at the sentencing stage, the study found that they are sometimes or rarely used. For example, fully or partially suspended prison sentences is used as reported by 50.94% of the respondents while 46% of the respondents indicated that plea bargaining is rarely used. This has also been confirmed by the court cases assessed during this study. Among 100 court cases collected from different courts, 70 were related to suspended sentences, with attached conditions such as community services. Thus, the suspended sentence alternative was the most used. This proves that, in practice, different types alternatives are not always used despite their availability in the legislation. The respondents perceive that parole is sometimes (54.31%) or rarely (32.96%) used after sentencing the offender. This is mainly due to the fact that the 2019 Law on criminal procedure requires the Commissioner General of Rwanda Correctional Service to submit the list of applicants for provisional release to the Minister in charge of justice at least once a year (Article 234) and this sounds like one parole process per year is enough.

In sum, this study reveals that the available alternatives to imprisonment (at the pre-trial, sentencing and after sentencing stages) are sometime or rarely used. The limited use of alternatives to imprisonment affects the effectiveness of these alternatives because the latter cannot play their role to reduce prison overcrowding and promote access to justice. Therefore, more efforts are needed to motivate the authorities empowered to impose these alternatives whenever possible and use imprisonment as the last resort.

The authorities empowered to impose the different alternatives

Different institutions are involved in the implementation of alternatives to imprisonment. These are Rwanda Investigation Bureau (RIB), National Public Prosecution Authority (NPPA), Courts and the Ministry of Justice (MNIJUST) (and Rwanda Correctional Services). The study shows that RIB has the power to imposing a bail (for petty and misdemeanor offenses) and other conditions such as the imposition to remain at a specific address, reporting to a specified authority on a daily or periodic basis, surrendering passports or other identification papers and electronic monitoring. However, the implementation rates are very low. For example, 5.24% of the respondents perceive that RIB impose bail and 17.98% perceive that RIB applies other alternative measures such as keeping suspects at a specific address, reporting to a specified authority on a daily or periodic basis, surrendering passports or other identification papers and electronic monitoring.

At the pre-trial stage, the prosecutor has the power to impose a bail, fine without trial, initiate negotiations for an amicable settlement, conduct a plea bargaining and release under some conditions. Though the implementation is still low, the study found out that fine without trial is the most practiced as reported by 35.21% of the participants, followed by negotiations (30%),

conditions to report to a specified authority on a daily or periodic basis (32.96%), remaining at a specific address (29.21%) and bail (20.97%).

The study found that, at the pretrial detention and sentencing stages, the courts have different alternatives to pre-trial detention and imprisonment. Contrary to RIB and NPPA, the study shows that the courts impose alternatives at a relatively higher level. Suspended prison sentence is the most practiced (86%) while negotiations/mediation is the least practiced (54%). A provisional release of a convicted person is requested from the Minister in charge of justice through the Commissioner General of Rwanda Correctional Service. At least once a year, the Commissioner General of Rwanda Correctional Service submits a list of the applicants for provisional release to the Minister in charge of justice.

The criteria used by those authorities in selecting appropriate alternatives

The study respondents indicate that the nature and gravity of the offence (94.76%), the rights of the victim (80.26%) and personality, attitude and background of the offender (74.76%) are the criteria mostly used by the authorities to impose alternatives to imprisonment. However, a few respondents (33%) indicate that some authorities do not consider the above factors. They just consider the provisions of the law without considering other surrounding circumstances of the case. It should be emphasized noted that, though the majority of respondents consider that the nature and gravity of the offense is the most important factor in select an appropriate alternative to impose to the offender, the gravity of the offense should not be an obstacle to the imposition of alternatives to imprisonment. Conversely, the authorities should consider all circumstances surrounding the commission of the offense such as the background of the suspect, confessions and the purpose of punishment (denunciation, deterrence and rehabilitation) to impose alternatives to imprisonment and impose the imprisonment as the last resort. Concerning the source of information in determining the appropriate alternative sentence, the study also found out that the authorities who impose alternatives to imprisonment mainly rely on the information obtained from the offender's profile/background report, medical reports, plea bargaining agreements or mediated agreements.

Furthermore, the study findings point to various challenges facing the implementation of alternatives. These are as follows:

a) limitations imposed by the legislation on alternatives such mandatory minimum sentences that judges must observe;
b) reduced political willingness in putting in place different orders and policies related to the implementation of alternatives to imprisonment;
c) lack of harmony between legislation and practice whereby the 2018 Law on offences and penalties in general contains many provisions with mandatory minimum sentences that judges must impose while, in practice, the Supreme Court found similar provisions unconstitutional;

d) limited resources to support systems on the implementation of alternatives, which makes it difficult to monitor the compliance and completion of alternatives to imprisonment;
e) limited public awareness about existing alternatives to imprisonment and leading to a feeling that the returning of offenders or suspects puts the community in greater danger; and
f) excessive use of imprisonment, especially the pre-trial detention, whereby the pre-trial detention seems to be the "principle" while it should be used as the last resort.

In addition, the respondents revealed that one of the barriers to the effective implementation of alternatives is that the compliance and completion of imposed alternative sanctions are not properly monitored as perceived by 70% of the respondents interviewed This is mainly due to the lack of adequate resources (human and financial and infrastructure).

The study suggested some strategies that can help to improve the use of alternative measures to imprisonment. These include

a) organising trainings on alternatives to imprisonment for judges, prosecutors, ivestigators and defense lawyers;
b) putting in place adequate laws on alternatives to imprisonment which do not impose statutory minimum sentences, extend availability of community service for more offenses and lower thresholds for minimum and maximum sanctions for a wide range of crimes, i.e property crimes not involving threats to life or injury, drug related crimes (personal consumption), etc.;
c) Creation of partnership between the judiciary and civil society organisations that provide alternative sentencing options such as rehabilitation and reintegration programs, access to justice and legal aid or promote community support for alternatives through sensitization campaigns.

The study formulated the following recommendations:

a) amend the 2018 Law on offences and penalties in general and remove all offenses with mandatory minimum sentences;
b) put in place a criminal justice policy which would clearly explain the implementation of alternatives to imprisonment;
c) prohibit the use of pre-trial detention for all offences which can be punished by a fine or community service as alternatives to imprisonment
d) speed up the publication of different orders on the implementation of different alternatives to imprisonment;
e) provide adequate resources (human, financial and infrastructure) to all institutions in charge of implementing alternatives to imprisonment for an effective implementation of alternatives; and
f) organize regular trainings and public awareness campaigns on alternatives to imprisonment.

I. INTRODUCTION

In Rwanda, there are various alternatives that can be used as a means to punish and rehabilitate offenders and Rwanda has used these for some time. For example, community service was introduced in 2005 for genocide perpetrators[1]. Since 2012, with Organic Law no. 01/2012/OL of 02/05/2012 instituting the penal code, community service or travaux d'intérêt général ("TIG") is also available to perpetrators of ordinary crimes.

In 2018, the Rwandan Judiciary elaborated a strategic plan that would guide the interventions towards the achievement of its vision of providing timely and quality justice[2]. This document outlines the objectives in different documents such as (1) achieving fast and effective justice[3], (2) fighting corruption[4], (3) reducing judicial caseload[5] and (4) reducing the pressure on Rwanda's penitentiary system[6].

In 2019, the government of Rwanda introduced new measures as alternatives to imprisonment in its new criminal procedural law[7]. These alternatives include bail[8], negotiations[9], fine without trial[10], some conditions to respect (e.g to remain at a specific address, report to a specified authority on a daily or periodic basis, surrender passports or other identification papers, supervision by electronic tagging and tracking), fully or partially suspended prison sentences (with conditions attached)[11], community service[12], compensation/restitution[13], electronic monitoring[14], parole[15] and plea bargaining[16].

Despite the above alternatives to imprisonment, however, imprisonment is taken as the natural form of punishment in Rwanda. The overall rate of the use of imprisonment is rising every year, while there is little evidence that its increased use corresponds to improved public safety. For example, according to the 2018/19 report of the National Commission for Human Rights, the

[1] Presidential Order nº 10/01 of 07/03/2005 determining the modalities for the implementation of community service as alternative penalty to imprisonment, as modified and complemented.
[2] See The Judiciary of Rwanda, "Strategic plan 2018-2024", p. 1.
[3] The Judiciary of Rwanda, "Strategic plan 2018-2024", p. 18.
[4] Idem, p. 29.
[5] Idem, p. 43-44
[6] See Daniel Sabiiti, "Rwanda Moots Alternative Measures to Reduce Prison Congestion", available at https://www.ktpress.rw/2020/10/rwanda-moots-alternative-measures-to-reduce-prison-congestion/, accessed on 30/04/2021.
[7] See the Law no 027/2019 of 19/09/2019 relating to Criminal Procedure, in *Official Gazette*, n° Special of 08/11/2019 (hereafter the 2019 Law on criminal procedure).
[8] See article 80,6º -85 the 2019 Law on criminal procedure.
[9] See article 24,3º of the 2019 Law on criminal procedure.
[10] See article 25 of the 2019 Law on criminal procedure.
[11] See articles 239-241 of the 2019 Law on criminal procedure.
[12] See article 225 of the 2019 Law on criminal procedure.
[13] See article 24,4º of the 2019 Law on criminal procedure.
[14] See article 70 of the 2019 Law on criminal procedure.
[15] See articles 232-238 of the 2019 Law on criminal procedure
[16] See articles 26-27 of the 2019 Law on criminal procedure.

number of inmates in 14 monitored prisons was 70,152 in total: 64,654 men, 5,059 women, 420 boys and 19 girls. 63,799 of these inmates are prisoners while 6353 are detainees. Besides, 42,548 of these are in jail for common law offences while 27,604 are in jail because of genocide and related crimes.

The report indicates that during the previous five years (2014-2019), the proportion of the number of inmates to the prisons capacity increased as follows: 99.6% in 2014-2015, 96.9% in 2015-2016, 114.60% in 2016-2017, 114.5% in 2017-2018 and 124.8% in 2018-2019. Thus, congestion is generally a challenge for the country's prisons. One typical examples cited in the report is Rwamagana prison in the Eastern Province considered as the most congested facility, with 12,949 inmates, which is more than a double of its capacity to accommodate 5,055 people[17].

In its 2019/2020 report, the Rwandan National Commission for Human Rights indicated that the number of detainees was 66,082, consisting of 61,955 men, 3,511 women, 590 boys and 26 girls. Those who were prosecuted for common law offences totaled 40,979 while those who were prosecuted for genocide and related crimes were 25,103[18]. The same report indicates that the twelve (12) prisons that were inspected by the Commission had a capacity of hosting 48,501 inmates, but it was found out that they hosted 66,082 inmates, which is equivalent to 136% of its capacity. The most overcrowded prisons included Muhanga (225%), Gicumbi (161%), Rwamagana (156.9%), Ngoma (154.6%), Rusizi (144%), Huye (137%), Musanze (135.9%), Bugesera (135%), Nyagatare (127%) and Rubavu (122%).

As can be seen, Rwanda is facing a problem of overcrowded prisons while it is believed that the use of alternatives to imprisonment is a more effective and rational means of responding to crime in many cases and a key measure in mitigating the challenges posed by overcrowded prisons[19]. This report presents the findings of the study on the implementation of alternatives to imprisonment in Rwanda.

[17] See National Commission for Human Rights, "Annual Activity Report-July 2018 - June 2019", September 2020, pp. 37-40..
[18] National Commission for Human Rights, "Annual Activity Report-July 2019 - June 2020", September 2020, p. 48.
[19] See UNODC, "Alternatives to imprisonment", available at https://www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-alternatives-to-imprisonment.html, accessed on 18/06/2021.

1.1. Study Objectives

The overall objective of this study was "*to promote effective implementation of alternatives to imprisonment for improved access to justice*". More specifically, the study was conducted to advocate for increased and regular use of the alternatives to imprisonment.

The study objectives are as follows:

- Explore the legal and institutional frameworks of alternatives to imprisonment in Rwanda;
- Analyze the role of alternatives to imprisonment in promoting the access to justice;
- Examine the effectiveness of the implementation of alternatives to imprisonment in Rwanda;
- Find out obstacles related to the implementation of alternatives to imprisonment in Rwanda;
- Formulate Strategies aimed at improving the implementation of alternatives to imprisonment in Rwanda.

II. Research approach and methodology

This section describes the methodology adopted for the "Policy Research on the implementation of alternatives to imprisonment in Rwanda". It outlines the research approaches and methods, the study population and the sampling plan, the data collection process, data analysis and report drafting, quality assurance and ethical considerations.

The research used both quantitative and qualitative approaches in a bid to triangulate collected data and thereby increase the validity and reliability of the research findings.

2.1. The study population and sampling techniques

The study population is comprised of members of the Judiciary and the NPPA as frontline structures for the use of alternatives to imprisonment. The table below presents the number of judges and that of the NPPA officials as per their respective levels.

Table 1: The Study Sample size

Institution	Number of judges
Judiciary	
Supreme Court Level	7
Court of Appeal Level	13
High Court Level	32
Inspection	6
Intermediate Court Level	99
Primary Court Level	145
Court registrars	312
Total	**614**
National Public Prosecution Authority	
Top Managers	4
Inspectors	5
Prosecutors at the National Level	24
Chief Prosecutors at the Intermediate Level and Head of departments	15
Prosecutors at the Intermediate Level	80
Prosecutors at the Primary Level	57
Assistants of Prosecutors	88
Total	**272**

***Sources*: *Urukiko rw'Ikirenga, "Raporo y'ibikorwa by'Urwego rw'Ubucamanza y'umwaka wa 2019-2020", p. 42; Ubushinjacyaha Bukuru, "Ibikorwa byakozwe n'Ubushinjacyaha Bukuru mu mwaka wa 2019-2020", p. 4.**

The study was conducted countrywide. A random representative sample was selected from the study population using the Raosoft sample size formula as follows: a study population of 886 (i.e: 614 Judges and 272 prosecutors), 5% of margin of error and 95% of confidence level, the sample size for this study is estimated at 246 which is rounded to 250 respondents, including 170 Judges/courts registrars and 80 prosecutors/ assistants. The distribution of respondents by category is presented in Table 2 as follows:

Table 2: Sample size distribution

SN	Courts/NPPA	Number of respondents		Total
		Judges	Prosecutors	
1	Primary Courts (10)	70	30	**250**
2	Intermediate Courts (5)	50	20	
3	High Courts (4)	30	-	
4	Court of Appeal	10	-	
5	Supreme Court	5	-	
6	Prosecutors at National level	-	15	
7	Chief Prosecutors at the Intermediate Level and Head of departments	-	10	
8	Court/NPPA Inspectors	5	5	
Total		**170**	**80**	

To ensure the national representation of the sample, 10 primary courts (2 per province and the city of Kigali) and 5 Intermediate Courts (one per each province and the city of Kigali) were selected. The study population also involved advocates who were interviewed depending on their availability while assisting their clients in courts. Table 3 below provides a list of Primary Courts, Intermediate Courts and High Courts that were included in this study. The selection of these courts was based on a relatively high number of Judges and prosecutors in these institutions.

Table 3: Selected Courts by Province/CoK

Province /CoK	Primary Courts	Intermediate Courts	High Courts
Kigali	PC Nyarugenge, PC Gasabo	IC Nyarugenge	HC Kigali
Western	PC Ngororero, PC Gisenyi	IC Rubavu	HC Nyarugenge
Eastern	PC Nyagatare, PC Kiramuruzi	IC Nyagatare	HC Rwamagana
Northern	PC Byumba, PC Muhoza	IC Musanze	HC Musanze
Southern	PC Gacurabwenge, PC Ngoma	IC Huye	HC Nyanza

Respondents characteristics

Characteristics		Frequency	%
Position	**Judge**	85	31.84
	Prosecutor	31	11.61
	Advocate	151	56.55
Total		267	100
Gender	**Male**	166	62.17
	Female	101	37.83
Subtotal		267	100
Years of experience	**1-5 years**	13	4.9
	6-10 years	94	35.3
	10-15 years	96	35.9
	Over 15 years	64	23.9
Subtotal		267	100

The initial sample size of this study was 250 respondents comprised of 80 prosecutors and 170 judges. However, during the data collection, most of judges and prosecutors were working from home to comply with Covid-19 preventive measures. This is why only 85 judges and 31 prosecutors participated in the study as data was collected face-to-face. In total, 267 respondents were interviewed in this study with advocates being the majority (56.55%), followed by judges (31.84%). The prosecutors were the least represented amongst the participants as was the case for

the study size. This is because, as has been explained, their number at the court level is less than that of judges and advocates. With reference to gender, the majority of respondents were male (62.17%) as opposed to female ones (37.83%). In terms of experience in the legal practice, the survey shows that the majority of respondents (71.2%) possess a vast experience, ranging from 6 to 15 years.

2.2. Data collection methods

2.2.1 Questionnaires

A structured questionnaire was administered to members of the Judiciary and those from NPPA.

2.2.2 Desk review

A review of the Rwandan legal framework on alternatives to imprisonment in comparison to international best practices was conducted. The desk review mainly focused on the aspects such as the available alternatives to imprisonment and the meaning and implementation of each alternative to imprisonment. The key documents that were reviewed include:

(i) United Nations documents

- ✓ Universal Declaration of Human Rights, 1948.
- ✓ International Covenant on Civil and Political Rights, 1966.
- ✓ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984;
- ✓ Convention on the Rights of the Child 1989;
- ✓ Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- ✓ Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power
- ✓ Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988
- ✓ Standard Minimum Rules for Non-Custodial Measures, 1990 (Tokyo Rules);
- ✓ Standards Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules);
- ✓ Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002;
- ✓ Rules for the Protection of Children Deprived of their Liberty, 1990;
- ✓ Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare, 1991;
- ✓ Guiding Principles on Drug Demand Reduction of the General Assembly of the UN, 1998;

(ii) Regional documents

- ✓ The African Charter on Human and Peoples Rights, 1981;
- ✓ The Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998;
- ✓ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003;
- ✓ The African Charter on the Rights and Welfare of the Child 1990;
- ✓ The Kampala Declaration on Prisons in Africa 1996;
- ✓ The Kadoma Declaration on Community Service Orders in Africa 1997;
- ✓ The Ouagadougou Declaration on Accelerating Penal and Prisons' Reform in Africa, 2002.

(iii) National documents

- ✓ The constitution of the republic of Rwanda of 2003 revised in 2015;
- ✓ Law nº68/2018 of 30/08/2018 determining offences and penalties in general
- ✓ Law no 027/2019 of 19/09/2019 relating to Criminal Procedure.

Other sources

- ✓ Strategic plans for NPPA, the Judiciary and RCS;
- ✓ Research and evaluation reports by independent bodies, NGOs, academicians;
- ✓ Published books;
- ✓ Court judgements;
- ✓ Reports of the Judiciary, the National Commission for Human Rights, Rwanda Correctional Service, etc.;
- ✓ Published statistical data;
- ✓ Internet articles
- ✓ Empirical research articles.

2.2.3 Focus Group Discussions (FGDs)

These were used to collect information and views from various categories of people on the role of alternatives to imprisonment in improving access to justice. These people include lawyers, ordinary citizens, members of CSOs and the private sector.

2.2.4 Key informants' interviews (KIIs)

They were conducted with selected people, particularly experts in the area of alternatives to imprisonment, to get their perspectives on the status of implementation of alternatives to imprisonment in Rwanda. More specifically, KIIs involved officials from the following institutions: Rwanda Correctional Service (RCS), the Ministry of Justice, Rwanda Law Reform Commission, Rwanda Investigation Bureau, Rwanda National Police, Institute of Legal Practice

and Development (ILPD), National Commission for Human Rights, Prison Fellowship Rwanda, Detention in Dignity (Deide), Rwanda Bridges to Justice (RBJ), Haguruka, the Youth Association for Human Rights Promotion and Development (AJPRODHO) and Rwanda Bar Association. The discussions focused on their experience about the alternatives, their scope and effectiveness in promoting access to justice and decreasing overcrowding in prisons. These helped better understand the meaning of some numbers which had emerged from quantitative data and desk review data.

2.3.2.3 Data analysis

Data analysis was done differently according to the source of data. Through the desk review analysis, fine without trial the legal framework on alternatives to imprisonment, different aspects on alternative measures were analyzed. The study looked at available alternatives to imprisonment. Therefore, different types of alternative measures were analyzed. In addition, the desk review allowed to analyze the criteria that are used by investigators, prosecutors and judges to determine an appropriate alternative to imprisonment. It was important to analyze how the alternative sanctions are implemented in practice and compare these practices to international principles and recommendations.

Furthermore, data from the questionnaire has enabled researchers to analyze existing sanctions for non-compliance to alternative measures and discuss how effective they are. In order to assess the importance of alternatives to imprisonment, a comparative method was used to complement the perception-based impact measurement. This comparative method allowed to bring in best practices from advanced countries and developed countries that Rwanda can learn from and improve its alternatives to imprisonment.

III. Legal and institutional frameworks for alternatives to imprisonment

3.1. The legal framework on alternatives to imprisonment

3.1.1. The international level

At the global level, imprisonment is considered as a restriction of fundamental human rights of the prisoner. Therefore, many United Nations treaties carefully limit the circumstances under which imprisonment is justified. The existing framework for considering alternatives to imprisonment is restricted primarily to the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules). However, there are additional tools for matters related to alternatives to incarceration as discussed in the next sections.

- **Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)[20]**

The key international standard rules on alternatives to imprisonment are known as the "Tokyo Rules", which are the Standard Minimum Rules for Non-custodial Measures adopted by the United Nations in 1990. They provide a set of basic principles to promote the use of non-custodial measures and sanctions, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Tokyo Rules are based on the premise that alternatives to imprisonment can be effective and "to the best advantage of both the offender and society". The Tokyo Rules outline some key principles including:

- Pre-trial detention shall be used as a means of last resort in criminal proceedings (Rule 6.1);
- Non-custodial alternatives to imprisonment as a sanction should be developed (Rule 1.5);
- Any non-custodial measure or sanction – and its conditions – should be selected based on a number of factors, including the nature and gravity of the offence, and personal characteristics and the background of the person who is charged with, or convicted of, a criminal offence (Rule 3.2);

[20] See UN General Assembly, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), resolution / adopted by the General Assembly, 2 April 1991, A/RES/45/110, available at: https://www.refworld.org/docid/3b00f22117.html, accessed on 03/05/2022.

- Staff or personnel employed to supervise and implement non-custodial alternatives should have professional training and be adequately remunerated in view of the nature of their work (Rule 15.2-3)

Rule 6.2 of the Tokyo Rules emphasize the need for alternatives to pre-trial detention to be employed at as early a stage as possible. Such possible alternatives include releasing an accused person (Rule 5.1) and ordering them to do one or more of the following:

- to appear in court on a specified day;
- not to:
- engage in particular conduct,
- leave or enter specified places or districts, or
- meet specified persons;
- to remain at a specific address;
- to report on a daily or periodic basis to a court, the police or other authority;
- to surrender passports or other identification papers;
- to accept supervision by an agency appointed by the court;
- to submit to electronic monitoring; or
- to provide or secure financial or other forms of security as to attendance at trial or conduct pending trial. The most commonly used alternative is bail.

At the sentencing level, Rule 8.1 of the Tokyo Rules provides that the judicial authority, having at its disposal a range of noncustodial measures, should take the following into consideration in making its decisions: the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate. Rule 8.2 of the Tokyo Rules lists a wide range of dispositions other than imprisonment that can be imposed at the sentencing stage and which, if clearly defined and properly implemented, have an acceptable punitive element. These are:

(a) Verbal sanctions, such as admonition, reprimand and warning;

(b) Conditional discharge;

(c) Status penalties;

(d) Economic sanctions and monetary penalties such as fines and day fines;

(e) Confiscation or an expropriation order;

(f) Restitution to the victim or a compensation order;

(g) Suspended or deferred sentence;

(h) Probation and judicial supervision;

(i) A community service order;

(j) Referral to an attendance centre;

(k) House arrest;

(l) Any other mode of non-institutional treatment;

(m) Some combination of the measures listed above.

At the post-sentencing stage, the competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and assist offenders in their early reintegration into society (Rule 9.1). The post-sentencing dispositions may include (Rule 9.2):
(a) Furlough and halfway houses;
(b) Work or education release;
(c) Various forms of parole;
(d) Remission;
(e) Pardon.

The Tokyo rules are complemented by other instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Standards Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules'), Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters and the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare, 1991.

- **The Universal Declaration of Human Rights**

Article 9 of this declaration stipulates that "no one shall be subjected to arbitrary arrest, detention or exile" and it is complemented by Article 11(1) of the Universal Declaration which states that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence".

- **The International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to liberty and security of person. It particularly stipulates the right to test the legality of one's detention

before a competent and impartial tribunal. In common-law countries, this right is enshrined in the famous writ of habeas corpus. Article 9, paragraph, 1, of the ICCPR stipulates that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

In its General Comment No. 8 concerning Article 9, the Committee of United Nations lays down the elements that must be tested in determining the legality of preventive detention. It states: "if the so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (para. 1), information about the reasons must be given (para. 2) and the court control of the detention must be available (para. 4) as well as compensation in the case of a breach (para. 5). And if, in addition, criminal charges are brought in such cases, the full protection of Article 9(2) and (3), as well as Article 14, must be granted."

Article 14 of the ICCPR states that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". This article provides details on the particularization of rules of procedural fairness for anyone, subject to a criminal charge or criminal proceedings. At the heart of Article 14, and in common with the counterpart Declaration text, is the elemental requirement for 'a fair and public hearing' by an 'independent and impartial tribunal' in criminal and certain civil proceedings. The International Covenant on Civil and Political Rights (Article 14(4)) also emphasizes the desirability of promoting the rehabilitation of juveniles in conflict with the law.

- **The Convention on the Rights of the Child**[21]

The UN Convention on the Rights of the Child unequivocally states that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". (Art 37 (b). The need to prioritize the rehabilitation and re-integration of a convicted juvenile is highlighted in Article 40(1) of the Convention on the Rights of the Child.

- **The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

Article 3(2) of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances specifically requests Parties to establish possession for personal consumption as a criminal offense. Article 24, of the same Convention permits countries to adopt more strict or

[21] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: https://www.refworld.org/docid/3ae6b38f0.html, accessed on 11/05/2022.

severe measures if they are desirable or necessary in order to protect public health and welfare, or prevent or suppress illicit traffic. In this way, no part of the convention requires that non-serious drug offenses be punished with incarceration or any particular penalty.

While the 1988 Convention requests countries to establish personal possession as a criminal offense, it simultaneously widens the scope of application of rehabilitative alternatives or additions to conviction or punishment (in Art 3.4 (b, c, and d)) in the following terms:

"*…in appropriate [supply offenses] of a minor nature, the parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare*."

- **The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment[22]**

Principle 36 (2) of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment forbids any restrictions that are not strictly required for the purpose of the detention or to prevent interference or obstruction of the investigation or the administration of justice. According to Principle 39 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, "except in special cases provided by law', a person is entitled to release pending trial subject to conditions that may be imposed in accordance with the law".

- **Standards Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)[23]**

There are specific rules on children in conflict with the law, known as the Beijing Rules, which stress the need for alternative non-custodial measures. Rule 11 encourages authorities to avoid, wherever appropriate, formal trials while dealing with juvenile offenders (division). Rule 13.1 emphasizes that the detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home (Rule 13.2).

[22] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988.
[23] UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") : resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/33, available at: https://www.refworld.org/docid/3b00f2203c.html, accessed on 12/05/2022.

- **The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules')[24]**

The UN Bangkok Rules were adopted by the UN General Assembly in December 2010 and filled a long-standing lack of standards providing for the specific characteristics and needs of women offenders and prisoners. Historically, prisons and prison regimes (from the architecture of prisons, to security procedures, to healthcare, family contact, work and training) have almost invariably been designed for the majority male prison population–. The 70 Rules give guidance to policy makers, legislators, sentencing authorities and prison staff to reduce the imprisonment of women, and meet the specific needs of women in case of imprisonment. The UN Bangkok Rules explicitly encourage the development and use of gender-specific non-custodial alternatives to pre-trial detention and to imprisonment (not least due to the growing global female prison population).

The Bangkok Rules recognise that many women in conflict with the law do not pose a risk to society and imprisonment frequently has a disproportionately negative impact on their rehabilitation and on their children's lives. Non-custodial measures and sanctions which take women's distinctive needs into account enable women to meet their care-taking obligations serving their sentence at the same time and can be far more effective at addressing the root causes of their offense than spending time in prison.

- **Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters**[25]

"Restorative justice programmes" means any programme that uses restorative processes and seeks to achieve restorative outcomes (Principle 1). A restorative process is any process in which the victim, the offender and, where appropriate, any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, generally with the help of a facilitator. The restorative process may include mediation, conciliation, conferencing and sentencing circles (Principle 2). According to these Basic Principles, a restorative intervention can be used at any stage of the criminal justice process (Principle 6). It can be used at the police level (pre-charge), (b) the prosecution level (post-charge but usually before a trial), (c) the court level (either at the pre-trial or sentencing stages; and, (d) the corrections level (as an alternative to incarceration, as part of or in addition to, a non-custodial sentence, during incarceration, or upon release from prison)[26].

[24] UN General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) : note / by the Secretariat, 6 October 2010, A/C.3/65/L.5, available at: https://www.refworld.org/docid/4dcbb0ae2.html, accessed on 12/05/2022.

[25] Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, E/RES/2002/12, available at: https://www.refworld.org/docid/46c455820.html, accessed on 10/05/2022.

[26] See UNODC, *Handbook on Restorative Justice Programmes*, United Nations, New York, 2006 p. 13.

- **Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare[27]**

In general, mentally ill persons are better treated outside prison. Ideally, they should be in their communities, a principle recognised by the United Nations Principles for the Protection of Persons with Mental Illness. If they need to be treated in a mental health facility, then the facility should be as close to home as possible. However, prisons are not acceptable substitutes for mental health facilities. Mentally ill persons do sometimes commit criminal acts. If no legal procedures exist to commit mentally ill offenders who continue to pose a threat to others to secure mental health facilities, such persons end up in prisons, which are not designed to take care of them.

3.1.2. Regional instruments

- **African Charter on Human and Peoples Rights[28]**

Article 6 of the African Charter guarantees all persons the right to liberty and security of the person, prohibits arbitrary arrest and detention, and provides that a person may only be deprived of their liberty for reasons and conditions previously laid down by law. Arrest should be permitted arrest only in the exercise of powers normally granted to law enforcement officials in a democratic society.

- **The African Charter on the Rights and Welfare of the Child[29]**

Article 17 (3) of the African Charter on the Rights and Welfare of the Child states that "the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation".

- **The Kampala Declaration on Prisons in Africa**

Between 19-21 September 1996, 133 delegates from 47 countries, including 40 African countries, met in a conference in Kampala, Uganda[30]. At the close of the conference, the Kampala Declaration on Prison Conditions in Africa was adopted. The Declaration addresses issues related

[27] UN General Assembly, Principles for the Protection of Persons With Mental Illness and the Improvement of Mental Health Care, 17 December 1991, A/RES/46/119, available at: https://www.refworld.org/docid/3ae6b3920.html, accessed on 10/05/2022

[28] Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: https://www.refworld.org/docid/3ae6b3630.html, accessed on 10/05/2022.

[29] Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), available at: https://www.refworld.org/docid/3ae6b38c18.html, accessed on 12/05/2022.

[30] See Penal Reform International, "Kampala Declaration on Prison Conditions in Africa", available at https://www.penalreform.org/resource/kampala-declaration-prison-conditions-africa/, accessed on 12/05/2022.

to prison conditions, remand prisoners, prison staff and alternative sentencing. With reference to alternative sentencing, the following recommendations were formulated:
1. petty offences should be dealt with according to customary practice, provided this meets human rights requirements and that those involved so agree;
2. whenever possible, petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to the criminal justice system;
3. the principle of civil reparation or financial recompense should be applied, taking account of the financial capability of the offender or of his or her parents;
4. the work done by the offender should, if possible, recompense the victim;
5. community service and other non-custodial measures should, if possible, be preferred to imprisonment;
6. there should be a study of the feasibility of adapting successful African models of non-custodial measures and applying them in countries where they are not yet being used;
7. the public should be educated about the objectives of these alternatives and how they work.

- **The Kadoma Declaration on Community Service Orders in Africa**

The International Conference on Community Service Orders in Africa was held in Kadoma, Zimbabwe, from 24-28 November 1997[31]. The participants adopted a Declaration called "The Kadoma Declaration on Community Service Orders in Africa" and agreed, among other things, that the use of prison should be strictly limited to a measure of last resort (point 1) and that community service is a positive and cost-effective alternative that should be preferred to a custodial sentence whenever possible. Community Service is in conformity with African traditions of dealing with offenders and healing the damage caused by the crime within the community. Furthermore, it is a positive and cost-effective measure to be preferred whenever possible to a sentence of imprisonment (point 3).

- **The Ouagadougou Declaration on Accelerating Penal and Prisons' Reform in Africa**

Between 18-20 September 2002, 123 delegates from 38 countries including 33 from Africa met in Ouagadougou under the high patronage of the President of Burkina Faso. The three days of intensive deliberation resulted in the Ouagadougou Declaration on Accelerating Penal and Prison Reform in Africa, which was adopted by consensus at the closure of the conference. It was recommended that criminal justice agencies work together more closely to reduce the use of

[31] See Penal Reform International, "Kadoma Declaration on Community Service Orders in Africa", available at https://www.penalreform.org/resource/kadoma-declaration-community-service-orders-africa/, accessed on 12/05/2022.

imprisonment. Greater efforts should be put into promoting the reintegration of offenders into society[32].

3.1.3. National instruments

Rwanda has enacted different laws that provide for alternatives to imprisonment. Below are some examples.

- **The constitution of the republic of Rwanda of 2003 revised in 2015[33]**

Article 29 of the 2015 Constitution sets out the right to be presumed innocent and to appear before a court. Article 24 of the Constitution guarantees the right to liberty and security of persons. It states that "a person's liberty and security are guaranteed by the State. No one shall be subjected to prosecution, arrest, detention or punishment unless provided for by laws in force at the time the offence was committed. No one shall be subjected to security measures except as provided for by law and for reasons of public order or State security".

- **Law nº68/2018 of 30/08/2018 determining offences and penalties in general[34]**

The 2018 Law on offences and penalties in general provides for penalties that can replace the imprisonment. These are the fine and penalty of community service[35]. These sanctions can be combined by accessory penalties such as special confiscation, a ban on residence or compulsory residence in a particular location, deprivation of civic rights and publication of the offence committed and the penalty pronounced by the court[36].

- **Law no 027/2019 of 19/09/2019 relating to Criminal Procedure[37]**

The 2019 Law on criminal procedure is the main law that provides different alternatives to imprisonment at different levels of the criminal proceedings. The alternatives to imprisonment can be grouped as alternatives to pre-trial detention (bail[38], negotiations[39], fine without trial[40], orders

[32] See The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, adopted on 20th September 2002.
[33] See the Constitution of the Republic of Rwanda of 2003 revised in 2015, in *Official Gazette*, n° Special of 24/12/2015 (hereafter the 2015 Constitution).
[34] See Law nº68/2018 of 30/08/2018determining offences and penalties in general, in *Official Gazette*, no. Special of 27/09/2018, as amended by the Law nº 69/2019 of 08/11/2019 amending Law nº 68/2018 of 30/08/2018 determining offences and penalties in general, in Official Gazette, n° Special of 29/11/2019 (hereafter the 2018 Law on offences and penalties in general).
[35] See article 23 of the 2018 Law on offences and penalties in general.
[36] See article 24 of the 2018 Law on offences and penalties in general.
[37] See the Law no 027/2019 of 19/09/2019 relating to Criminal Procedure, in *Official Gazette*, n° Special of 08/11/2019 (hereafter the 2019 Law on criminal procedure).
[38] See article 80,6º-85 the 2019 Law on criminal procedure.
[39] See 24,3º of the 2019 Law on criminal procedure.
[40] See article 25 of the 2019 Law on criminal procedure.

to do or not to do something[41]), alternative sanctions which are aimed at replacing prison sentences such as suspended prison sentences (with conditions attached)[42], community service[43], Compensation/restitution[44], electronic monitoring[45] and alternatives which aim at reducing the duration of a prison sentence such as parole[46] and plea bargaining[47].

- **Law no 71/2018 relating to the protection of the child[48]**

The 2018 Law on the protection of the child provides for special provisions for a child under prosecution (in conflict with the law) or victim of an offence. At the pre-trial phase, the principle is that a child cannot be on remand (detention). Article 24 of the 2018 Law on the protection of child stipulates that "*except in case of recidivism, whatever charges against him/her, the child cannot be on remand during the judiciary inquiries. A child can be on remand only where the charges against him/her are punishable with a term of imprisonment of more than five (5) years. The period of a child's remand should not exceed fifteen (15) days and court decision for such a remand cannot be extended. When, based on reasons presented by the prosecutor, the judge estimates that it is necessary to continue to maintain the child on remand beyond the period stated in the preceding paragraph, remand is substituted by strict monitoring measures, within his/her family, or wherever he/she lived".*

Furthermore, the investigators and prosecutors should always find a compromise on cases against children for offences punishable by a term of imprisonment that does not go beyond five (5) years. Article 25 of the 2018 Law on the protection of the child states that *"the investigator shall have powers to suggest a compromise between a child, his/her parent or guardian and the victim of the offence and such a compromise shall be approved by a Prosecutor when such an offence is punishable by a term of imprisonment not more than five (5) years".*

[41] See article 20 of the 2019 Law on criminal procedure.
[42] See articles 239-241 of the 2019 Law on criminal procedure.
[43] See article 225 of the 2019 Law on criminal procedure.
[44] See article 24,4° of the 2019 Law on criminal procedure.
[45] See article 70 of the 2019 Law on criminal procedure.
[46] See articles 232-238 of the 2019 Law on criminal procedure
[47] See articles 26-27 of the 2019 Law on criminal procedure.
[48] See the Law no 71/2018 relating to the protection of the child, in *Official Gazette*, no.37 bis of 10/09/2018 (hereafter the 2018 Law on the protection of child).

3.2. Institutional framework

The Judiciary

Article 43 of the 2015 Constitution states that "*the Judiciary is the guardian of human rights and freedoms*". Courts play an important role in the implementation of alternatives to imprisonment. The Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts empowers courts to try criminal cases[49]. Rwandan courts have at their disposal a wide range of options of sentences as previously explained. The sentencing judge is expected to take the particulars of each case into consideration before deciding on an appropriate sentence[50].

The Ministry of Justice

The Ministry of Justice is the main institution responsible for organizing, overseeing and promoting activities related to the rule of law, law enforcement and justice for all. Some of the responsibilities of the Ministry of Justice/Office of the Attorney General include (i) the conception, elaboration and dissemination of national policies, strategies, laws and programmes to promote the rule of law, law enforcement and justice for all; (ii) elaboration of measures governing the administration of justice and the compliance with the Constitution; (iii) putting in place measures aimed at guaranteeing the quality of the justice system regarding national reconciliation, the fight against genocide ideology, access to justice for all, the fight against corruption and promotion of human rights; and (iv) putting in place measures aimed at improving legal drafting and harmonization of national laws and regulations with the international laws signed, acceded to or ratified by Rwanda, etc.[51].

The National Public Prosecution Authority (NPPA)

The National Public Prosecution Authority has the overall responsibility for investigating and prosecuting offences throughout the country (Rwanda)[52]. NPPA has the obligation to apply alternative measures to imprisonment whenever necessary[53].

[49] See articles 26, 29, 39-43, 52 of the Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, in *Official Gazette*, n° Special of 02/06/2018

[50] See article 49 of the 2018 Law on offenses and penalties in general.

[51] See Minijust, "Overview: responsibilities", available at https://www.minijust.gov.rw/about, accessed on 20/06/2022.

[52] See article 3 of the Law nº014/2018 of 04/04/2018 determining the organization, functioning and competence of the National Public Prosecution Authority and of the Military Prosecution Department, in *Official Gazette*, nº Special of 30/05/2018. See also article 17 and 23 of the 2019 Law on criminal procedure.

[53] See article 24, 25, 26, 66, 80, 81-85 of the 2019 Law on criminal procedure.

Rwanda Investigation Bureau (RIB)

RIB carries out preliminary investigations on complaints, on own motion or under instructions of the public prosecution[54]. RIB acts under the supervision and instruction of the National Public Prosecution Authority for criminal acts under its investigation[55] and has the power to arrest and detain criminal suspects[56].

Rwanda Correctional Service (RCS)

Rwanda Correctional Service was established under Law n° 34/2010 of 12/11/2010[57] as a result of merging the former National Prisons Service (NPS) and the Executive Secretariat of National Committee of Community Services as an alternative penalty to imprisonment (TIG). RCS is responsible for the implementation of the general policy for the management of detainees and prisoners, respecting the rights of detainees and prisoners in accordance with the law, ensuring the security of every detainee and prisoner until the completion of his/her sentence and ensuring effective management of prisons and persons serving the TIG penalty, among others[58]. In brief, RCS is responsible for verifying and ensuring that offender's file is complete with all the necessary documents before he/she commences his/her sentence, to facilitate his/her release at its completion.

As one can notice, there exists a robust legal and institutional framework on alternatives to imprisonment. Many international and regional instruments have been established and Rwanda is a party to these instruments. At the national level, there exist also legal instruments which have incorporated international principles on alternatives to imprisonment. The structures have also been put in place to make sure that these principles are effectively implemented. The following chapter presents the findings of the study on the implementation of alternatives to imprisonment in Rwanda

[54] See article 17, para. 2, of the 2019 Law on criminal procedure.
[55] See article 6 of Law n°12/2017 of 07/04/2017 establishing the Rwanda Investigation Bureau and determining its mission, powers, organization and functioning, in Official Gazette, n° Special of 20/04/2017 (hereafter the 2017 Law on RIB).
[56] Article 10, 1°, of the 2017 Law on RIB.
[57] See the Law n° 34/2010 of 12/11/2010 on the establishment, functioning and organization of Rwanda Correctional Service (RCS), in *Official Gazette*, n°04 of 24/01/2011 (hereafter the 2011 Law on RCS).
[58] See article 4 of the 2011 Law on RCS.

IV. Presentation of findings on the implementation of alternatives to imprisonment in Rwanda

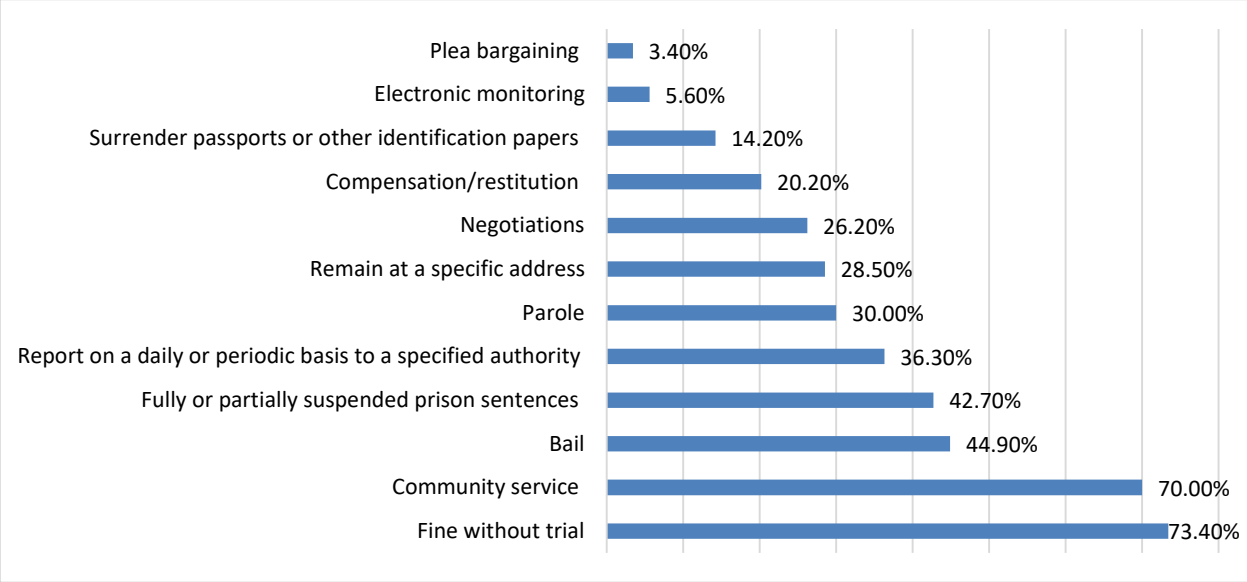
4.1. Available alternatives to imprisonment

This chapter provides (i) an overview on the availability of alternatives to imprisonment in Rwanda, (2) the analysis on available alternatives to imprisonment in Rwanda, and (2) the way these alternatives are enforced.

4.1.1. An overview on the availability of alternatives to imprisonment in Rwanda

The study found that there exist at least 12 alternatives measures to imprisonment provided in the Rwanda legal framework. In the context of this research, availability means "the use of alternatives and their availability in the legislation". These alternatives are already being implemented though some of them are implemented to a small scale. The table below provides a list of available alternatives and the extent to which they are being implemented in Rwanda as perceived by the respondents.

Figure 1: Alternatives to imprisonment available in Rwanda



As the table above shows, fine without trial (73.4) and community service (70%) are the most practiced while electronic monitoring (5.6%) and plea bargaining (3.4%) are the least practiced.

The study found out that "fine without trial" is the alternative most practiced by the prosecution as one of the procedures to recover stolen or embezzled assets. Community service is also provided for as a stand-alone alternative sanction and is used as an alternative sanction when the convict

fails to execute a court decision on fine. However, the presidential order determining modalities for the execution of the community service penalty has not yet come into force and this is a challenge to the its implementation.

Electronic monitoring was found to be the least practiced alternative. One reason, as highlighted in the study findings, is that the order of the Minister in charge of justice determining the modalities through which a suspect may be monitored through technology is not yet into force, which is a challenge for the implementation of this alternative. For plea bargaining, the study found that prosecutors rarely use this alternative as was found in the court judgements collected in different courts. The following sections provide an analysis of each alternative in details. However, before analyzing each alternative measure, the section below explains why the alternatives are very important in promoting access to justice and reducing prison overcrowding in Rwanda.

4.1.2. The role of alternatives to imprisonment in promoting the access to justice

Before analyzing these alternatives at different levels, it is important to highlight the issues of prison overcrowding and access to justice for which the use alternatives to imprisonment can be a solution.

4.1.2.1.The problematic of prison overcrowding and access to justice in Rwanda

1. Prison overcrowding

In 2019/2020, the National Commission for Human Rights of Rwanda inspected twelve (12) prisons and it was found out that they hosted 66,082 (136%) inmates, which number is far beyond the recommended capacity. The most overcrowded prisons included Muhanga (225%), Gicumbi (161%), Rwamagana (156.9%), Ngoma (154.6%), Rusizi (144%), Huye (137%), Musanze (135.9%), Bugesera (135%), Nyagatare (127%) and Rubavu (122%)[59].

The tables below show the current prison population. The data was collected from Rwanda Correctional Service (RCS) on 30th May 2022.

[59] National Commission for Human Rights, "Annual Activity Report-July 2019 - June 2020", September 2020, p. 48.

Table 4: Number of prisoners by geographical coverage as on 30 May 2022

Location	Prison	Number of incarcerated persons
The City of Kigali	Nyarugenge Prison	**11,849**
Eastern Province	Ngoma Prison	**1,353**
	Bugesera Prison	**3,513**
	Rwamagana Prison	**17,448**
	Nyagatare Prison	**603**
Northern Province	Gicumbi Prsion	**3,933**
	Musanze Prison	**4,180**
Western Province	Rubavu Prison	**8,512**
	Rusizi Prison	**3,901**
Southern Province	Huye Prison	**13,706**
	Nyamagabe Prison	**1,817**
	Nyanza Prison	**6,723**
	Muhanga Prison	**7,172**
TOTAL		**84,710**

Source: Data collected from Rwanda Correction Service, on 30th May 2022.

As indicated by the National Commission for Human Rights of Rwanda, twelve (12) prisons hosted 66,082 inmates in 2019/2020, while they had a capacity to host 48,501 inmates. This was a very big challenge because those prisons were overcrowded at the average of 136%[60]. Moreover, over the past two years (as of 30th May 2022), the size of the prison population has grown and the same twelve (12) prisons host 84,710 inmates, which means 174% of their capacity. Thus, Rwanda is facing a problem of overcrowded prisons, possibly because of lack of space, which constitutes a major obstacle to achieving a safe, secure, healthy and humane prison environment. The table below provides the number of incarcerated persons by category and their offences as of 30 May 2022.

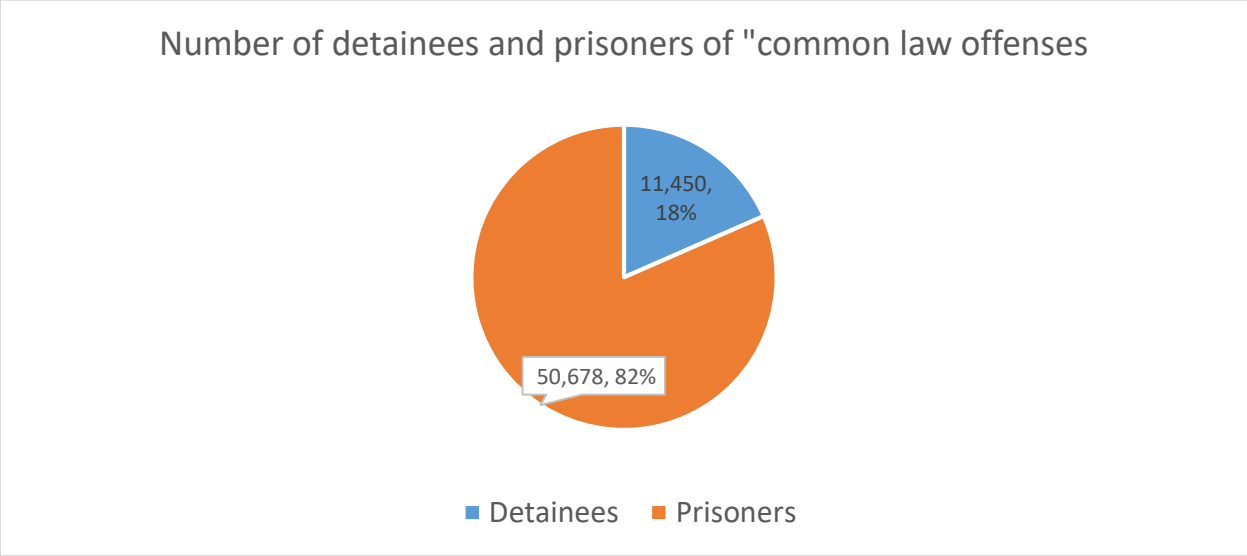
[60] National Commission for Human Rights, "Annual Activity Report-July 2019 - June 2020", September 2020, p. 48.

Table 5: Number of incarcerated persons by category and their offences as on 30 May 2022

Prison name	Offenses for which they were detained/imprisoned																Total
	Common Law Offenses								Genocide								
	Detainees				Prisoners				Detainees				Prisoners				
	Men	Women	Boys	Girls	Men	Women	Boys	Girls	Men	Women	Boys	Girls	Men	Women	Boys	Girls	
Nyarugenge	4,320	584	0	0	4,854	673	0	0	6	1	0	0	1,145	266	0	0	**11,849**
Ngoma	0	137	0	0	0	735	0	0	0	0	0	0	241	240	0	0	**1,353**
Bugesera	376	0	0	0	1,608	0	0	0	0	0	0	0	1,529	0	0	0	**3,513**
Rwamagana	1,597	0	0	0	12,957	0	0	0	1	0	0	0	2,893	0	0	0	**17,448**
Nyagatare	0	0	56	5	61	0	363	21	0	0	0	0	88	6	0	0	**603**
Gicumbi	427	0	0	0	3,006	0	0	0	0	0	0	0	500	0	0	0	**3,933**
Musanze	254	54	21	4	2,932	701	14	0	0	1	0	0	126	73	0	0	**4,180**
Rubavu	861	0	0	0	5,757	0	0	0	4	0	0	0	1,890	0	0	0	**8,512**
Rusizi	229	0	0	0	2,541	0	0	0	0	0	0	0	1,131	0	0	0	**3,901**
Huye	1,149	0	0	0	7,115	0	0	0	3	0	0	0	5,439	0	0	0	**13,706**
Nyamagabe	0	66	0	0	6	518	0	0	0	2	0	0	400	825	0	0	**1,817**
Nyanza	0	0	0	0	1,996	0	0	0	2	0	0	0	4,725	0	0	0	**6,723**
Muhanga	1,196	96	17	1	4,442	374	4	0	0	0	0	0	919	123	0	0	**7,172**
TOTAL	**10,409**	**937**	**94**	**10**	**47,275**	**3,001**	**381**	**21**	**16**	**4**	**0**	**0**	**21,026**	**1,533**	**0**	**0**	**84,710**

In this table, the term “prisoners” is used to describe the people held in prison after being convicted and sentenced while the term “detainees” is used to describe those who have not yet been convicted and sentenced, or, in other words, those who are under pre-trial detention.

Figure 2: Number of detainees and prisoners of common law offenses



One of the main contributing factors behind overcrowding in Rwandan prisons is the excessive use of pre-trial detention. As can be seen in Figure 2 above, the category of the prison population under "Common Law Offenses" is made up of 11,450 detainees and 50, 678 prisoners. Thus, pre-trial detainees represent 18% of the prison population incarcerated for common law offences. These figures only includes those detained under the prison administration and do not include those in police cells or other forms of detention. While there is an excessive use of pre-trial detention in Rwandan courts, the causes of this trend were not documented by concerned institutions. Some of the questions that this documentation could answer include the following: Does it mean the increase in criminality? Does it mean that some acts that were not defined as criminal in the 2018 Law on offences and penalties in general have been added to the list of acts that have come to be considered as offences? Is it because of the slowness of the judicial system that cases are often slow to come before the court and this causes too many pretrial detainees?

This study was not intended to analyse the statistical associations between imprisonment rates and crime rates. However, given the above statistics on the use of pre-trial detention in Rwanda, the study assumes that there is a less use of alternatives to pre-trial detention and recommends another study to find answers to the above questions.

In an interview with the Deputy Director of Muhanga Prison[61], it was suggested that "*some actions should be taken to address overpopulation in prisons such as increasing the budget and materials to help the facilitators to train the inmates on conditional liberation attitudes and behaviors, advocacy for RIB, NPPA and the Judiciary to opt other alternatives to pre-trial detention while the investigation is undergoing and amend the 2018 penal code to clearly describe public interest*

[61] Interview with the Deputy Director of Muhanga Prison, on 02/08/2022.

activities to be carried out during community service. Furthermore, the rehabilitation and reintegration programmes should be part of alternatives to imprisonment during the sentencing".

2. Use of incarceration and access to justice

In Rwanda, the data available show that the proportion of detainees for common law offenses to the overall prison population is very high:18% of all inmates as of May 2022. However, the proportion increased while the total prison population (for common law offenses only) slightly decreased (from 66,082 in 2019/2020 to 62,128 inmates as of May 2022). Furthermore, the number of detainees for common law offenses decreased from 34,629 in 2019-2020[62] to 11,450 detainees as of May 2022[63]. While women prisoners continue to be a minority in prisons, the proportion of the female prison population has increased from 3537 females[64] to 3968 as of May 2022[65].

In 2019/2020, the National Commission for Human Rights investigated whether there were prisoners with cases that had already been taken to courts and who had not been summoned for trial for six (6) months. This investigation was based on Article 16 (1) of the Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure stating that "*any case referred to the court must be decided within six (6) months from the date the claim is referred to the Court*". This provision is also applied in criminal matters in accordance with Article 264 of the Law nº 027/2019 of 19/09/2019 relating to criminal proceedings which stipulates that "*all matters that are not provided for under this Law regarding procedure are handled in accordance with civil procedure rules, unless the civil procedure principles cannot be applicable in criminal matters*". The National Commission for Human Rights found out that the rights of detainees to timely and fair trial has not been properly respected because some detainees spent more than six (6) months before being summoned for trial[66].

As can be seen, excessive use of pretrial detention not only poses a problem of the aforementioned overcrowding, but also affects the principles of access to justice such as the right to a fair trial and, especially, the right to a speedy trial. It also affects the vulnerable and the poor, who are unlikely to afford legal representation.

With reference to access to a speedy trial, the African Commission on Human and Peoples' Rights elaborated the principles and guidelines on the right to a fair trial and legal assistance in Africa that explain the right to a trial without undue delay. According to this Commission, the right to a trial without undue delay means "*the right to a trial which produces a final judgement and, if*

[62] National Commission for Human Rights, "Annual Activity Report-July 2019 - June 2020", September 2020, p. 48.
[63] Data collected from RCS, on 30th May 2022.
[64] National Commission for Human Rights, "Annual Activity Report-July 2019 - June 2020", September 2020, p. 48.
[65] Data collected from RCS, on 30th May 2022.
[66] National Commission for Human Rights, "Annual Activity Report-July 2019 - June 2020", September 2020, p. 50.

appropriate a sentence without undue delay. Every person charged with a criminal offence has the right to a trial without undue delay"[67].

In the Rwanda context, there is no specific provision on how to determine the length of proceedings in criminal matters. The reference is made on Article 16 (1) of the Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure which states that "*any case referred to the court must be decided within six (6) months from the date the claim is referred to the Court*". However, this provision was designed considering the practice of non-criminal cases only. If one analyses how criminal cases are handled in Rwanda, from early phases involving the investigation to determine whether to arrest a suspect and bring charges and the period between the time the charges are brought and the time the defendant is convicted or acquitted, it is hardly possible "any criminal case referred to the court will be decided within six (6) months". And this is regardless of other factors such as the complexity of the case, the applicant's conduct and the conduct of the relevant administrative and judicial authorities[68].

However, long periods of detention are to be discouraged in order to respect the right to access to justice for all. As pointed out by the Rwandan National Commission for Human Rights, "*it is the violation of the rights of detainees to timely and fair trial when court does not summon detainees for trial for six (6) months and more"*[69]. The Court cannot regard lengthy periods of unexplained inactivity as reasonable[70].

As provided for in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems Guideline[71], Rwanda should monitor and enforce custody time limits in police holding cells or other detention centres and prisons. This can be done by instructing judicial authorities screening the remand caseload in detention centres and prisons on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones[72]. Furthermore, Rwanda should encourage the use of alternative measures and sanctions to deprivation of liberty wherever appropriate [73].

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[67] See African Commission on Human & Peoples' Rights, "Principles and guidelines on the right to a fair trial and legal assistance in Africa", p. 15., available at https://archives.au.int/handle/123456789/5430, accessed on 30/06/2022.
[68] See for more details, The European Court of Human Rights, "Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial", 30/04/2022, p. 62, available at https://www.echr.coe.int › guide_art_6_criminal_eng, accessed on 30/06/2022.

[69] National Commission for Human Rights, "Annual Activity Report-July 2019 - June 2020", September 2020, p. 50.
[70] See The European Court of Human Rights, "Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial", cited above, p. 63.
[71] UN General Assembly, "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems", resolution / adopted by the General Assembly, 28 March 2013, *A/RES/67/187*, available at https://www.refworld.org/docid/51e6526b4.html, accessed on 30/06/2022.
[72] See United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guide 4 (d).
[73] See United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guide 4 (g).

Another concern about the limited use of alternatives to imprisonment or excessive use of pre-trial detention is its impact on vulnerable and poor people who are unlikely to afford legal representation. In a research conducted by the Open Society Justice Initiative, it was found out that "*excessive and arbitrary pre-trial detention is an overlooked form of human rights abuse that affects millions of persons each year, causing and deepening poverty, stunting economic development, spreading disease, and undermining the rule of law. Pretrial detainees may lose their jobs and homes; contract and spread disease; be asked to pay bribes to secure release or better conditions of detention; and suffer physical and psychological damage that last long after their detention ends*"[74]. The families and communities of the detainees also suffer. One example is a case of a detainee who was male head of a household in a rural area. In order to obtain cash for legal fees, bail and bribes, his family had to sell its maize-milling machine which as a steady source of income for the family and the only one of its type in the community. As a result, the family lost its source of income and the entire community was forced to resort to pounding maize by hand[75].

According to the Open Society Justice Initiative, those entering pre-trial detention come from "*the poorest and most marginalized echelons of society, who are least equipped to deal with the criminal justice process and the experiences of detention*." The poor are more likely to come into conflict with the law, more likely to be confined pending trial, and less able to afford the "**three Bs**" of pre-trial release: bribe, bail, or barrister[76]. This study shows that the poor r suffer more during the pre-trial detention. First, they are more likely to end up in pre-trial detention, because they cannot afford a lawyer who might help them get out. Most of them never see a lawyer or a legal advisor and often lack information on their basic rights. Second, when they do eventually appear at trial, without representation and likely beaten down by months of confinement, they are more likely to end up convicted. Studies have shown that being at liberty before a trial appearance increases the chances of acquittal[77].

Therefore, a functioning legal aid system, as part of a functioning criminal justice system, is needed to help reduce the length of time which the poor suspects spend held in police stations and detention centres. Once this goal is achieved, it will also help to reduce the prison population, prison overcrowding and congestion in the courts. The organisations working in the area of access to justice and the rule of law should ensure that the rights of the poor and vulnerable groups are respected, especially during the pre-trial detention phase. In accordance with the fundamental right of anyone charged with a criminal offence to be presumed innocent until proven guilty, according to law, pre-trial detention should be used as the last resort in criminal proceedings[78].

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[74] See Open Society Justice Initiative, "The socioeconomic impact of pretrial detention", Report, September 2010, p. 8.
[75] *Idem*, p. 8.
[76] Open Society Justice Initiative, *op. cit*., p. 7.
[77] Idem, pp.7-8.
[78] See article 9 (3) of the International Covenant on Civil and Political Rights; United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), Rule 6.1; Body of Principles for the Protection of All Persons Under

Should it be used, detainees suspected of, or charged with, a crime are entitled to a trial within a reasonable time or to release pending trial.

It should be noted that the number and proportion of persons held in prison without any sentence is an important indicator of fairness and efficiency of the criminal justice system. During the interviews, the respondents agree that each alternative provided for in the Rwandan legislations is so important and, if effectively used, they can be a sustainable solution to the issues of prison overcrowding and access to justice previously discussed . As has been previously mentioned, the 2018 Law on offences and penalties in general provides for penalties that can replace the imprisonment including the fine and penalty of community service[79]. The 2019 Law on criminal procedure provides different alternatives measures to imprisonment at different levels of the criminal proceedings. These can be grouped into the alternatives to imprisonment at pre-trial detention stage, the alternatives to imprisonment at the sentencing stage and the alternatives to imprisonment after the sentencing stage. The following section provides the details on alternative measures that can be used at the pre-trial detention , sentencing and after sentencing stages.

4.1.2.2. Alternatives at pre-trial detention level

Table 6: Agreeance of the role of alternatives to Alternatives to pre-trial detention

Alternatives to pre-trial detention	Roles	% of aggrement
Bail	Ensure that the accused does not leave a given place or miss specified trial dates in court	92.88
	Protect the right to be presumed innocent until guilt is proven	95.51
	Reduce prison overcrowding	95.5
Negotiations	Obtain the best possible outcome	96.26
	Secure the best possible concessions on sentence.	96.26
	Secure the prosecution's cooperation to get a favourable result to the offender	98.5
Fine without trial	Deter the offender	88.02
	Punish the offender	85.77
	Compensate the state for the offense	87.27

Any Form of Detention or Imprisonment, Principle 39 and United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rules 57-58.

[79] See article 23 of the 2018 Law on offences and penalties in general.

Remain at a specific address	Ensure that the individual remains in a designated place	91.38
	Reduce prison overcrowding	96.25
	Reduce financial costs of imprisonment	96.26
Report on a daily or periodic basis to a specified authority	Reduce prison overcrowding	97.38
	Reduce financial costs of imprisonment	98.5
Surrender passports or other identification papers	Ensure that the individual remains in a designated place	91.38
	Reduce financial costs of imprisonment	92.51
Accept supervision by electronic tagging and tracking	Ensure that the individual remains in a designated place	77.53
	Reduce the cost of administering custodial sentences	77.91
	Can reduce the number of prison populations	79.03

The 2019 Law on criminal procedure provides different alternatives to imprisonment at the pre-trial stage which can be used by investigators, prosecutors and judges. These include bail[80], compensation[81], negotiations[82], fine without trial[83] and ordering a person to respect one or more of these conditions: to remain at a specific address, to report on a daily or periodic basis to a specified authority, to surrender passports or other identification papers and to accept supervision by electronic tagging and tracking[84].

All the respondents agreed that these alternative measures to imprisonment play a crucial role in reducing prison overcrowding, and de facto the financial costs of imprisonment, and access to justice. The following section analyses each alternative and how it is applied.

[80] See article 80,6º-85 the 2019 Law on criminal procedure.
[81] Article 24,4º of the 2019 Law on criminal procedure.
[82] See 24,3º of the 2019 Law on criminal procedure.
[83] See article 25 of the 2019 Law on criminal procedure.
[84] See article 80 of the 2019 Law on criminal procedure.

1. Bail

The 2019 Law on criminal procedure sets out the rules on bail[85]. This section provides an analysis of (a) the types of bail, (b) offences subject to bail, (c) determination of bail, (d) the authorities empowered to impose the bail and (e) the enforcement of bail (the practice).

a) Types of bail

The 2019 Law on criminal procedure does not define a bail; however, it provides that bail may be (i) in form of cash, (ii) immovable property or (iii) guaranteed by a third party[86].

i) Bail in cash

The amount of money paid as bail is deposited into the account opened and managed by the authority that ordered bail.

ii) Bail as immovable property

The immovable property surrendered as bail is considered as a guarantee in the normal procedure of property suretyship.

iii) Bail guaranteed by a third party

If a person accepts to stand as a surety that the accused will not evade justice with intention to be prosecuted while free, the surety must be a person of integrity and have the capacity to pay for indemnification in case the accused fails to appear. The surety ends with the finalization of the normal appeal procedures. If the accused appeared in the trial proceedings at the last instance, he or she is responsible for all trial costs. If the accused did not appear in such proceedings and he or she loses the case, the surety may be accountable for the damages caused by the offence as ordered in the proceedings without the need for another hearing to decide them. However, the surety pays if the property of the accused is unable to compensate for the damages.

b) Offences subject to bail

Article 82 of the 2019 Law on criminal procedure states that "*without prejudice to due diligence of the competent authority to take decision, bail may be deposited on all offences. However, for felonies, the suspect required to deposit a bail is ordered to comply with provisions of Article 80 of this Law*". In principle, bail may be deposited on all offences.

[85] See articles 81-85 of the 2019 Law on criminal procedure.
[86] See article 83 of the 2019 Law on criminal procedure.

There are two exceptions to this rule. First, the suspect who committed a felony, an offence punishable under the law by a principal penalty of imprisonment for a term of more than five (5) years or by life imprisonment[87], is ordered to comply with one of other measures such as to remain at a specific address, to report to a specified authority on a daily or periodic basis, to surrender passports or other identification papers, and to be monitored through technology (supervision by electronic tagging and tracking)[88]. Second, the authority who imposes the bail remains with the power to accept or reject the bail proposal, depending on the information obtained on the suspect during the "due diligence".

For example, in the case of *Tuyisabe Epiphanie and others vs Prosecutor*, the court approved the bail on immovable properties [89], considering the gravity of the offense they were accused of. However, it imposed on the condition of the accused reporting to the prosecutor every week, on Monday at 8 am, for two 2 months.

c) Determination of bail

Bail is determined in consideration of the damages caused by the offence, the good conduct of the suspect attested by the local authority of his or her residence and whether he or she has never been condemned by a court. If the offence is against property, bail must be at least double the value of the property which he or she is required to restitute. For other offences, bail is determined at the discretion of the competent authority in consideration of the gravity of the offence committed and the wealth of the guarantor[90].

d) Authority empowered to approve the bail

The bail is proposed by the suspect and approved by investigator, prosecutor or a judge.

i) Bail approved by an investigator

An investigator is empowered to approve a bail in case of a petty offence and a misdemeanor. A petty offence is an offence punishable under the law only by a principal penalty of imprisonment for a term of less than six (6) months, a fine or the penalty of community service[91] while a misdemeanour is an offence punishable under the law by a principal penalty of imprisonment for a term of not less than six (6) months and not more than five (5) years[92].

ii) Bail approved by a prosecutor

[87] Article 17 of the 2018 Law on offences and penalties in general.
[88] Article 80 of the 2019 Law on criminal procedure.
[89] See Rubavu Intermediate Court, *Tuyisabe Epiphanie and others vs Prosecutor*, case no RDPA00258/2021/TGI/RBV, 28/12/2021, pp. 9-10, paras. 22-23.
[90] See article 84 of the 2019 Law on criminal procedure.
[91] See article 19 of the 2018 Law on offences and penalties in general.
[92] See article 18 of the 2018 Law on offences and penalties in general.

The Prosecutor is empowered to approve the bail in all offences[93]. In case of felonies, he/she may require to deposit a bail and order the suspect to comply other measures such as to remain at a specific address, to report to a specified authority on a daily or periodic basis, to surrender passports or other identification papers, and to be monitored through technology (supervision by electronic tagging and tracking)[94].

iii) Bail approved by a judge

A judge also has the power to approve a bail in all offenses in case of offences in a trial on provisional detention or release and at any time before the closing of hearing at the first instance or appeal.

e) Enforcement of bail (the practice)

According to the 2019 Law on criminal procedure, bail may be deposited on all offences[95]. However, the circumstances in which a competent authority (investigator, prosecutor and judge) can deny bail are not determined. Nevertheless, it can be deduced from the provisions of article 84 of the 2019 Law on criminal procedure that the competent authority can deny bail if a) a local authority of his/her residence attests that the suspect is not of "good conduct"; b) the defendant already has a record of prior convictions; c) the defendant cannot afford the double of the value of the property he or she is required to restitute (in case of offenses against property); d) the gravity of the offence is very high and e) the guarantor is not "wealthy". A decision on bail depends on the discretion of the competent authority, based on the information collected during the process of "due diligence".

It appears that the lack of clarity on the criteria for bail denial can lead to unnecessary detention. For example, if a local authority simply attests that a suspect is not of "good conduct", the latter will be denied a bail. However, what constitutes is not clear a "good conduct".

The fact of having been previously convicted of an offense can also be a cause of bail denial while the type of offence (petty, misdemeanor, felony) and the number of convictions are not specified. It would be unfair to deny bail a person who has been convicted of a petty offence just once in his/her life. In the United State of America, for example, one can be denied of a bail in the case of felonies when they already have a record of two prior convictions[96]. Thus, the Rwandan legislator should also determine the cases of recidivism in which a suspect can be denied a bail.

[93] Article 82 of the 2019 Law on criminal procedure.
[94] Article 80 of the 2019 Law on criminal procedure.
[95] See article 84 of the 2019 Law on criminal procedure.
[96] See The Law Firm of Krisor and Associates, "Why bail is important to the defendant and the criminal justice system", available at https://www.krisorlaw.com/why-bail-is-important-for-defendants-and-the-criminal-justice-system, accessed on 19/05/2022.

Furthermore, in the case of offenses against property, the bail set by the law is at least double of the value of the property the defendant is required to restitute. The requirement of depositing a bail equivalent to a double of the value of the property seems excessive and this can be the burden to the defendant and the reason to miss the chance to enjoy the benefit of bail. As noted by Cohen and Reaves, there is a direct relationship between the bail amount and the probability of release. The higher the bail amount the lower the probability of pre-trial release[97].

Another possible criterion to deny the bail is the gravity of the offence and the wealth of the guarantor. The "Gravity of the offense" is vague while the principle is that the bail can be deposited for all offenses. It could be better to name some of the crimes that are considered as "grave". In the USA, for example, the crimes that warrant bail denial include felonies whereby the defendant already has a record of two prior convictions, murder and other violent crimes, serious crimes against minors and drug crimes that would carry more than a decade long prison sentence[98]. In any case, there must be convincing evidence that releasing a person on bail will result in further crimes that could harm the community[99]. The judge carefully weighs the situation, the manner of arrest, the circumstances and the compiled evidence before waiving the right to bail in the interest of public safety.

In practice, however, the study found that the courts distinguished "serious grounds to believe that the suspect committed an offense" and "serious grounds to detain a suspect" as a measure of gravity. In *Tuyisabe Epiphanie and others vs Prosecutor, the court said, "even though there are serious grounds to believe that they have committed the offense, there are no serious grounds to detain them while waiting for the trial as they have provided a bail"*[100].

In *Sindaheba Eric vs Prosecutor*[101], the court reasoned that "*the bail is accepted for all offenses [regardless of their gravity]. Once it is accepted by a competent authority, the suspect must be released even when there are serious grounds to believe that he committed the crime, but the acts he committed did not affect the public order, the bail posted can cover the damages, restitutions, fine and court fees when he is convicted*". Thus, when the judges consider that the bail posted can cover up the damages, fine and court fees and that the offense committed has less impact on the

[97] See Thomas H. Cohen and Brian A. Reaves, "Pretrial Release of Felony Defendants in State Courts: State Court Processing Statistics, 1990-2004", U.S. Department of Justice, Special Report, November 2007, p. 3.
[98] The Law firm of Krisor and Associates, "Why bail is important to the defendant and the criminal justice system", available at https://www.krisorlaw.com/why-bail-is-important-for-defendants-and-the-criminal-justice-system, accessed on 19/05/2022.
[99] *Ibidem*.
[100] See Rubavu Intermediate Court, *Tuyisabe Epiphanie and others vs Prosecutor*, case no RDPA00258/2021/TGI/RBV, 28/12/2021, pp. 9-10, paras. 22-23.
[101] Musanze Intermediate court, Sindaheba Eric vs Prosecutor, case no RDPA 00227/2021/TGI/MUS, 25/08/2021, p. 3, para. 8: "*n'ubwo hariho impamvu zikomeye zimushinja ko yakoze icyaha aregwa, ariko kuba ibyo yakoze nta ntugunda byateje muri rubanda, kuba ingwate ituma haboneka ubwishyu bw'ibyangijwe n'icyaha, ibintu bigomba gusubizwa, ihazabu n'amagarama y'urubanza, mu gihe icyaha kimuhamye, (...) uru Rukiko rurasanga SINDAYIHEBA Eric kuba yaratanze ingwate nkuko byagaragajwe agomba gufungwa by'agateganyo mu gihe agitegereje kuburana urubanza rwe mu mizi*".

public order, there are no serious grounds to detain a suspect despite the evidence that he or she is believed to have committed the offense.

In an interview with a judge in Musanze High Court, he revealed that "*the use of bail faces different challenges. First, criminal defense lawyers rarely use this alternative though it is provided for by the law. This is seen as a poor legal assistance on the side of lawyers/advocates. Second, the suspect is unware of the availability of the bail as an alternative to imprisonment. Third, it is sometimes difficult for the poor to afford the bail. For example, when the offence committed is against property, bail must be at least double the value of the property which the suspect is required to restitute. Thus, most of the poor people do not possess such properties and they miss this chance to post a bail. Fourth, the public perceive that when a suspect is released at the pre-trial detention there is always something behind, such as corruption. This puts a lot of pressure on investigators, prosecutors and judges who become reluctant to release the suspects in order to avoid being suspected of engaging in corruption*"[102].

An official from Institute of Legal Practice and Development (ILPD) mentioned that "*doubling a bail for offenses against property is against the principle of presumption of innocence because it sounds like the suspect has been already convicted of damaging such a property while it may not be the case*"[103].

During an interviews with Officials from Rwanda Investigation Bureau (RIB)[104] and National Public Prosecution Authority (NPPA)[105], it was mentioned that there are some challenges related to implementation of bail such "*as lack of bailable properties for many of the suspects, unknown address of some suspects and the refusal of third parties to post bail for the suspect mainly because the suspect is poor and there is doubt that he/she will be able to pay back a posted bail in case of conviction*".

In sum, all interviewees agreed that "*the bail allows the justice system to protect each person's right to be presumed innocent until guilt is proven, while still protecting the interest of the public safety. Another important role that bail plays in the criminal justice system is to reduce the burden on the taxpayer. It is costly to hold all accused persons in the custody of the state until a trial date is set"*[106]. However, the researchers could not find the data on the numbers of the defendants who have been offered or denied a bail over the 2019/2021 period to assess the real impact of bail in reducing prison overcrowding. They also could not find data on bail amounts imposed by courts and release rates from 2019-2021 to assess how bail is promoting access to justice for the suspects.

[102] Interview with a Judge at the High Court/Musanze, on 29/07/2022.
[103] Interview with an official from ILPD, on 02/08/2022.
[104] Interview with an official from RIB, on 09/08/2022.
[105] Interview with an official from NPPA, on 11/08/2022.
[106] Interview with a Judge at the High Court/Musanze, on 29/07/2022; Interview with an official from ILPD, on 02/08/2022, interview with an official from Haguruka NGO, on 29/07/2022.

2. Fine without trial

The "fine without trial" procedure is mentioned in Article 24 (4) of the 2019 Law on criminal procedure. In accordance with Article 24 (4) of the 2019 Law on criminal procedure, upon the receipt of the case file, the prosecutor may *"impose a fine without any proceedings (...)".* This article is complemented by Article 25 of the 2019 Law on criminal procedure which states "*that for any offence that falls within his/her competence, if the prosecutor considers that the offence may be punishable by a fine, he or she may ask the suspect to choose between being brought before the court or paying a fine without trial, which fine cannot exceed the maximum fine increased by any possible additional amount stipulated by Law. If the suspect decides to pay the fine without trial, the criminal action against the suspect is discontinued. The decision is notified to the victim. The payment of fine does not constitute admission of guilt*".

The NPPA uses the "fine without trial" procedure when the suspects are subject to the punishment of a fine. The prosecution also uses this procedure to recover embezzled funds and taxes that are not retained by employees or are not paid by tax payers. The table below shows the numbers of people who paid "fine without trial" from 2019.

Table 7: The use of "fine without trial" and fines paid from 2019-2021

Year	Number of persons who accepted to pay	Amount paid (Rwf)
2018/2019	2	865,584
2019/2020	5	5,000,000
2020/2021	8	7,176,000
Total	**15**	**13,041,584**

Source: NPPA Reports of activities, from 2018-2021.

The study found that the NPPA used "fine without trial" for offenses punished by the fine as an alternative to imprisonment. From 2019-2021, 15 offenders accepted to pay fines equivalent to 13,041,584 Rwf. The amount of money in fines increased over the years whereby from 2019 the amount increased from 865,584 Rwf to 5,000,000 Rwf in 2020 and 7,176,000 Rwf in 2021. This is mainly due to the fact that the number of offenders subject to fines also increased from 2 in 2019 to 5 in 2020 and to 8 in 2021.

Table 8: Recovered public funds related to tax frauds through the "fine without trial" procedure from 2019-2021

Year	Number of suspects	Recovered assets
2018/2019	39	581,745,918 Rwf
2019/2020	100	609,235,735 Rwf
2020/2021	73	576,564,780 Rwf
Total	**212**	**1,767,546,427 Rwf**

Source: NPPA Reports of activities, from 2018-2021.

The study also found out that the NPPA widely used "fine without trial" to recover public funds related to tax frauds. From 2019-2021, "fine without trial" was imposed to 212 suspects of tax frauds and the NPPA was able to recover 1,767,546,427 Rwf over the same period. The study found out the "fine without trial" procedure is very important because it helps to speed up a criminal process that would take years in the court, the suspect does not need to go through traumatic criminal proceedings and the assets stolen or embezzled are quickly recovered. Thus, the use of "fine without trial or proceedings" in more offenses classified as petty and misdemeanor offenses should be explored.

3. Compensation, restitution and negotiations

The 2019 Law on criminal procedure contains some provisions which require the prosecutor to seek compensation and other restorative justice mechanisms as alternatives to imprisonment. For example, in accordance with Article 24 (4) of the 2019 Law on criminal procedure, upon the receipt of the case file, if the prosecutor *imposes a fine without any proceedings while there is a victim of the offence who may ask for compensation, the prosecutor summons him or her in order to help him or her negotiate with the suspect about the amount of the compensation. In case of disagreement, the victim of the offence files a claim of compensation to the competent court".*

The term "restitution" (gusubiza iby'abandi) is also used throughout the 2019 Law on criminal procedure tough it is not defined[107]. Restitution is the money paid by the criminal or a third party to the victim or his family. It could be the return of property, the payment of damages for loss or suffering, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights[108].

In accordance with Article 24 (3) of the 2019 Law on criminal procedure, upon the receipt of the case file, the prosecutor has the obligation to "*initiate formalities for negotiations between the suspect and victim if he or she believes that it is the sole procedure to remedy the victim, nullify the consequences of the offence and facilitate rehabilitation of the offender. The procedure does not apply to offences punishable with imprisonment exceeding two (2) years. However, when the suspect is a minor, the negotiation can also apply to the offences punishable by a maximum term of imprisonment of five (5) years*".

The provisions above oblige the prosecutor to consider the formalities of restitution, compensation, victim-offender-mediation or reconciliation upon the receipt of the file. Thus, restitution or

[107] See article 140 and 218 of the 2019 Law on criminal procedure.
[108] See Principle 8 of the UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34, available at https://www.refworld.org/docid/3b00f2275b.html, accessed on 29th/06/2022.

compensation and negotiations can serve as conditions to be fulfilled in exchange for non-prosecution.

In Rwanda, in accordance with Article 24 (3) of the 2019 Law on criminal procedure, the prosecutions regarding all offences punishable with imprisonment not exceeding two (2) years (for adults) and not exceeding five (5) years for minors can be terminated through negotiations. A judge from Musanze High Court recommended that "*a study should be conducted on how to use mediation in criminal matters (victim-offender-mediation or reconciliation) because it helps to reduce the burden for the criminal justice system, especially for the correctional system. For example, in the case of larceny, the suspect could be required to return to the owner an amount of money twice or three times the value of the stolen goods or, in the case of insolvency, to perform labor for the victim for a certain period of time. Furthermore, in the case of embezzlement, prosecutions can be terminated (or never initiated) as a consequence of an arrangement if the criminal has agreed to make restitution*"[109]. Unfortunately, the study could not find data on the implementation of compensation, restitution and negotiations as alternatives to imprisonment in order to assess how they are contributing to reducing prison overcrowding and improving access to justice in Rwanda.

4. Electronic monitoring[110]

Electronic monitoring as an alternative to imprisonment is provided for in Article 70 of the 2019 Law on criminal procedure, which states that "a suspect may be monitored through technology". This article also states that "*an order of the Minister in charge of justice determines the modalities through which a suspect may be monitored through technology*". However, this ministerial order is yet to be published. Electronic monitoring is considered as an additional means of surveillance that can monitor compliance with other measures. For example, it can determine whether a person is obeying an order to remain at a specific address or to keep away from a specific district. However, this alternative requires considerable investment in technology and the infrastructure to support it[111].

In an interview with a Judge from Musanze High Court, he mentioned that "*the judge cannot impose this alternative because the ministerial order which would determine the modalities through which a suspect may be monitored through technology is not yet to come into force*"[112].

[109] Interview with a Judge at the High Court/Musanze, on 29/07/2022.
[110] See article 70 of the 2019 Law on criminal procedure.
[111] See UNODC, *Handbook of basic principles and promising practices on Alternatives to Imprisonment*, United Nations, New York, 2007 p. 22-23.
[112] Interview with a Judge at the High Court/Musanze, on 29/07/2022.

Furthermore, Officials from Rwanda Investigation Bureau (RIB)[113] and National Public Prosecution Authority (NPPA)[114] also mentioned that electronic monitoring is not yet implemented for the following reasons:

a) Lack of the ministerial order which would determine the modalities through which a suspect may be monitored through technology;
b) It is an expensive mechanism;
c) The offenses which it can be applied to are not well determined.

It is worth mentioning that some European countries are well known in the implementation of electronic monitoring as an alternative to imprisonment. For example, Sweden adopted a system of intensive supervision by electronic monitoring during the 1990s. Upon the offender's request, correctional authorities could commute a prison sentence of up to three months to electronic monitoring. The days under electronic tagging were matched one-to-one with the days the offender would have served in prison. Sweden expanded tagging as a means of earlier release in 2001 and made this option permanent four years later. All offenders serving a sentence of at least 1.5 years may apply to serve the last four months under electronic monitoring. In 2005, Swedish authorities also increased the length of the application of electronic monitoring from three to six months[115].

It is difficult to assess the implementation of this alternative in Rwanda while an order of the Minister in charge of justice which would determine the modalities through which a suspect may be monitored through technology is yet to come into force. For example, no single case related to electronic monitoring measures amongst around 100 court cases collected from different courts and assessed during this study.

5. Other measures

The 2019 Law on criminal procedure provides different measures at the disposal of the investigator, prosecutor and the judge. Those alternative measures include the order to remain at a specific address, report to a specified authority on a daily or periodic basis, and surrender passports or other identification papers[116]. These measures are mainly conditions that accompany the alternatives discussed previosuly. For example, the court may order to post a bail and then, impose one of these conditions, like in the aforementioned case of *Tuyisabe Epiphanie and others vs Prosecutor*, whereby the court ordered the accused to report to the prosecutor every week, on Monday at 8 am, for 2 months in addition to the bail posted.

[113] Interview with an official from RIB, on 09/08/2022.
[114] Interview with an official from NPPA, on 11/08/2022.
[115] UNODC, *Handbook of basic principles and promising practices on Alternatives to Imprisonment*, *op. cit*, p. 40.
[116] See article 80 of the 2019 Law on criminal procedure. See also article 45, para.4, of the 2019 Law on criminal procedure.

As is the case for other alternatives to pre-trial detention discussed above, the study could not find real data on the implementation of these conditions/measures. Therefore, their impact on prison overcrowding and access to justice remains undocumented.

4.1.2.3. Alternatives to imprisonment at the sentencing stage

At the sentencing level, the Rwandan legislation provides for many alternative sanctions, which are aimed at replacing prison sentence.

Table 9: Agreeance on the role of alternatives at the sentencing level

Alternatives aimed at replacing prison sentences	Role	% of agreeance
Fine	Deter the offender	98.88
	Punish the offender	97.01
	Compensate the state for the offense	95.13
Fully or partially suspended prison sentences	Reduce the potential negative impact of imprisonment	95.88
	Reduce prison overcrowding	98.5
	Reduce the cost of administering custodial sentences	97.75
Community service	Serve as prison diversion	97
	Serve as a stand-alone punishment	94.01
	An option to work off a fine by an impoverished offender	94.76
Compensation/restitution	Punish the offender	95.5
	Pay to the victims of a crime	97.75

1. **Fine**

A fine is the amount of money a judge decides the convict has to pay as punishment for an offence. At the sentencing level, a fine, as an alternative to imprisonment, is provided for under Article 30 of the of the 2018 Law on offences and penalties in general. A fine is imposed on the convict on the basis of the gravity of the offence[117]. The court sets a time limit for payment of a fine which does not exceed one (1) year from the day the judgment has become final. The court may order that the fine be paid in instalments or commuted to community service.

[117] Article 31 of the 2018 Law on offences and penalties in general.

The research identified at least 45 offenses in which a sentencing judge has an option to impose a fine instead of an imprisonment. These include the following: manslaughter[118], unintentional bodily harm[119], throwing an object at a person that may inconvenience or dirty them[120], assault or battery to several persons[121], unintentional performing of an abortion on another person[122], advertising the means of abortion[123], providing false statement[124], stigmatization against a sick person[125], false accusations[126], "aggravated" violation of domicile[127], secretly listening to conversations, taking photos or disclosing them[128], public insult[129], fraudulent retention of another person's found property[130], "not aggravated" forging or alteration of keys[131], non-payment of bills[132], arson by the property's owner[133], setting fire on other person's property[134], sale or use of properties resulting from offences[135], damaging or plundering another person's property[136], damaging or plundering trees, crops and agricultural tools[137], removal or displacement of signs or geodetic land markers[138], removal, displacement or plundering of land marks[139], mistreat, injure or kill domestic animals[140], inciting the public to undermine the financial sector[141], illegal operations of currency sale or exchange[142], illegal demonstration or public meeting[143], hindering implementation of ordered works[144], disrespect of employment badges[145], interfering with the smooth running of activities of the Parliament[146], interference with the activities within the

[118] Article 111 of the 2018 Law on offences and penalties in general defines manslaughter as "killing another as a result of clumsiness, carelessness, inattention, negligence, failure to observe rules or any other lack of precaution and foresight but without intent to kill him/her".
[119] See article 118 of the 2018 Law on offences and penalties in general.
[120] See article 119 of the 2018 Law on offences and penalties in general.
[121] Article 120, para.3, of the 2018 Law on offences and penalties in general.
[122] Article 120, para.3, of the 2018 Law on offences and penalties in general.
[123] Article 127 of the 2018 Law on offences and penalties in general.
[124] Article 133 of the 2018 Law on offences and penalties in general.
[125] Article 147 of the 2018 Law on offences and penalties in general.
[126] Article 152 of the 2018 Law on offences and penalties in general.
[127] Article 155, para. 2, of the 2018 Law on offences and penalties in general.
[128] Article 156 of the 2018 Law on offences and penalties in general.
[129] Article 161 of the 2018 Law on offences and penalties in general.
[130] Article 172 of the 2018 Law on offences and penalties in general.
[131] Article 173, para. 2, of the 2018 Law on offences and penalties in general.
[132] Article 175 of the 2018 Law on offences and penalties in general.
[133] Article 179 of the 2018 Law on offences and penalties in general.
[134] Article 181, para.2, of the 2018 Law on offences and penalties in general.
[135] Article 185 of the 2018 Law on offences and penalties in general.
[136] Article 186 of the 2018 Law on offences and penalties in general.
[137] Article 187 of the 2018 Law on offences and penalties in general.
[138] Article 188 of the 2018 Law on offences and penalties in general.
[139] Article 189 of the 2018 Law on offences and penalties in general.
[140] Article 190 of the 2018 Law on offences and penalties in general.
[141] Article 222 of the 2018 Law on offences and penalties in general.
[142] Article 223 of the 2018 Law on offences and penalties in general.
[143] Article 225 of the 2018 Law on offences and penalties in general.
[144] Article 231 of the 2018 Law on offences and penalties in general.
[145] Article 232 of the 2018 Law on offences and penalties in general.
[146] Article 237 of the 2018 Law on offences and penalties in general.

premises of the Office of the President of the Republic or the Cabinet[147], unlawful break of seals[148], breaking of seals affixed by judicial organs or bailiffs on seized property[149], refusal to appear before the organ in charge of investigation, public prosecution or other authority[150], discrediting a decision of judicial organs[151], production, sell or prescription of prohibited substances in medicine[152], noise nuisance[153], public drunkenness[154], forgery, falsification and use of forged documents (5-10 years)[155], issuance of a document to a person who is not entitled[156], usurpation of titles and wearing a uniform with an intention to mislead the public[157], wearing badges, a ribbon or any other decoration by an unauthorized person[158], claiming to be attached to a profession, a certificate, an official diploma or any other entitlement granted to a person meeting requirements[159] and unlawful detention[160].

However, the research found that some petty offenses are not alternatively punished by a fine while others are. Those not punished by fine include assault or battery to one person[161], violation of domicile[162], refusal to answer questions of the intelligence or security organs[163]. The table below shows offenses which can be punished with a fine as alternative to imprisonment and those which cannot while they are in the same category (petty offenses).

[147] Article 239 of the 2018 Law on offences and penalties in general.
[148] Article 240 of the 2018 Law on offences and penalties in general.
[149] Article 241 of the 2018 Law on offences and penalties in general.
[150] Article 242 of the 2018 Law on offences and penalties in general.
[151] Article 262 of the 2018 Law on offences and penalties in general.
[152] Article 266 of the 2018 Law on offences and penalties in general.
[153] Article 267 of the 2018 Law on offences and penalties in general.
[154] Article 268 of the 2018 Law on offences and penalties in general.
[155] Article 276 of the 2018 Law on offences and penalties in general.
[156] Article 278, para. 2, of the 2018 Law on offences and penalties in general.
[157] Article 279, para. 3-4, of the 2018 Law on offences and penalties in general.
[158] Article 280 of the 2018 Law on offences and penalties in general.
[159] Article 281 of the 2018 Law on offences and penalties in general.
[160] Article 285 of the 2018 Law on offences and penalties in general.
[161] Article 124, para.3, of the 2018 Law on offences and penalties in general "Any person who, because of clumsiness, recklessness, negligence, carelessness, lack of precaution and foresight, assaults or batters another person or causes an injury, commits an offence. Upon conviction, he/she is liable to imprisonment for a term of not less than eight (8) days and not more than two (2) months and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred thousand Rwandan francs (FRW 200,000)".
[162] Article 155, para. 1, of the 2018 Law on offences and penalties in general.
[163] Article 253 of the 2018 Law on offences and penalties in general

Table 10: Offenses punished by a penalty from 1 day to 6 months with or without alternative

No	Offense	Range of Penalty	With alternative	Without alternative
1	Unintentional bodily harm	3 months – 6months	Fine	NA
2	Unintentional assault or battery to one person	8 days -2 months	No	Yes
3	Unintentional assault or battery to several persons	2 months -6 months	Fine	NA
4	Providing false statement	3 months -6 months	Fine	NA
5	Stigmatization against a sick person	1 month- 6 month	Fine	NA
6	Denial of freedom to practice family planning	2 months- 6 months	No	Yes
7	Fraudulent use of family property	3 months -6 months	No	Yes
8	False accusations	3 months -6 months	Fine	NA
9	Violation of domicile	2 months – 6 months	No	Yes
10	Public insult	15 days – 2 months	Fine	NA
11	Non-payment of bills	15 days – 2 months	Fine	NA
12	"Unintentionally" setting fire on another person's property (not building or transport means)	2 months- 6 months	No	yes
13	Damaging or plundering another person's property	2 months- 6 months	Fine	NA
14	Mistreat, injure or kill domestic animals	8 days -2 months	Fine	NA
15	"Aggravated" mistreat, injure or kill domestic animals	2 months- 6 months	No	Yes
16	Illegal demonstration or public meeting	8 days -6 months	Fine	NA
17	"Unintentional" unlawful break of seals	2 months- 6 months	Fine	NA

18	Refusal to appear before the organ in charge of investigation, public prosecution or other authority	1 month-6 month	No	Yes
19	Refusal to answer questions of the intelligence or security organs	1 month-6 month	No	Yes
20	Public drunkenness	8 days -2 months	Fine	NA
21	Damaging monies	2 months – 3 months	No	Yes
22	Claiming to be attached to a profession, a certificate, an official diploma or any other entitlement granted to a person meeting requirements	1 month-6 months	Fine	NA

Among the 22 offenses shown above, all punishable of an imprisonment ranging from 1 day to 6 months, 13 offenses can be alternatively punished by a fine while 9 offenses do not qualify for a penalty of fine as an alternative to imprisonment. All these offenses are classified as petty offenses or, in other words, small offenses, with limited gravity[164].

This disparity in alternatives to imprisonment for offenses of the same category (petty offenses) may be explained by the gravity of each offense. However, the actors in the criminal justice sector should review the offenses listed in Table 10 and find out whether a fine can be a "compulsory alternative to imprisonment" for all offenses classified as petty offenses. Tables 9 and 10 include petty and misdemeanor offenses and show that the Rwandan legislator has provided a fine as an alternative to imprisonment for some offenses and no alternatives for others while there are in the same range of penalty. Thus, it is strongly recommended that sentencing guidance be put in place to explains how, when and to whom to apply a fine as an alternative to imprisonment, especially in small offenses. For example, it would sound unfair to see that someone convicted of "fraudulent use of family property" can face an imprisonment of 6 months while another person convicted of "production, sell or prescription of prohibited substances in medicine", an offense punished by an imprisonment of up 2 years, can alternatively be imposed a fine and go home. The tables, in annex 1, also show how there are disparities in imposing a fine as an alternative to imprisonment for the offenses classified in the same range of penalty. It is an appeal to relevant institutions to review these offenses and their sentencing policies.

[164] See article 19 of the 2018 Law on offences and penalties in general.

2. Community service[165]

The punishment of community service as a principal penalty applicable to natural persons is provided for under Article 23, 3º, of the 2018 Law on offences and penalties. This article is complemented by Article 35 of the 2018 Law on offences and penalties in general that provides for the modalities in which the punishment of community services is imposed. It states that "*in case the penalty of community service is imposed as a principal penalty, the court sets the time limit for serving such a penalty. Such a time limit does not exceed six (6) months*".

The penalty of community service may be imposed in lieu of another principal penalty as follows:
1º when an offence is punishable by imprisonment for a term of more than six (6) months and not more than five (5) years, the court may order that the convict serve half (1/2) of the term of his/her penalty in community service;
2º when an offence is punishable by imprisonment for a term of less than six (6) months, the court may order that the convict serve the penalty of community service for a period not exceeding the maximum imprisonment provided by the law for such an offence.
In case of the convict's failure to properly serve the penalty of community service, he/she is forced to serve the remainder of the penalty in prison.

Furthermore, Article 36 of the 2018 Law on offences and penalties states that "*when the Court imposes a fine, court fees, any other payment into the public treasury, and restitutions or payment of damages for the benefit of the victim, it determines, in case of the convict's failure to execute the court's convictions against him/her, the period to serve the penalty of community service. When the court orders restitutions or payment of damages for the benefit of the victim, community service imposed does not preclude the victim's right to such restitutions or damages. A convict is exempted from serving the penalty of community service if he/she effects payment*".

A Presidential order determining modalities for the execution of the penalty of community service was approved by the Cabinet on 28th November, 2019[166] but it is not yet published in the official gazette. Some examples of offenses punished by community services include theft[167], fraudulent retention of another person's found property[168], non-payment of

[165] Previous research conducted by ILPD discussed in depth the use community service as an alternative to imprisonment. See Institute of Legal Practice and Development (ILPD), "Study of Alternatives to Imprisonment in Rwanda Focusing on the Mainstreaming of TIG ("Travaux d'Intérêts Général") and Best Practice Guidelines for Judges in the Exercise of their Discretion when Imposing Non-Custodial Sentences", Research Paper, no 1, 2013.

[166] Rwanda Broadcasting Agency (RBA), "Statement on Cabinet decisions of 28 November 2019", 29th November, 2019, available at https://www.rba.co.rw/post/Cabinet-communiqu-of-28-November-201901, accessed on 23/05/2022.
[167] Article 166
[168] Article 172 of the 2018 Law on offences and penalties in general.

bills[169], displacement or plundering of land marks[170], mistreat, injure or kill domestic animals[171], failure to comply with a court order[172], possession or consumption of narcotic drugs or psychotropic substances[173].

In the court cases analysed in this study, there are few cases where the penalty of community service was imposed when the convicts failed to execute the court's convictions against them. For example, in *Havugimana Célestin vs Prosecutor*[174], the court ordered that "*(…) the fine must be paid in 5 months and failure to do this, the fine will be replaced by the penalty of community service to be executed in five months and 15 days*".

In an interview, a Judge in Musanze High Court revealed that "*it is very difficult to monitor the implementation of community service because the presidential order determining modalities for the execution of the penalty of community service is not yet into force*"[175]. With this being the situation, it is difficult to assess how this alternative punishment is being implemented though some courts have started to impose it on the offenders. It is recommended the entry into force of this important presidential order be speeded up.

3. Suspended prison sentences

Fully or partially suspended prison sentence is provided for by Article 64-66 of the 2018 Law on offences and penalties in general. These provisions are similar to articles 239-241 of the 2019 Law on criminal procedure. This section discusses the meaning of suspended prison sentence, the requirements for imposing this form of punishment and its effect.

A. The meaning of suspended prison sentence

A suspended prison sentence is the term given to a prison sentence imposed by the court, and then suspended (ie 'delayed'). Suspension of a sentence is a court decision which orders the stay of execution of a penalty of imprisonment[176].

B. Requirements for imposing suspended prison sentences

[169] Article 175 of the 2018 Law on offences and penalties in general.
[170] Article 189 of the 2018 Law on offences and penalties in general.
[171] Article 190, para.1, of the 2018 Law on offences and penalties in general.
[172] Article 36 of the 2018 Law on offences and penalties in general
[173] Article 263, as modified, of the 2018 Law on offences and penalties in general
[174] Huye Intermediate Court, *Havugimana Célestin vs Prosecutor*, case no RP 00391/2021/TGI/HYE, 31/05/2021, para. 13 and para. 16; See also Huye Intermediate Court, *Munyaneza vs Prosecutor*, case no RP 00573/2021/TGI/HYE, 09/07/2021, para. 15 and para. 18;
[175] Interview with a Judge at the High Court/Musanze, on 29/07/2022.
[176] Article 64 of the 2018 Law on offences and penalties in general.

On conviction of an offence punishable by a term of imprisonment, the court may impose a suspended prison sentence if the convict fulfills the following requirements:

a**) Absence of previous conviction of an offense punishable by imprisonment exceeding six months**

A convicted person benefits from a suspended sentence if he/she was not previously given another penalty of imprisonment exceeding six (6) months[177]. In all court cases assessed, "the absence of previous conviction" is mentioned by the courts as a requirement for accepting the suspension of sentence[178].

b) The main penalty must not exceed five years of imprisonment

The court can suspend the execution of all or part of the main or additional penalties imposed, provided that the main penalty imposed does not exceed five (5) years in prison[179]. The court cases analysed provide more insights about this "gravity requirement". Some examples are discussed in the next paragraphs.

In *Mwiseneza Janvier vs Prosecutor*[180], the court reasoned that "*the gravity (more than 5 years of imprisonment) should not be an obstacle to apply the suspension of the sentence Mwiseneza could face, considering other circumstances surrounding the case such as the age of the accused (minor), confessions and the purpose of punishment (rehabilitative)*". Thus, the gravity must be balanced with other circumstances surrounding the case such as (a) the age and attitude of the offender and (b) the purpose of punishment.

In *Ndahimana Gratien vs Prosecutor*[181], the court granted the suspension of sentence by looking at the impact of the offense among other requirements. said the court indicated that "… *the offense did not have an impact on the victim, especially that his wife wrote a letter in which she pardoned*

[177] Article 239 of the 2019 Law on criminal procedure.
[178] See for example, Rubavu Intermediate Court, *Bigirimana Célestin vs Prosecutor*, case no RP 00122/2019/TGI/RBV, on 23/12/2020, para. 16; Huye Intermediate Court, *UWIHOREYE Emmanuel vs Prosecutor*, case no, RP00166/2020/TGI/HYE, on 01/04/2021, p. 6, para. 18; Huye Intermediate Court, *NKUNDABAGENZI Emmanuel vs Prosecutor*, case no RP 00414 /2021/TGI/HYE, on 11/06/2021, . 7, para. 25.
[179] Article 239 of the 2019 Law on criminal procedure. See also Article 64, para.1, of the 2018 Law on offences and penalties in general.
[180] See Nyagatare Intermediate Court, *Mwiseneza Janvier vs The Prosecutor*, case no RP/Min 00032/2021/TGI/NYG, 14/04/2021, paras.18-20.
[181] See Huye Intermediate court, *Ndahimana Gratien vs Prosecutor*, case no RP 00393/2021/TGI/HYE, on 31/05/2021, p. 5, para.13; see also Huye Intermediate Court, *Nshimiyimana Emmanuel vs Prosecutor*, case no RP 00552/2021/TGI/HYE, on 28/06/2021,), para.14.

him, which shows that the offense did not have an impact on her, therefore, the court orders that a part of his imprisonment be suspended".

The impact of the offense may also be minimized if there is no proof from the expert. For example, in *Munyaneza vs Prosecutor*[182], the court said that "… *the offense did not have any meaningful impact on the victim, especially that there is no medical report to prove such an impact*".

In *Prosecutor vs Mugabonake Juvenal*[183], the court reasoned that when there is "*reconciliation between the offender and the victim, for example, the letter written by the parents of the child beaten by the defendant in which they pardoned the defendant, 'restorative justice should be given the priority*".

In an interview with a Judge in Musanze High Court, the judge expressed concerns about the gravity requirements stipulated in Article 64, para.1, of the 2018 Law on offences and penalties in general: "*Imposing a suspended sentence to only offenders convicted of offenses not exceeding 5 years of imprisonment, without considering other circumstances surrounding the case, is a denial of justice to other offenders who may be convicted of offenses with more than 5 years of imprisonment. The main issue in sentencing is the way the 2018 Law on offences and penalties in general has been adopted with mandatory minimum sentences, which does not really guarantee the independence of a sentencing judge*"[184].

c) The penalty that cannot be suspended

The penalty of a fine and that of community service may not be subject to suspension[185]. For example, in *Bizimana Célestin vs Prosecutor*, the court explained that the fine is not suspended[186].

C. Effects of suspending a sentence

If a judge decides to impose a suspended sentence, the defendant must comply with the requirements imposed during the suspension period. Following are the conditions of a suspended sentence:

a) A suspended penalty is considered null and void if, within a prescribed period, the convicted person is not subsequently prosecuted and convicted of a felony or

[182] See Huye Intermediate court, *Munyaneza vs Prosecutor*, case no RP 00573/2021/TGI/HYE, on 09/07/2021, paras.13-14.
[183] See Musanze Intermediate Court, *Prosecutor vs Mugabonake Juvenal*, case no RP 000133/2020/TGI/MUS, on 14/10/2021, p. 4, para.12-13: The court based on the letter written by the parents of the child beaten by the defendant in which they pardoned the defendant. The court noticed that "there has been reconciliation between the defendant and the victim's family and that 'restorative justice should be given the priority".
[184] Interview with a Judge at the High Court/Musanze, on 29/07/2022.
[185] Article 64, para.3, of the 2018 Law on offences and penalties in general.
[186] See Rubavu Intermediate Court, *Bigirimana Célestin vs Prosecutor*, case nº RP 00122/2019/TGI/RBV, on 23/12/2020, para. 16.

misdemeanour committed after the decision granting suspension of the enforcement of penalties has become final[187].

b) If the defendant breaches the terms of the suspended sentence, the custodial term is likely to be activated[188].
c) Suspension of penalty does not prevent the payment of court fees and damages;
d) Suspension of penalty does not prevent the deprivation of rights as a result of conviction. However, deprivation of rights ceases to have effect on the date the offence becomes null and void[189].

However, the law does not provide for the court which deals with a breach of a suspended sentence.

In sum, from the court cases collected from different courts and assessed during this study, it was found out that the following requirements are considered to impose the suspension of sentences:

i) The request of the offender to be granted suspended sentences;
ii) The absence of previous conviction;
iii) The gravity of the offense (not more than five years of imprisonment) which is balanced with the lack of, or little impact of, the offense on the victim (as a result of the reconciliation between the offender and the victim, lack of evidence to prove the impact), attitude of the offender (pleading guilty, confessions, etc) and age of the offender (minor)[190];
iv) The penalty to be suspended is not a fine or community service

4. Plea bargaining[191]

A. History of plea bargaining in Rwanda

Plea bargaining is the practice of negotiating an agreement between the prosecution and the defense whereby the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for more lenient sentencing, recommendations, a specific sentence, or a dismissal of other charges[192].

In 2019, Rwanda introduced a new mechanism known as "Plea Bargaining in its law relating to criminal procedure[193]. Even though this mechanism was introduced in 2019, it is worth noting

[187] Article 240, para.1, of the 2019 Law on criminal procedure.
[188] Article 240, para.2, of the 2019 Law on criminal procedure.
[189] Article 241 of the 2019 Law on criminal procedure. See also article 66 of the 2018 Law on offences and penalties in general.
[190] See Rubavu Intermediate Court, *Kubwimana Réponse and Mushumba Jean Paul vs Prosecutor*, case no RP/MIN 00002/2021/TGI/RBV, on 15/02/2021, p. 5, para.11.
[191] See articles 26-27 of the 2019 Law on criminal procedure.
[192]Britannica, " Plea bargaining", available at https://www.britannica.com/topic/plea-bargaining/Benefits-of-plea-bargaining, accessed on 23/06/2022.
[193] See articles 26-27 of the Law no 027/2019 of 19/09/2019 relating to Criminal Procedure, in Official Gazette……

that, in 2006, Rwanda ratified the United Nations Convention against Corruption which calls for States to "*take appropriate measures to encourage the persons who participate or who have participated in the commission of an offence to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds; to consider providing for the possibility of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence and to consider providing for the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence*"[194]. These are some forms of plea bargain.

One may also say that, in practice, the concept of plea bargaining is not new in Rwanda. For example, during Gacaca trials, there was practice of lighter sentences for those who confessed, assisted in tracing remains of those who were killed and expressed remorse for their crimes s[195]. Under the Rwandan criminal procedure, the new version of plea bargaining provides that at the end of interrogation, a prosecutor may "*propose a plea-bargaining agreement whereby the suspect helps the prosecutor to obtain all the necessary information in the prosecution of the offence and to know other persons involved in the commission of the crime in return of some benefits without hindering good administration of justice. The prosecutor is permitted to make concessions with regard to charges and penalties. The court may admit or reject the agreement but may not modify it. If the agreement is admitted, the court must take it into consideration in coming to a decision*"[196].

B. Types of plea bargains

There are two types of plea bargains in Rwanda: charge bargaining and penalty/sentence bargaining[197].

a) Charge bargaining

The Law nº 027/2019 of 19/09/2019 relating to Criminal Procedure does not provide details on the charge bargaining process. In the bargaining related to charges, the defendant agrees to plead guilty to reduced charges (e.g., aggravated assault rather than attempted murder). It may also involve the

[194] See article 37 of the United Nations Convention against Corruption, New York, 31 October 2003, entered into force on, 14 December 2005, ratified by Rwanda on 4 Oct 2006.
[195] See Sam Rugege, "Some aspects of judicial reform in Rwanda from 2004-2019", in *Rwanda Law Journal*, issue nº 1, March 2020, p. 46.
[196] See articles 26-27 of the Law nº 027/2019 of 19/09/2019 relating to Criminal Procedure.
[197] See articles 26 of the Law no 027/2019 of 19/09/2019 relating to Criminal Procedure, "(…) the prosecutor undertakes to make concessions to the suspect in relation to charges against him or her and the penalties that he or she may request".

plea negotiation on count bargaining, in which defendants who face multiple charges may be allowed to plead guilty to fewer counts[198].

b) Sentence bargaining

The Law no 027/2019 of 19/09/2019 relating to Criminal Procedure does not provide details on the sentence bargaining process. In fact, sentence bargaining involves the assurance of lighter or alternative sentences in return for a defendant's pleading guilty[199]. Sentence bargains also occur in less-serious cases, such as pleading guilty to a charge in exchange for a sentence of "time served," which generally means that the defendant will be immediately released. It appears that merely pleading guilty can reduce one's sentence by about two-thirds.

In an interview, an Official from RIB suggested that "*the negotiations of a plea-bargaining agreement should start at the investigation level whereby the preliminary investigations are conducted. This could help to gather all necessary evidence and reduce the work of the NPPA"*. However, he also suggested that *"it is necessary to determine the offenses to which plea bargaining should be applied, depending on their gravity*"[200].

C. Benefits of plea bargaining

Plea bargaining is the primary apparatus through which judges, prosecutors, and defense attorneys cooperate and work together toward their individual and collective goals.

a) For prosecutors

Prosecutors benefit from plea bargains because the deals allow them to improve their conviction rates. Plea bargaining can also be a tool to achieve cooperation; prosecutors might offer a reduced sentence in exchange for a guilty plea and agreement to testify against a third party[201]. Some prosecutors also use plea bargains as a way to encourage defendants to testify against codefendants or other accused criminals. They also allow prosecutors to avoid trials, which are time-consuming, labour-intensive, and costly but carry no guarantee of success. Through the rational use of plea bargains, prosecutors can secure some penalty for the offenders who might be acquitted on technicalities. Although prosecutors cannot negotiate every case (because that would incur public ire), they can bargain away routine cases or those characterized by weak evidence or other difficulties, saving their time and resources for cases that require more attention.

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[198] Britannica, " Plea bargaining", available at https://www.britannica.com/topic/plea-bargaining/Benefits-of-plea-bargaining, accessed on 23/06/2022.

[199] *Ibidem*.

[200] Interview with an official from RIB, on 09/08/2022.

[201] Turner, J. I., "Plea Bargaining. In Luna, E. (ed), Reforming Criminal Justice: Pretrial and Trial Processes", Academy for Justice, (vol. 3), (2017), available at https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_3.pdf, accessed on 23/06/2022.

b) For defense attorneys

The primary benefit of plea bargaining for both the prosecution and the defense is that there is no risk of complete loss at trial. In the cases where evidence for or against a defendant is questionable, bargains may represent a feasible way for the attorneys to minimize their potential losses by settling on a mutually acceptable outcome. Plea bargaining allows defense attorneys to increase their efficiency and profits, because they can invest less time in plea-bargained cases. Disposing of cases efficiently is important for both public and private attorneys. Public defenders are sometimes responsible for handling huge caseloads, and private attorneys can make more money by bargaining than by going to trial. When prosecutors issue charges that are arguably unmerited, defense attorneys can use negotiation to achieve charge reductions. Defense attorneys may threaten to file many pre-trial motions or to present an exceptionally zealous defense if prosecutors will not cooperate.

c) Judges and judiciary

Judges also benefit from plea bargaining. The practice allows judges to preside over efficient trials, to minimize the risk of rulings being overturned on appeal, and to avoid the necessity of making rulings during trial. More importantly plea bargains relieves judges of the burden of determining guilt, and the practice allows them to share the responsibility for sentencing with the attorneys who fashioned the bargain. Although plea bargains must be approved by judges before whom they are brought[202], judges rarely refuse approval unless they feel that the defendant is legally innocent or has been coerced into pleading guilty or the bargain calls for a penalty that the judge believes is excessively harsh or lenient[203].

Plea dispositions are largely viewed as essential to the administration of the criminal legal system because they allow for a rapid processing of cases in a system that has too many cases in order to support speedy jury trials in every case[204].

d) Defendants

Defendants also benefit from plea bargains, because they can limit the severity of the sanctions they face and add certainty to an otherwise unpredictable process. Some defendants plead guilty to avoid the stigma of trial, because trials are open to the public and may be reported in the media. Guilty defendants sometimes use the threat of trial to persuade prosecutors to reduce the severity of penalties they face. Some defendants, both guilty and innocent, may accept bargains that seem beneficial to them, especially if they have been detained before trial and if accepting the bargain would mean getting out of jail (e.g., an offer of "time served"). Plea bargaining also allows

[202] Article 26, para. 2, of the 2019 Law on criminal procedure.
[203] Turner, J. I., "Plea Bargaining. In Luna, E. (ed), Reforming Criminal Justice: Pretrial and Trial Processes", cited above.
[204] *Ibidem*.

defendants who are likewise able to move on with their lives sooner than a trial would allow[205]. During investigations, a suspect who enters into plea bargaining with the prosecution may be prosecuted while free[206].

e) Victims

Sometimes even victims prefer plea bargains to trials. Plea bargains allow victims to avoid testifying in court, which may be frightening or upsetting, especially for victims of violent crimes. Some victims also appreciate the certainty provided by plea bargains; they need not worry about the emotional trauma of dealing with the acquittal of someone they feel is guilty. Thus, speedy disposition through guilty pleas can also benefit victims[207]. However, plea bargaining does not prevent the victim of the offence from getting information on the prosecution file and contributing to the explanation on the commission of the offence[208].

Criticisms about plea bargaining

As has been explained, plea bargaining is not without criticisms. Some consider that (b) there exists power imbalance in the negotiation process, (b) lack of transparency in prosecutorial decision-making and (c) limited judicial oversight.

a) Power imbalance in the negotiation process

Pleas are often obtained through a negotiation process characterized by a power imbalance. Given charging discretion and unequal access to information between the defendant and the prosecution, this imbalance typically favors the prosecution. Furthermore, plea bargaining may be used to win convictions in cases that may otherwise have ended in dismissal or acquittal due to procedural rights violations or lack of evidence[209].

b) Lack of transparency in prosecutorial decision-making

The off-the-record nature of most plea negotiations and the absence of publicly shared plea negotiation guidelines contribute to a troubling lack of transparency in prosecutorial decision-making. That lack of transparency impairs the ability of communities to offer feedback on policies, hold elected prosecutors accountable, and detect disparities in decision-making. Likewise, if prosecutors' offices fail to collect sufficient data on plea bargaining, prosecutorial leaders may

[205] *Ibidem.*
[206] Idem
[207] Turner, J. I., "Plea Bargaining. In Luna, E. (ed), Reforming Criminal Justice: Pretrial and Trial Processes", Academy for Justice, (vol. 3), (2017), available at https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_3.pdf, accessed on 23/06/2022.
[208] Article 26, para.3, of the 2019 Law on criminal procedure.
[209] Turner, J. I., "Plea Bargaining. In Luna, E. (ed), Reforming Criminal Justice: Pretrial and Trial Processes", cited above.

find it challenging to detect and remedy disparities, address concerning practices, or advance other policy goals[210].

c) Limited judicial oversight

Article 27, para. 2-3, of the 2019 law on criminal procedure states that "*the court may admit or reject an agreement of plea bargaining but cannot alter the agreement. In case the agreement is admitted, the court, while taking a decision, considers the agreement on plea bargaining concluded between the public prosecution and the accused*". This law does not allow judges to participate in plea negotiations. In addition, as has been mentioned, pleas are often obtained through a negotiation process characterized by a power imbalance and the lack of transparency in plea negotiations. As there are no guidelines on how plea negotiations are conducted, it is very difficult to verify how the prosecution obtains the pleas. Furthermore, while the 2019 law on criminal procedure allows the judges to admit or reject an agreement of plea bargaining, it does not provide the criteria that the judge should consider to make decisions.

The situation is somehow different in some other countries such as the United States of America, where judges remain an independent "passive verifier". This means that they review the agreed-upon plea to ensure that it is voluntary, knowing, and made on a solid factual basis, but they do not impose direction in negotiations that might sway the defendant[211]. It is recommended that the Rwandan judiciary determines the guidelines on the judicial oversight on the agreements of plea bargaining. For example, it is recommended that, after the defendant and the prosecutor agree to the terms of the plea agreement, the latter is submitted to the judge for approval. The deal should be considered valid only after the judge has signed on it. Otherwise, the level of discretion afforded to prosecutors in plea negotiations raises concerns because individual prosecutors may misuse their prosecutorial powers to obtain pleas.

In an interview with a Judge in Musanze High Court, it was revealed that prosecutors do not use this alternative measure while it can help to eradicate complex cases such asorganized crimes (drug trafficking, human trafficking, terrorism, etc.)[212]. However, the study could not find real data on the implementation of plea bargaining in Rwanda. Therefore, its impact on prison overcrowding and access to justice could not be established.

[210] See Miller, M. and Wright, R. (2008), The Black Box, Iowa Law Review, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1264010; Vera Institute of Justice (2018), Unlocking the Black Box of Prosecution, https://www.vera.org/unlocking-the-black-box-of-prosecution, accessed 23/06/2022.

[211] Turner, J.I. (2006), Judicial Participation in Plea Negotiations, *The American Journal of Comparative Law*, 54(1), 199-267.

[212] Interview with a Judge at the High Court/Musanze, on 29/07/2022.

C. Alternatives to imprisonment after the sentencing stage

After the sentencing phase, the convict has to serve his/her sentence in prison. However, there exists alternatives to imprisonment which aims at reducing the duration of a prison sentence. These are (1) parole and (2) presidential pardon.

1. Parole

Parole, also known as conditional release in Rwanda, is the conditional release of prisoners before they complete their sentence. Article 232 of the 2019 Law on criminal procedure states that **"***a person sentenced to one or several penalties of imprisonment can be granted release on parole if (a) he or she sufficiently demonstrates good behaviour and gives serious pledges of social rehabilitation; (b) he or she suffers from serious and incurable disease approved by a recognized medical doctor; (c) if he or she has already served his or her penalty for a period of time provided for under Article 233 of this Law depending on the offences of which he or she was convicted*".

In terms of served penalty, Article 233 of the 2019 Law on criminal procedure specifies that "the applicant can be granted release on parole under the following conditions: (1) if he or she was sentenced to imprisonment for a term not exceeding five (5) years and has served at least one third (1/3) of the penalty; (2) if he or she was sentenced to imprisonment for a term exceeding five (5) years and has served at least two- third (2/3) of the penalty; and (3) if he or she was sentenced to life imprisonment, he or she cannot benefit from release on parole unless he or she has served at least twenty (20) years of imprisonment.

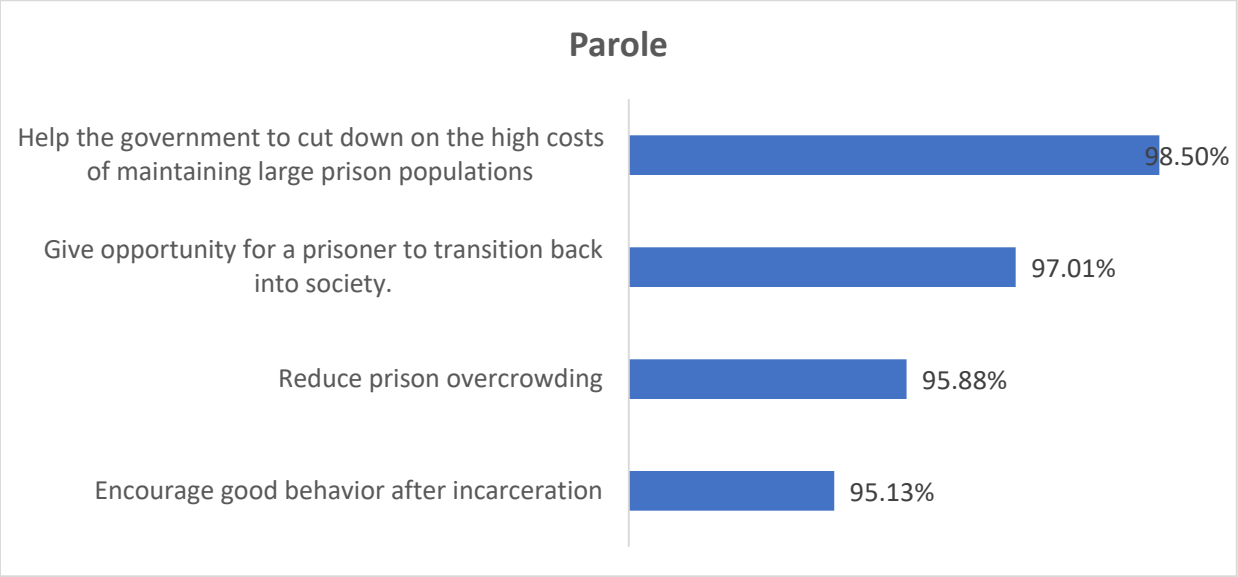
A provisional release of a convicted person is requested from the Minister in charge of justice through the Commissioner General of Rwanda Correctional Service. At least once a year, the Commissioner General of Rwanda Correctional Service submits the list of applicants for provisional release to the Minister in charge of justice. An order of the Minister in charge of Justice approves the release on parole of a convicted person and conditions imposed to him or her and the decision on release on parole is not subject to appeal (Article 234 of the 2019 Law on criminal procedure). In an interview, an official from Rwanda Correctional Service (RCS-Musanze) said that "*RCS establishes the lists of applicants who fulfill the requirements for parole at least twice a year but there is some delay in approving them at the level of the Ministry of Justice*"[213].

[213] Interview with an official from RCS-Musanze Prison, on 29/07/2022.

Nevertheless, there are cases where offenders were released on parole between 2019 and 20221. On 3rd April, 2019, for example, 1761 convicts were released on parole[214]. On 10th October, 2019, the 2,451 convicts who requested for parole and fulfilled the requirements were granted a conditional release[215]. On 18th May, 2020, 3596 convicts were granted the conditional release[216]. On 30th July, 2021, 4,781 convicts were released on parole[217].

The respondents indicated that parole plays different roles after the offender has been sentenced (see Figure 3): it gives an opportunity for a prisoner to transition back into society (97.01%), encourages good behavior after incarceration (95.13%), reduces prison overcrowding (95.88%) and helps the government to cut down on the high costs of maintaining large prison populations (98%).

Figure 3: Agreeance on the role of alternatives after sentencing



2. Presidential pardon

In accordance with Article 109 of the 2015 Constitution, "*the President of the Republic has the authority to exercise the prerogative of mercy in accordance with the procedures provided for by law and after consultation with the Supreme Court*". The 2019 Law on criminal procedure provides

[214] See Ministerial Order nº005/MOJ/AG/19 du 24/04/2019 granting release on parole, in *Official Gazette*, no Special of 26/04/2019; see also the Ministerial Order no.005/MOJ/AG/19 of 24/04/2019 granting release on parole, published in the Official Gazette no. Special of 26/04/2019, in *Official Gazette*, no Special of 27/04/2019.
[215] See Ministerial Order nº 18/MOJ/AG/19 of 11/10/2019 approving release on parole, in *Official Gazette*, nº Special of 11/10/2019.
[216] See Ministerial Order nº 08/MOJ/AG/20 of 19/05/2020 granting release on parole, in *Official Gazette*, n° 14 of 19/05/2020
[217] Edmund Kagire, "President Kagame Pardons 10 Girls Convicted for Abortion, 4,781 Convicts Get Parole", published on July 31, 2021, available at https://www.ktpress.rw/2021/07/president-kagame-pardons-10-girls-convicted-for-abortion-4781-convicts-get-parole/, accessed on 22/06/2022.

more details on how the presidential pardon is exercised[218]. Article 227, para. 2, of the 2019 Law on criminal procedure states that "*presidential pardon is granted by the President of the Republic under his or her sole discretion and for public interest*". It may be individual or collective[219].

When one combines the text of the 2015 Constitution and the 2019 Law on criminal procedure, two terms (mercy and pardon) are used, but it is not clear whether they are interchangeable. In fact, mercy is a prerogative power exercised by the President of the Republic to allow a sentence to be commuted, remitted or suspended. In criminal law, mercy is the total or partial remission of a punishment to which a convict is infringed. When the whole punishment is remitted, it is called a pardon. When only a part of the punishment is remitted, it is frequently a conditional pardon. When only a part of the punishment is remitted before sentence, it is called clemency or mercy[220].

Different forms of mercy (clemency) can be inferred from the provisions of the 2019 Law on criminal procedure. Article 227, para. 3, of the 2019 Law on criminal procedure stipulates that "*presidential pardon remits in whole or in part penalties imposed or commute them to less severe penalties*". In addition, article 73 of the 2018 Law on offences and penalties in general reads that "*when the execution of the penalty of a fine or that of imprisonment of three (3) months or less has not yet commenced, it is suspended throughout the investigation of the case until the day the decision of presidential pardon is taken. During that same period, however, the Minister in charge of justice may, at any time, order the suspension of the execution of any penalties, whether or not their execution has commenced*". Article 228 of the 2019 Law on criminal procedure provides for a presidential pardon granted to an individual convict while article 229 of the 2019 Law on criminal procedure provides for a collective pardon. Thus, at least four forms of mercy fall under the authority of the President of the Republic, namely pardon, amnesty, commutation and reprieve. These are explained below.

A full pardon releases the convict from punishment and restores his/her civil rights[221]. A pardon may be granted at any time prior to charge, prior to conviction, or following conviction[222].

Amnesty is essentially identical to a pardon in practical effect (extinction of penalty)[223], with the principal distinction between the two being that amnesty is typically extended to whole classes or communities, instead of individuals[224]. For example, on 10th October, 2019, the President pardoned

[218] See article 227-231 of the 2019 law on criminal procedure.
[219] See article 70 of the 2018 Law on offences and penalties in general.
[220] See Collins Dictionary of Law, "Mercy", (2006), available at https://legal-dictionary.thefreedictionary.com/mercy, accessed on 24/05/2022.
[221] See article 67 of the 2018 Law on offences and penalties in general: A penalty becomes extinct following its execution, the convict's death, amnesty, *presidential pardon* or due to its prescription".
[222] See Michael A. Foster, "Presidential Pardons: Overview and Selected Legal Issues", Report, Congressional Research Service, January 14, 2020, p. 3.
[223] See article 67 of the 2018 Law on offences and penalties in general.
[224] See article 229 of the 2019 Law on criminal procedure; see also article 68 of the 2018 Law on offences and penalties in general: "Amnesty is a pardon granted in the general interest and for the benefit of convicted persons in respect of the offences they have committed".

52 persons convicted for the offenses of abortion and infanticide[225]. Such a collective presidential pardon for a specific category of convicts (girls and young women) for specific offenses (abortion and infanticide) is legally defined as "amnesty". Other examples of collective pardon recently occurred including the April 2019 collective presidential pardon of 367 girls and women convicted for the offence of abortion, complicity in abortion and infanticide[226]. In May 2020, the President also granted a collective presidential pardon to 52 girls and young women who were serving different sentences after they had been found guilty of engaging in illegal abortion[227]. On 30th July, 2021, the President granted a collective presidential pardon to 10 girls and young women convicted of abortion[228]. In total, the President granted a collective presidential pardon (amnesty) to 481 girls and young women convicted for abortion and related offenses from 2019 to 2021,.

In contrast to pardons and amnesty, which obviate criminal punishments in their entirety, *commutation* merely substitutes the punishment imposed by a court for a less severe punishment, such as a reduced sentence of imprisonment[229]. For example, a 10 year sentence of imprisonment can be commuted to a 5 year sentence of imprisonment.

A *reprieve* produces delay in the execution of a sentence, such as the suspension of the execution of penalty indicated in article 73 of the 2018 Law on offences and penalties in general[230]. No data is available on how a reprieve is implemented in Rwanda.

In accordance with Article 231 of the 2019 Law on criminal procedure, "*presidential pardon can be granted unconditionally or subject to conditions indicated in the decision. If the conditions are not complied with, the presidential pardon is automatically revoked and the execution of the penalty resumed*". An administrative process has been established through the Supreme Court, Rwanda Correctional Service and the Ministry of Justice for submitting and evaluating requests for these forms of mercy[231], though the process is merely advisory and does not affect the President's ultimate authority to grant relief. Indeed, presidential pardon is *under the sole discretion of the President of the Republic*[232].

While presidential pardon is well regulated, some legal issues need more discussions. The Rwandan legislation is not clear on whether there is a limitation to the use of presidential pardon and other aforementioned forms of mercy. Thus, some questions are left without answers including the following: while the presidential pardon is under the sole discretion of the President of the

[225] See the Presidential Order nº 112/01 of 11/10/2019 granting mercy, in *Official Gazette*, no Special of 11/10/2019.
[226] See Presidential Order nº 047/01 of 04/04/2019 granting mercy, in *Official Gazette*, no Special of 04/04/2019.
[227] Presidential Order nº 067/01 du 19/05/2020 granting collective pardon, in *Official Gazette*, n° 14 of 19/05/2020.
[228] Edmund Kagire, "President Kagame Pardons 10 Girls Convicted for Abortion, 4,781 Convicts Get Parole", published on July 31, 2021, available at https://www.ktpress.rw/2021/07/president-kagame-pardons-10-girls-convicted-for-abortion-4781-convicts-get-parole/, accessed on 22/06/2022.
[229] See Michael A. Foster, *op. cit*., p. 4
[230] See Michael A. Foster, *op. cit*., p. 5.
[231] See articles 227, 228 and 229 of the 2019 Law on criminal procedure.
[232] See article 227, para. 2, of the 2019 Law on criminal procedure.

Republic, can one challenge presidential pardon in court, if, for example, the conditions attached to it are unconstitutional? Can the President grant presidential pardon for all offenses? Can the Supreme Court oversee the use of the mercy power of the President of the Republic as the latter exercises his/her power after consultation with the Supreme Court (i.e. to avoid differential treatment)? How are the principles of the rule of law and the separation of powers safeguarded vis-a-vis the use of presidential pardon (i.e. to avoid undermining the confidence in a fair and independent criminal justice system)? May the President grant mercy to himself/herself?

Furthermore, contrary to parole, there is no timeline as to when the President grants the presidential mercy[233]. While it remains under the President's discretion to decide to whom and when to grant the pardon, the impact of the presidential mercy (pardon, amnesties, commutations and reprieve) on the prison population and access to justice is hard to measure, though it remains an alternative to imprisonment.

4.1.2.4. Persons qualified for alternatives to imprisonment

The study asked the respondents to specify the types of persons for whom the alternatives to imprisonment should apply and they all agreed that, in principle, no suspect should be detained or imprisoned for a petty offense. These are offences punishable under the law only by a principal penalty of imprisonment for a term of less than six (6) months, a fine or the penalty of community service[234]. For misdemeanors, the gravity and impact of offense should be considered to determine an appropriate alternative measure to imprisonment. For example, in an interview with an official from RIB, he mentioned that "*the suspects of gender-based violence, child abuse, bounced checks and road accidents are, in principle, investigated while free*"[235].

For felonies, while they are considered as very serious crimes, the respondents suggested that the authorities empowered to impose alternatives to imprisonment should carefully consider all circumstances surrounding the commission of the offenses and impose imprisonment as the last resort.

4.1.2.5. Sanctions for failure to comply with alternatives to imprisonment

There are some sanctions provided for in case the offender fails to comply with the conditions of specific alternatives to imprisonment. For example, if convict fails to properly serve the penalty of community service, he/she is forced to serve the remainder of the penalty in prison[236]. The convicts to whom the court imposes a fine, court fees, any other payment into the public treasury, and restitutions or payment of damages for the benefit of the victim and fails to execute the court

[233] See article 234 of the 2019 Law on criminal procedure: "*at least once a year*, the Commissioner General of Rwanda Correctional Service submits to the Minister in charge of justice the list of applicants for provisional release".
[234] See article 19 of the 2018 Law on offences and penalties in general.
[235] Interview with an official from RIB, on 09/08/2022.
[236] See article 35, para.3, of the 2018 Law on offences and penalties in general.

judgement, he/she is sanctioned with a penalty of community service[237]. Moreover, suspended sentence is void in case of recidivism[238]. In general, most of the respondents (90.26%) perceive that convict's failure to comply with non-custodial alternative or commit another offence while under an alternative to imprisonment leads to the imprisonment as illustrated in Figure 4 below.

Figure 4: Respondents' perception of the effects of failure to comply with a non-custodial alternatives

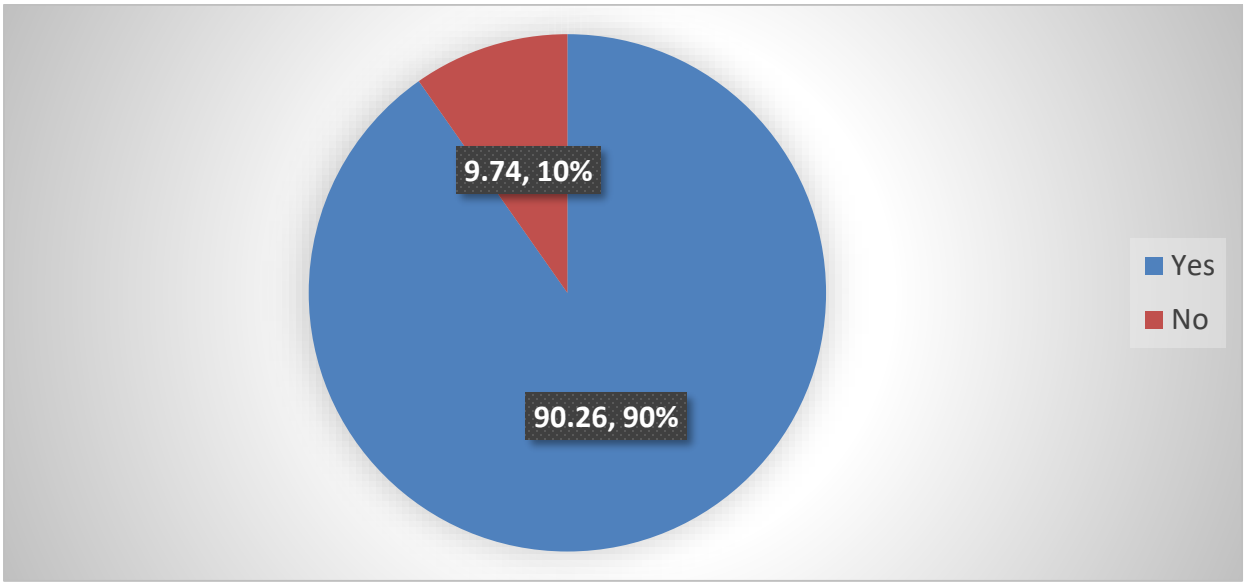
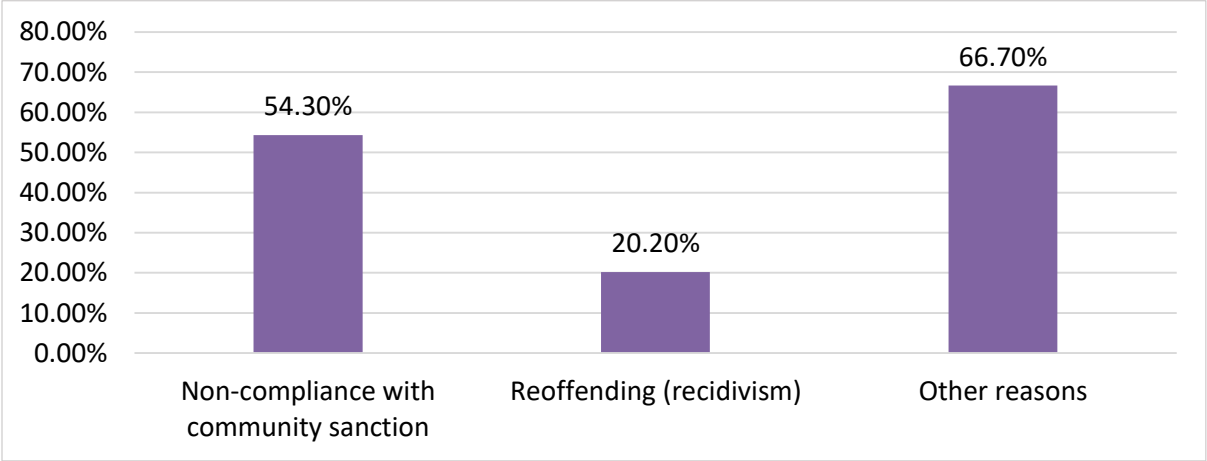


Figure 5: Causes of failure to comply with alternatives



54.3% of the respondents explained that the failure to comply consists of non-compliance with community sanction, while 20.2% indicated that it consists of reoffending. Surprisingly, the

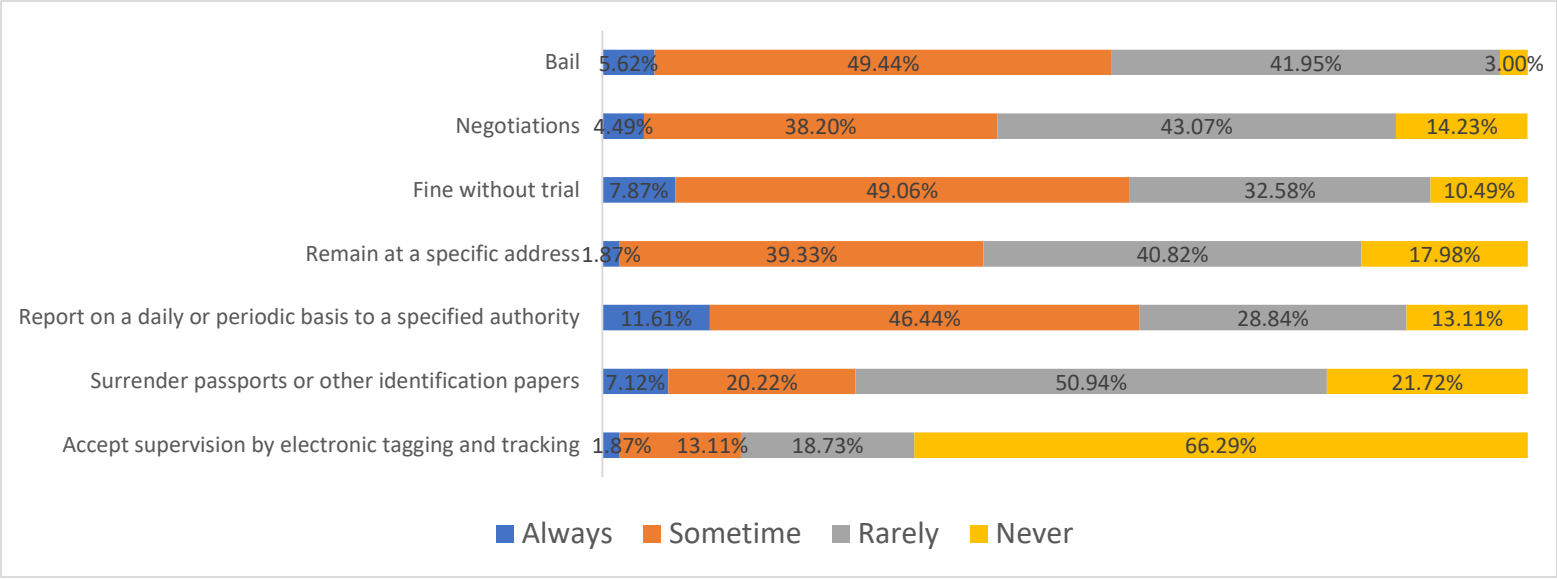
[237] See article 36, para.1, of the 2018 Law on offences and penalties in general.
[238] See article 65, of the 2018 Law on offences and penalties in general.

respondents pointed out some other reasons as main cause of failure to comply with alternatives. 66.7% of the respondents from the criminal justice chain revealed that poverty of the suspects, limited monitoring systems due to lack budget, limited infrastructures, lack of implementing orders and policies remain the main causes behind the failure to comply with alternatives accounting.

4.2. Effectiveness of the implementation of alternatives to implementation

4.2.1. Use of alternatives at the pretrial detention level

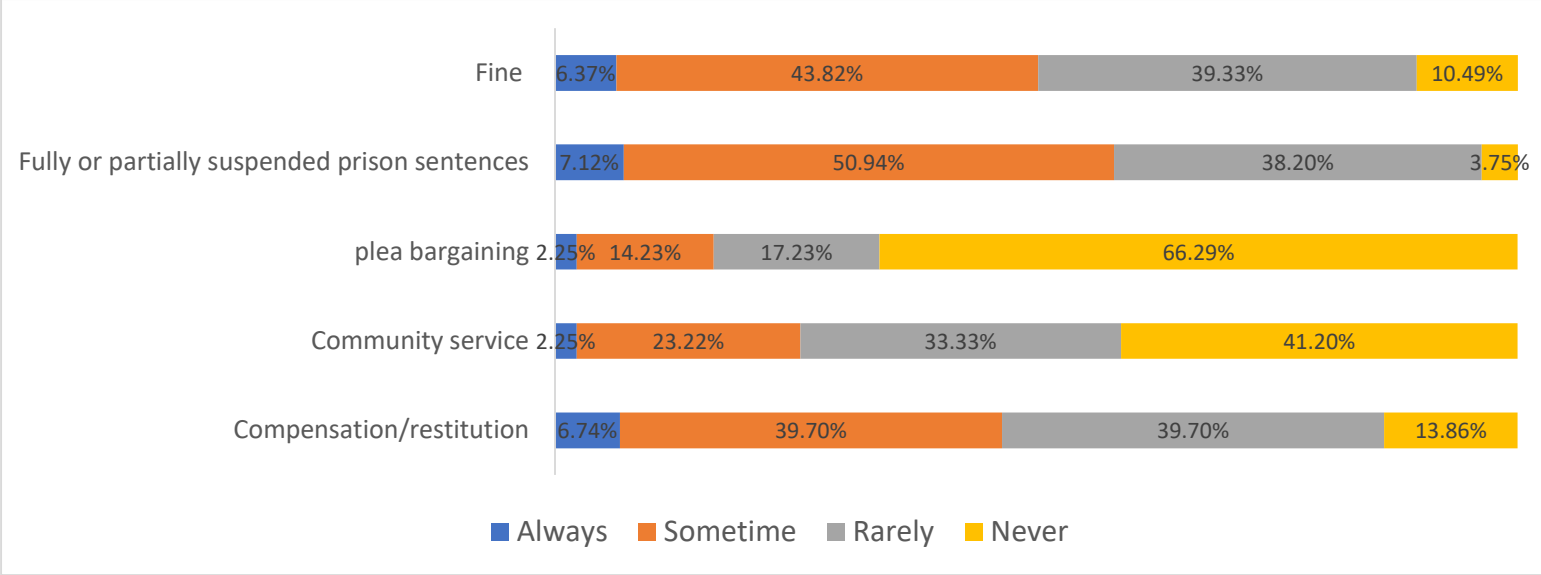
Figure 6: Frequency of the use of alternatives to pre-trial detention



The study found out that, in general, available alternatives at the pretrial level are sometime or rarely used. 49.44%, 49.06% and 46.44% of the respondents respectively indicated that bail , fine without trial and reporting to a specified authority on a daily or periodic basis are relatively used though to a limited extent. Respondents also voiced their perceptions of the use of other alternative measures: such as 50.94% and 43.07% respectively indicated that surrendering passports or other identification papers and negotiations (are still rarely used while 66.29% indicated that supervision by electronic tagging and tracking is never used. The study found that the latter alternative is quasi impossible because the order of the Minister in charge of justice determining the modalities through which a suspect may be monitored through technology is yet to come into force.

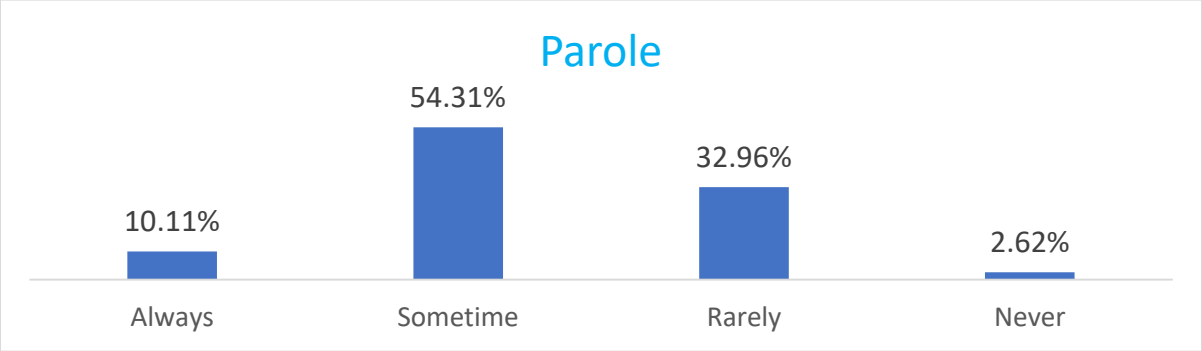
4.2.2. Effectiveness of alternatives at the sentencing level

Figure 7: Frequency of the use of alternatives at the sentencing level



4.2.3. Effectiveness of alternatives after sentencing

Figure 8: Frequency of the use of alternatives after the sentencing level



54.31% of the respondents perceive that parole is sometimes used while 32.96% perceive that it is rarely used after sentencing the offender. This is mainly due to the fact that the 2019 Law on criminal procedure requires the Commissioner General of Rwanda Correctional Service to submit the list of applicants for provisional release to the Minister in charge of justice at least once a year (Article 234) and this sounds like one parole process per year is enough. The respondents suggested that the Commissioner General of Rwanda Correctional Service conducts regular screening of the

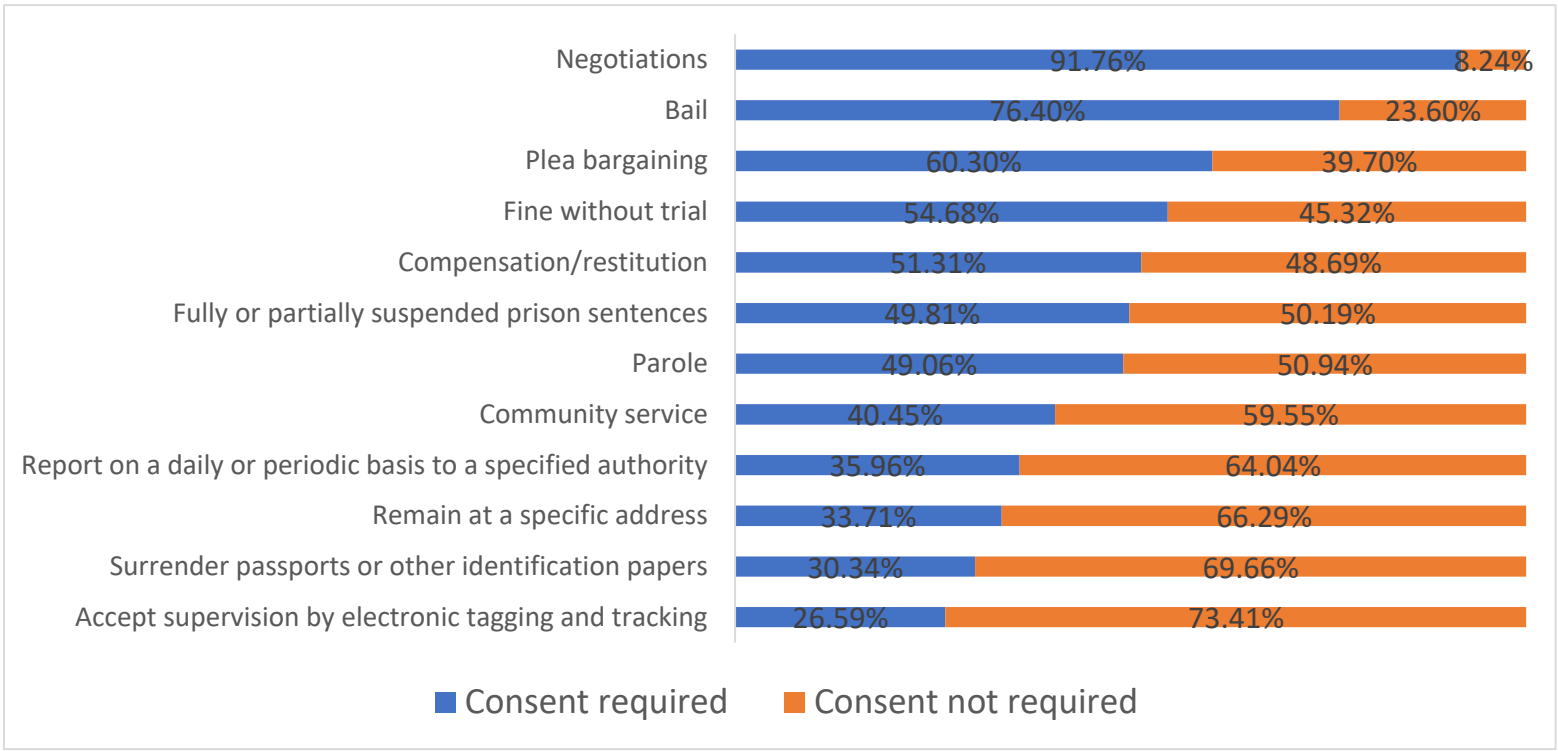
prisoners who fulfil the requirements for conditional release so that they can be released as many times as possible per year.

In sum, this study shows that the available alternatives to imprisonment (at the pre-trial, sentencing and after sentencing stages) are sometimes or rarely used. Despite their availability in the legislations, the alternatives are not always imposed and this limited use affects their contribution to reducing prison overcrowding and promoting access to justice. Therefore, more efforts are needed to encourage the authorities empowered to impose alternatives to imprisonment whenever possible and use imprisonment as the last resort.

4.2.4. The consent of the offender to the imposition of the alternative

The Tokyo Rules require that "the dignity of the offender subject to non-custodial measures shall be protected at all times."[239] Thus, Alternative sanctions requires the formal consent of the offender on whom it is being imposed[240]. Thus, the study sought to establish whether a formal consent of the offender is required in the application of specific alternatives to imprisonment in Rwanda. The answers from the respondents are summarized in Figure 9 below:

Figure 9: Perception on the requirement of offender's consent in applying the alternatives



[239] See The Tokyo Rules, Rule 3.9.
[240] See UNODC, *Handbook of basic principles and promising practices on Alternatives to Imprisonment*, United Nations, Vienna, 2007, p. 27.

As can be seen in Figure 9, the study found out that the formal consent of the offender is generally required in applying specific alternatives to imprisonment. For example, 91.76% of the respondents indicated that they require the consent of the offender while initiating negotiations, while imposing bail (76%), when concluding plea bargaining agreement (60.3%), when imposing a fine without trial (54.68%), and when compensation/restitution (51.32%). In other alternatives such as suspended prison sentences, community services, parole, conditions like remaining at a specific address, reporting to a specified authority on a daily or periodic basis, surrendering identification documents and accepting supervision by electronic tagging and tracking, the formal consent of the offender is less required.

However, the underlying principle with sanctions that oblige offenders to perform certain acts is that they require the offender's consent. Rule 3.4 of Tokyo Rules states that "*non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent*". Thus, this principle should be respected in order to avoid human rights abuse in applying alternatives to imprisonment.

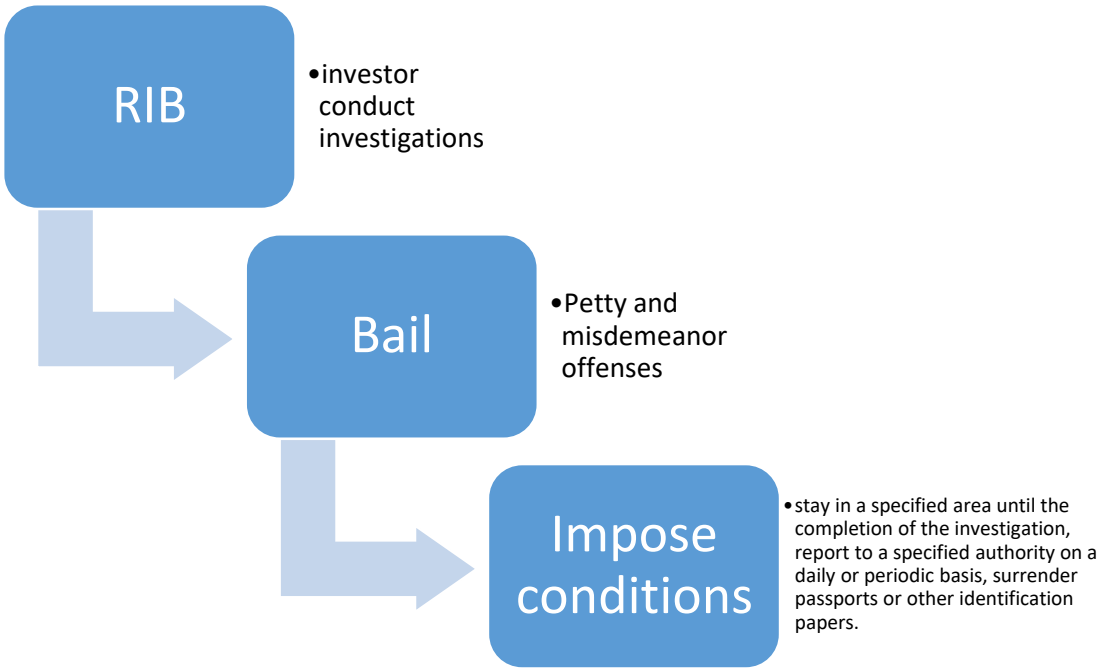
4.2.5. Authorities empowered to impose the different alternatives

Different institutions are involved in the implementation of alternatives to imprisonment. These are RIB, NPPA, Courts and MNIJUST (and RCS).

1. Powers of RIB to impose alternatives to imprisonment

The study shows that RIB has the power to impose a bail and other conditions such as remaining at a specific address, reporting to a specified authority on a daily or periodic basis, surrendering passports or other identification papers and electronic monitoring. However, the implementation rates are very low. For example, 5.24% of the respondents perceive that RIB impose bail and 17.98% of the respondents perceive that RIB applies the other alternative measures.

Figure 10: Powers of RIB to impose alternatives to imprisonment



At the pre-trial level, the investigator may release any person under investigations under some conditions such as not moving away from a specified area or staying in that area[241] or post a bail in case of a petty offence and a misdemeanor[242].

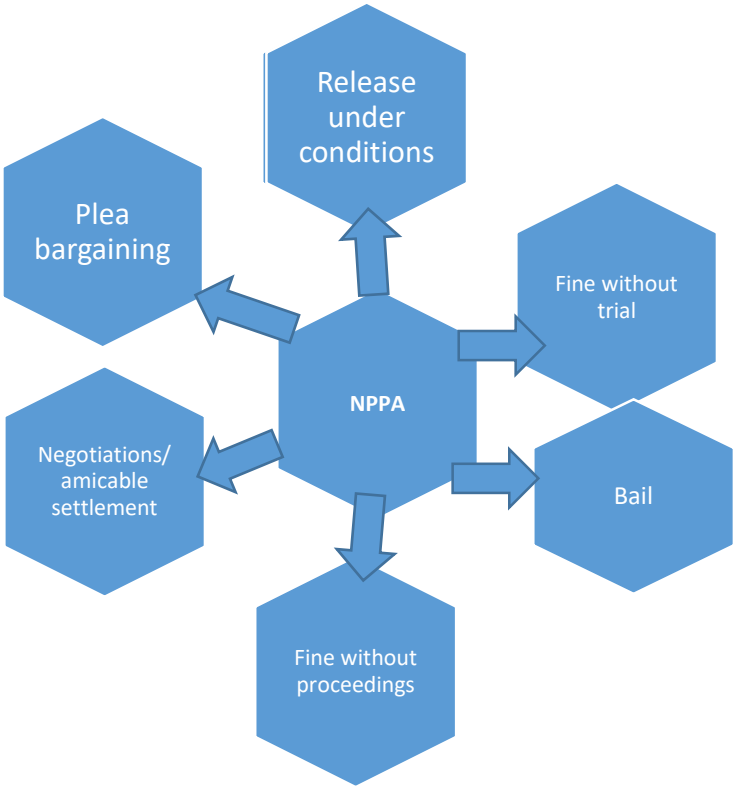
In an interview with an official from RIB, he mentioned that "*the suspects of gender-based violence, child abuse, bounced checks and road accidents are, in principle, investigated while free and may be required to respect some measures*"[243]. While RIB has the power to impose bail, according to the 2019 Law on criminal procedure, there is no data on cases handled through the imposition of bail at the RIB level.

2. Powers of NPPA to impose alternatives to imprisonment

At the pre-trial level, the prosecutor has the power to impose a bail, fine without trial, initiate negotiations for an amicable settlement, conduct a plea bargaining and release the suspect under certain conditions. Though the implementation rate is still low, the respondents indicated that these are practiced. 35.21% indicated that fine without trial is the most practiced, 30% referred to negotiations, 32.96% to conditions to report to a specified authority on a daily or periodic basis, 29.21% to remaining at a specific address and 20.97% to bail.

[241] See articles 45, para. 4, and 80 of the 2019 Law on criminal procedure.
[242] See article 81 (1°) of the 2019 Law on criminal procedure.
[243] Interview with an official from RIB, on 09/08/2022.

Figure 11: Powers of NPPA to impose alternatives



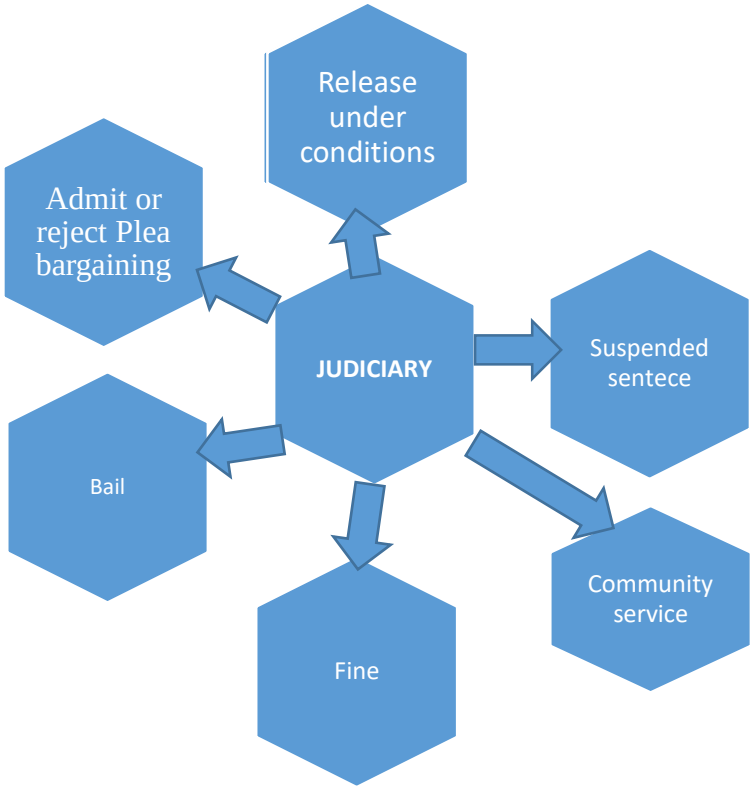
As has been mentioned, the prosecutor has the power to impose a bail or fine without trial, initiate negotiations for an amicable settlement, conduct a plea bargaining and release under certain conditions, at the pre-trial stage. However, in an interview with an official from NPPA, he emphasized that "*NPPA does not propose a bail to suspects; it only approves a bail posted by suspect as per the 2019 Law on criminal procedure. Thus, the law does not define who must propose a bail to be approved by NPPA*"[244].

3. Powers of the court to impose alternatives to imprisonment

The study found out that, at the pre-trial and sentencing levels, the courts have different alternatives to pre-trial detention and imprisonment. Contrarily to RIB and NPPA, the study shows that the courts impose alternatives at a relatively higher level. The study found out that suspended prison sentences is the most practiced as pointed out by 86% of the respondents while negotiations/mediation is the least practiced (54%).

[244] Interview with an Official from NPPA, on 11/08/2022.

Figure 12: Powers of the courts to impose alternatives to imprisonment



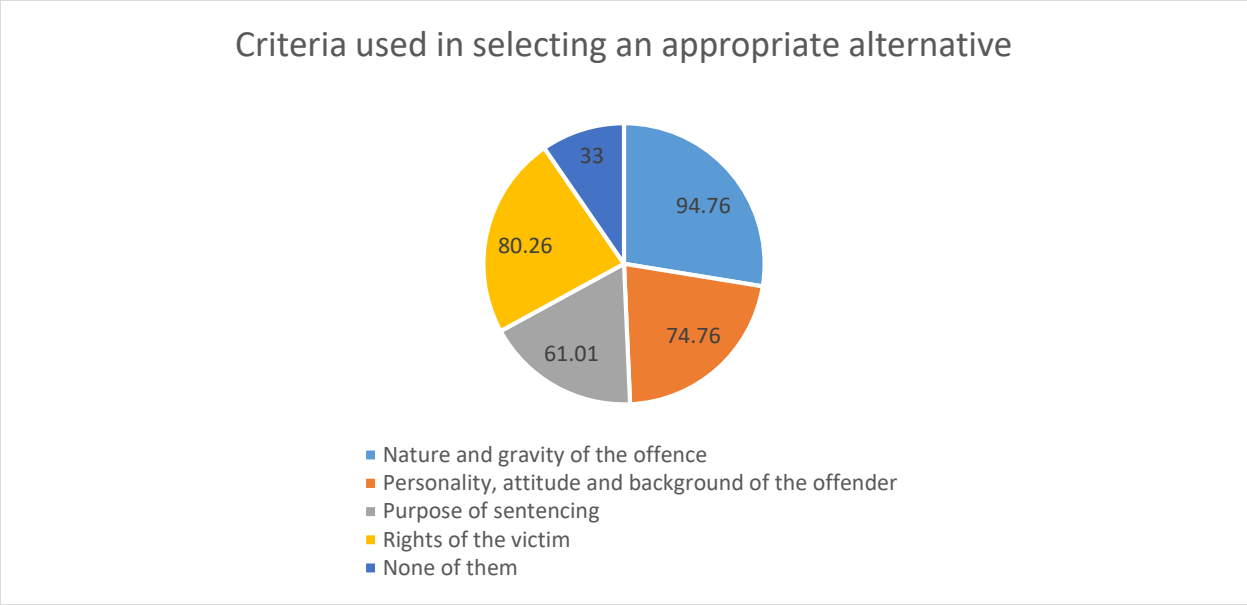
At the sentencing level, a judge has various options at his disposal to replace an imprisonment with. For example, at the pre-trial level, a judge can impose some conditions or a bail in lieu of pre-trial detention. At the sentencing level, the judge can impose a fine, community services, full or partial suspension of a sentence and examine the plea bargaining agreement between the prosecutor and the defendant.

4. Powers of the Minister of Justice to impose alternatives to imprisonment

A provisional release of a convicted person is requested from the Minister in charge of justice through the Commissioner General of Rwanda Correctional Service. At least once a year, the Commissioner General of Rwanda Correctional Service submits the list of applicants for provisional release to the Minister in charge of justice.

4.2.6. Selection of appropriate alternatives to be applied

Figure 13: Criteria used in selecting appropriate alternatives



The study assessed the criteria used by the authorities in selecting an appropriate alternative. Generally, the study found out that the following factors influence decision making by investigators, prosecutors and judges:

a) Nature and gravity of the offence (94.76%);

b) Rights of the victim (80.26%);

c) Personality, attitude and background of the offender (74.76%);

d) Purposes of sentencing (61.01%);

e) None of them (33%)

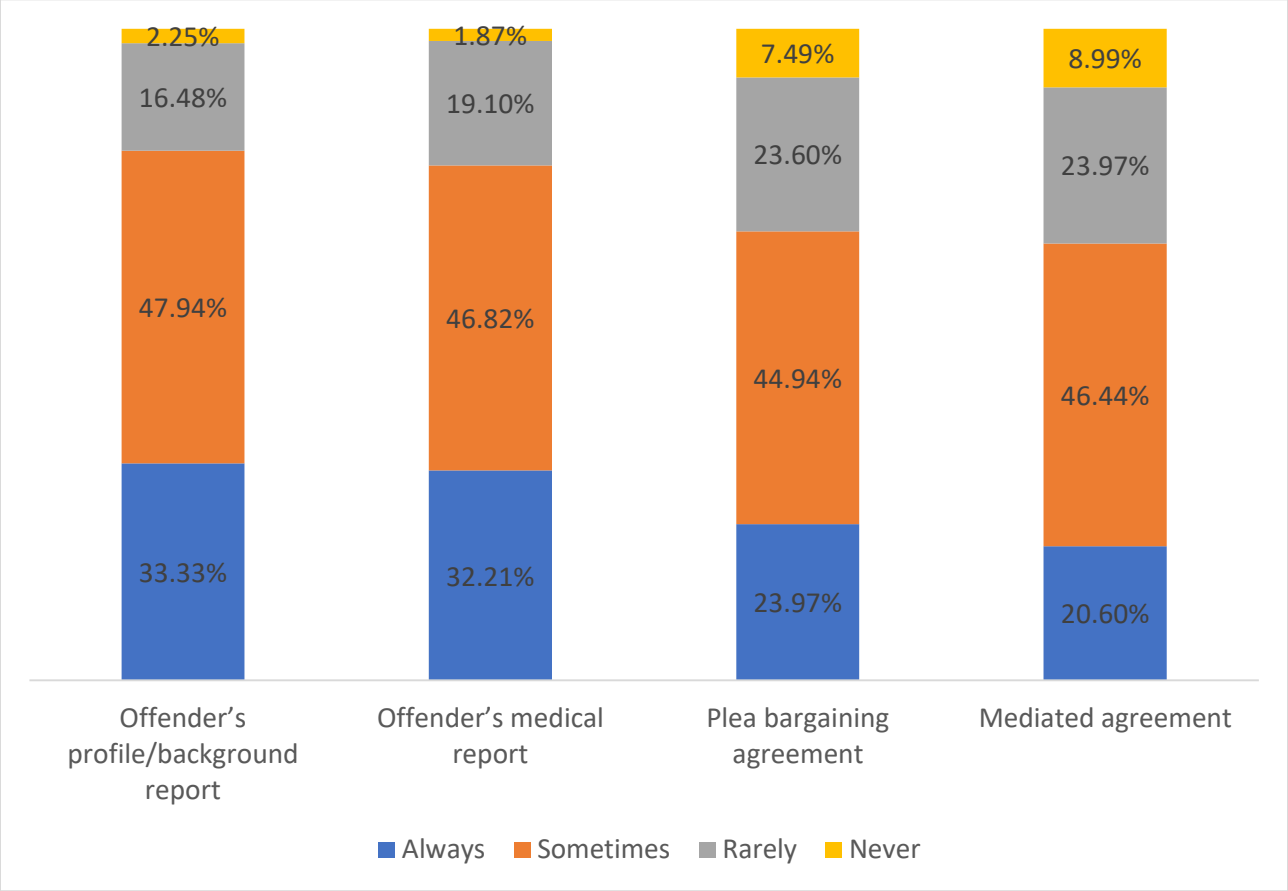
The study found out the nature and gravity of the offence (94.76%), the rights of the victim (80.26%) and personality, attitude and background of the offender (74.76%) are the criteria mostly used by the authorities to impose alternatives to imprisonment. However, the study also found out that some authorities do not consider the above factors, as pointed out by 33% of the respondents. It worth mentioning that, though the majority of respondents consider that the nature and gravity of the offense is the important factor in selecting an appropriate alternative to impose to the offender, we argue that the gravity of the offense should not be an obstacle to the imposition of alternatives to imprisonment. In the process of selecting an alternative to imprisonment, the

authorities should consider all circumstances surrounding the commission of the offense, including the background of the suspect, confessions and the purpose of punishment (denunciation, deterrence and rehabilitation[245]) and impose the imprisonment as the last resort.

4.2.7. Sources of information in determining the appropriate alternative

The findings of this study indicate that the authorities who impose alternatives to imprisonment mainly rely on the information obtained from offender's profile/background report, medical reports, plea bargaining agreements or mediated agreements in determining the appropriate alternatives. More details can be found in Figure 14 below:

Figure 14: Information used in determining the appropriate alternative sentence

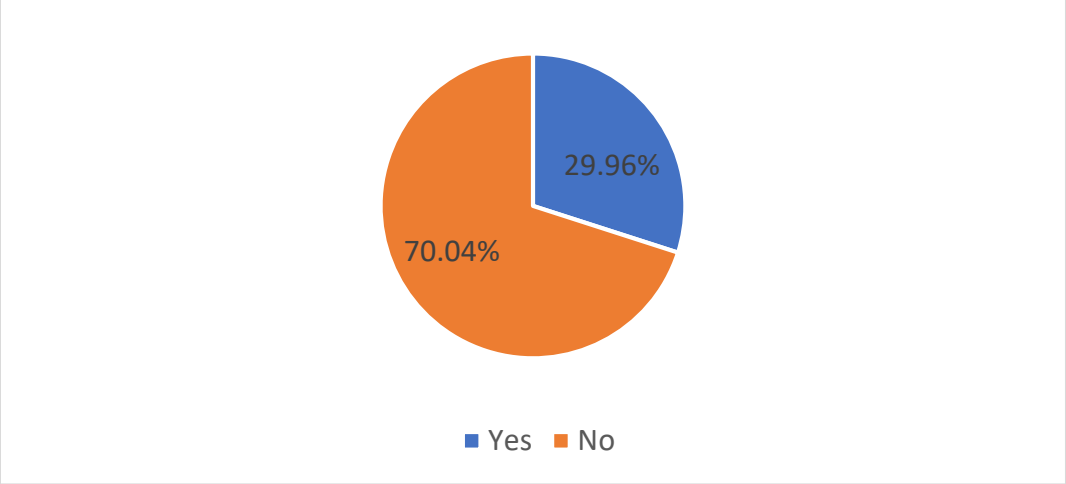


[245] See also Supreme Court, *KABASINGA Florida vs Government of Rwanda*, Case no RS/INCONST/SPEC 00003/2019/SC, on 04/12/2019, para. 47. See also Intermediate Court of Nyagatare, *Mwiseneza Janvier vs The Prosecutor*, case no RP/Min 00032/2021/TGI/NYG, 14/04/2021, paras.18-20.

4.2.8. Monitoring of compliance and completion of the alternatives to imprisonment

The respondents were asked about their perceptions of the monitoring of compliance and completion of the alternatives to imprisonment. Their answers, summarized in Figure 15 below, suggest that 70% of the respondents interviewed perceive that the compliance and completion of the alternatives to imprisonment are not monitored in Rwanda.

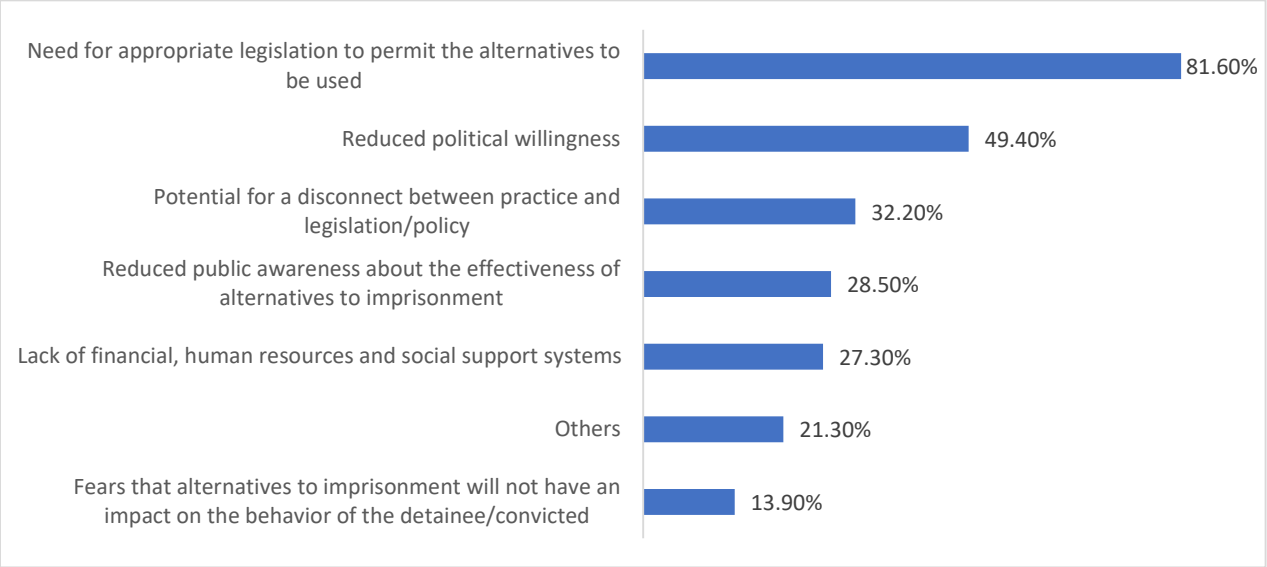
Figure 15: Perceptions on monitoring compliance and completion of the alternatives to imprisonment in Rwanda



In this figure, "Yes" represents the number of respondents who perceive that the compliance and completion of the alternatives to imprisonment are not monitored while "No" represent the number of respondents who perceive that the compliance and completion of the alternatives to imprisonment are monitored in Rwanda.

During the interviews, the respondents revealed that one of the barriers to the effective implementation of the alternatives is that the compliance and completion of imposed alternative sanctions is not properly monitored. This is mainly due to the lack of adequate resources (human, financial and infrastructure). For example, in many cases, no budget is allocated to the implementation of specific alternatives such as electronic monitoring. There are also no personnel to supervise the implementation of the imposed alternatives (for example, the order to remain in a specific place, etc.). In general, the lack of resources makes it difficult to monitor the compliance and completion of the alternative to imprisonment.

Figure 16: Obstacles related to the implementation of alternatives to imprisonment



The research identified different challenges related to the implementation of alternatives to imprisonment in Rwanda. These include (1) the limitations imposed by the legislation on alternatives, (2) reduced political willingness, (3) lack of harmony between legislation and practice, (4) lack of resources to support systems, (5) reduced public awareness about the effectiveness of alternatives to imprisonment and (6) and excessive use of imprisonment.

As one can notice in the Figure … above, a very high number of respondents (81, 6%) perceive that more work needs to be done at the level of the legislations. Rwandan laws need to be amended to accommodate international best practices on alternatives to imprisonments. This goes hand in hand with the reduced political will referred to by 49.4% of the respondents .These perceive that the senior politicians and decision makers are responsible for the delay in putting in place criminal justice policies and different orders that determine the modalities of implementation of existing alternatives to imprisonment .

1. Limitations imposed by the legislation on alternatives to imprisonment

Limitations imposed by the 2018 Law on offences and penalties in general

The 2018 Law on offences and penalties in general is designed in such a way that there is mandatory minimum sentences that judges must observe. However, the judges should not only focus on the gravity to determine a penalty. Rather, they should always consider other factors surrounding the commission of an offense such as the impact of the offence on the victim and the community at large, the motive for committing the offence, the offender's prior record and

personal situation and any other relevant circumstances[246]. The cases discussed in the following paragraph can be used to illustrate this claim.

The Supreme Court noticed that, in *KABASINGA Florida vs Government of Rwanda*[247], prohibiting a judge to impose a penalty which is below mandatory minimum sentences is against the principles of a fair trial and independence of the judge. As decided by the Court of Appeal, in *Nzafashwanimana Jean de Dieu vs The Prosecutor*[248], the role of punishment should not only be measured against the gravity of the offense committed. In the same sense, the gravity of the offense should not be an obstacle to the imposition of alternatives to imprisonment. The courts should consider all circumstances surrounding the commission of the offense such as the age of the accused (minor), confessions and the purpose of punishment (denunciation, deterrence and rehabilitation[249]) and impose the imprisonment as the last resort.

During the interviews with officials from the Judiciary (NPPA and RIB), they all mentioned that mandatory minimum sentences constitute a barrier to the implementation of the alternatives. One of them said, "*mandatory minimum sentences are barriers to the implementation of alternatives to imprisonment because the authorities empowered to impose the alternative measures are not free to consider all circumstances surrounding the commission of the offense and choose an alternative to imprisonment*". Therefore, a sentencing policy should be put in place to clearly explain the implementation of alternatives to imprisonment vis-à-vis the mandatory minimum sentence provided for by the 2018 Law on offences and penalties in general.

2 Unenforced political willingness about the alternatives to imprisonment

The officials from Judiciary (NPPA and RIB all agree that the delay to put in place implementing orders, policies and guidelines on the implementation of different alternatives to imprisonment has contributed to non-compliance with the latter. They recommend that the senior officials who are empowered to initiate those orders, policies and guidelines should speed up the establishment of these legal documents/instruments.

It is commendable that the 2019 Law on criminal procedure has introduced different types of alternatives to imprisonment. However, senior politicians and policy makers should design policies providing guidelines on the implementation of the provisions of the 2019 Law on criminal procedure about the alternatives to imprisonment. For example, there should be a criminal justice

[246] See article 49 of the 2018 Law on offences and penalties in general.
[247] See Supreme Court, *KABASINGA Florida vs Government of Rwanda*, Case no RS/INCONST/SPEC 00003/2019/SC, on 04/12/2019, paras. 28, 37and 38.
[248] See Court of Appeal, *Nzafashwanimana Jean de Dieu vs The Prosecutor*, case no RPAA 00032/2019/CA, on 28/02/2020, p.5, para.15.
[249] See also Supreme Court, KABASINGA Florida vs Government of Rwanda, Case no RS/INCONST/SPEC 00003/2019/SC, on 04/12/2019, para. 47. See also Intermediate Court of Nyagatare, *Mwiseneza Janvier vs The Prosecutor*, case no RP/Min 00032/2021/TGI/NYG, 14/04/2021, paras.18-20.

policy which provides the information on the implementation of various alternatives to imprisonment, policies to reduce prison population, etc.

Moreover, some important orders on the implementation of different alternatives to imprisonment have not yet been enacted. Those are, for example, the order of the Minister in charge of justice determining the modalities through which a suspect may be monitored through technology and the Presidential order determining modalities for the execution of the penalty of community service. Therefore, senior politicians and policy makers should share an ideological commitment in order to put in place all necessary instruments that can help improve the implementation of alternatives to imprisonment and thus, reduce the prison population.

3. Lack of harmony between legislation and practice

As has been mentioned previously, the 2018 Law on offences and penalties in general contains many provisions with mandatory minimum sentences that judges must impose. In practice the Supreme Court provided guidelines on some provisions that had been posing challenges and concluded that "prohibiting a judge to impose a penalty which is below mandatory minimum sentences is against the principles of a fair trial and independence of the judge (judicial discretions)[250]. Therefore, the 2018 Law on offences and penalties in general should be amended and harmonised with the practice of the Judiciary.

Furthermore, the 2019 Law on criminal procedure introduced different types of alternatives to imprisonment at the different levels of criminal proceedings: pre-trial, sentencing and after sentencing. Particularly, at the pre-trial level, the principle is that "a suspect normally remains free during investigation"[251]. This principle requires judges, prosecutors and investigators to use the imprisonment or detention as the last resort. However, the study found out that the number of pre-trial detainees accounts for 18% of all prison population in Rwanda, which proves that the pre-trial detention is frequently used in practice. The study also found that some detainees spend longer periods without being summoned to trial and this significantly contributes to prison overcrowding. Thus, the principle that a criminal case should be tried within 6 months should be respected.

As has been previously mentioned, mandatory minimum sentences should not be a reason to deny an alternative to imprisonment at the sentencing level. At the after sentencing level, it is commendable that in the last 3 years (2019-2021) 12,589 convicts were released on parole. This practice considerably contributes to the control of prison population. Thus, the collaboration of the Commissioner General of Rwanda Correctional Service to select the convicts who fulfill the

[250] Supreme Court, *KABASINGA Florida vs Government of Rwanda*, Case no RS/INCONST/SPEC 00003/2019/SC, on 04/12/2019, paras. 28, 37and 38.
[251] See article 66, para.1, of the 2019 Law on criminal procedure.

requirements of parole should be maintained so that the applicants who fulfill the requirements are released, at least once a year.

4. Limited resources to support the systems of implementation of alternatives to imprisonment

As has been previously explained, the practitioners in criminal justice indicated that one of the barriers to the implementation of alternatives is the lack of resources (human and financial) and infrastructure. For example, in many cases, there is no budget allocated to the implementation of specific alternatives such as electronic monitoring and community service. There is also no personnel to supervise if the alternatives imposed are being implemented (for example, the order to remain in a specific place, etc.).

Furthermore, the participants mentioned that if a drug abuser is sent to a centre for de-toxication, there is a lack of such infrastructure. In general, the lack of resources makes it difficult to monitor the compliance and completion of the alternative to imprisonment. For example, 70% of the respondents interviewed perceive that the compliance and completion of the alternatives to imprisonment are not monitored in Rwanda as shown in the table below.

5. Reduced public awareness about the effectiveness of alternatives to imprisonment

28.5% of respondents perceive that there is limited public awareness about the effectiveness of alternatives to imprisonment. The respondent revealed that raising public awareness is often overlooked and this leads to ineffective implementation of alternatives to imprisonment. For example, an informed community may feel that offenders or suspects who return into community put the community in greater danger. Thus, conferences, seminars and other forms of awareness campaigns should be regularly organized to provide more information to the public on the effectiveness of alternatives to imprisonment.

6. Excessive use of imprisonment

During the interviews with some judges and prosecutors, some of them (13.9%) expressed fear that alternatives to imprisonment will not have an impact on the behavior of the detainees/prisoners. This situation leads to excessive use of imprisonment, especially at the pre-trial stage. As has been noted, , there are 11,450 detainees in the category of "Common Law Offenses" as of 30th May 2022, representing 18% of the prison population in this category. Moreover, these numbers only represent those detained under the prison administration and do not include those in police cells or other forms of detention.

Article 66 of the 2019 Law on criminal procedure states that "*a suspect normally remains free during investigation. He or she may be held in provisional detention if there are sufficient grounds to believe that he or she committed an offence which is punishable with imprisonment for a term*

of at least two (2) years. However, even if the penalty provided for is less than two (2) years but not less than six (6) months, the investigator or prosecutor may provisionally detain the suspect if there is reason to believe that the suspect may evade justice; the identity of the suspect is unknown or doubtful; the provisional detention is the only way to prevent the suspect from disposing of evidence or exerting pressure on witnesses and victims or prevent collusion between the suspect and their accomplices; such detention is the only way to protect the accused, to ensure that the accused appears before judicial organs whenever required or to prevent the offence from continuing or reoccurring. The investigator or prosecutor, while taking the decision to detain, considers other circumstances related to the conduct and behaviour of the suspect, the category and the gravity of the offence or whether the objective of detaining the suspect may not be achieved through any other means".

In accordance with Article 66 of the 2019 Law on criminal procedure, the pre-trial detention is based on (i) the offense committed (the category and the gravity of the offence); (ii) serious grounds to suspect that the suspect committed or attempted to commit the offence; (iii) other factors such as avoidance of justice escape, unknown or doubtful identity, prevention of the suspect from disposing of evidence or exerting pressure on witnesses and victims or collusion between the suspect and their accomplices, protection of the accused, prevention of the offence from continuing or reoccurring and consideration of the conduct and behaviour of the suspect.

Based on the findings of this study, tt is recommended that the obligation for pre-trial detention for any offence ranging from a prison term of at least 6 months be removed. Pre-trial detention decisions should be based on an objective evaluation of factors, which may justify pre-trial detention[252]. The general rule in international standards is that "*a person is presumed innocent until found otherwise by a competent court and must be afforded his or her personal liberty and not be held in detention pending trial*"[253].

The United Nations Human Rights Committee (HRC) stated that detention before trial should be used only where it is lawful, reasonable and necessary. According to the HRC, detention may be necessary in the following circumstances[254]:

• To prevent flight;

• To prevent interference with evidence;

• To prevent the recurrence of crime;

[252] UNODC, *Handbook on strategies to reduce overcrowding in prisons*, Criminal Justice Handbook Series, United Nations, New York, 2013, p. 96.
[253] ICCPR, Article 9 (3); Tokyo Rules Rule 6.1; Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 39.
[254] Center for Human Rights, *Human Rights and Pre-Trial Detention: A Handbook of International Standards relating to Pre-Trial Detention*, Professional Training Series no. 3, New York, United Nations, 1994, pp. 14–15.

• Where the person concerned constitutes a clear and serious threat to society, which cannot be contained in any other manner.

European Court of Human Rights (ECtHR) also provided a commendable guidance on the suspicion that the defendant has committed the crime, the gravity of the crime committed, evading justice, absence of fixed residence and fear of reoffending stipulated in Article 66 of the 2019 Law on criminal procedure.

According to ECtHR, the ***suspicion that the defendant has committed an offence*** is not enough in itself to justify continuing detention, no matter how serious the offence and the strength of the evidence against him are[255]. The Court has "*repeatedly held that **the gravity of the charges** cannot by itself serve to justify long periods of detention on remand*"[256].

The ECtHR noted that the release pending trial is often refused on the grounds that there is a risk that the person will abscond (escape) prior to the trial. According to this court, "the mere absence of a fixed residence does not give rise to a danger of flight"[257]. Although such a danger may exist where the sentence faced is a long term of imprisonment, "*the risk of absconding cannot be gauged solely on the basis of the severity of the sentence faced*"[258]. Where such a risk is deemed to exist, the authorities are under a duty to consider alternatives to detention which will ensure the defendant appears at the trial if it is possible to obtain from him/her the guarantees that will ensure such appearance. An essential factor in such guarantees should be a deposit of bail or the provision of security for a large amount[259].

When release pending trial is refused on the basis that the defendant may commit further offences prior to the trial, the court must be satisfied that the risk is substantiated[260]. A reference to the defendant's antecedents does not suffice to justify continued detention on the grounds that there is a danger he will reoffend[261]. Instead, there must be evidence of the propensity to reoffend. A danger of reoffending in no way suffices to make pre-trial detention lawful where "*it is a matter solely of a theoretical and general danger and not of a definite risk of a particular offence. Furthermore, it cannot be concluded from "the lack of a job or a family that a person is inclined to commit new offences*"[262].

Therefore, the grounds of pre-trial detention stated in Article 66 of the 2019 Law on criminal procedure should be carefully applied because each of the reasons enumerated in that article cannot independently constitute a sufficient ground for pre-trial detention. During the pre-trial period

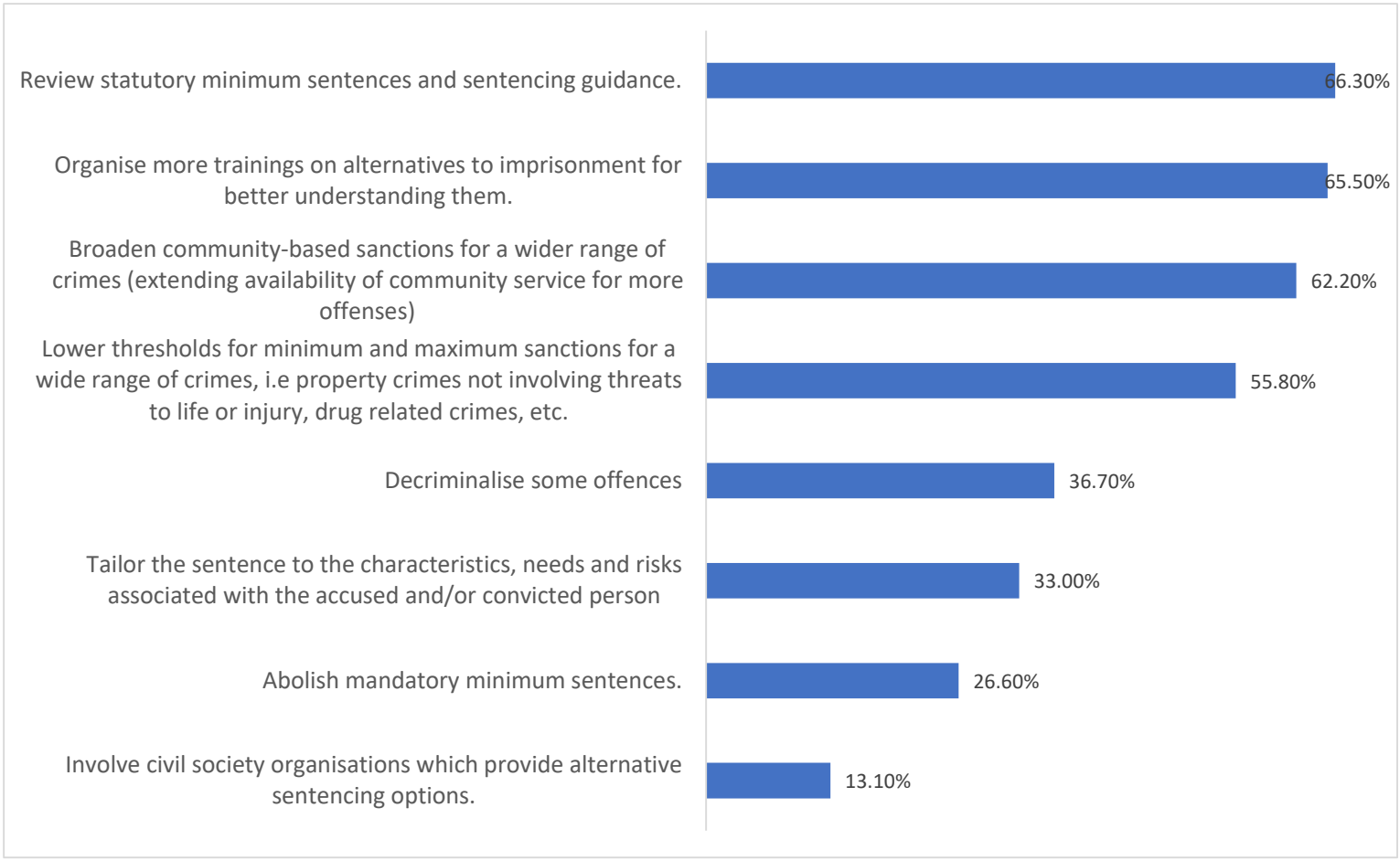
[255] European Court of Human Rights, *Tomasi v France*, nº 12850/87, 27 August 1992, para.89.
[256] European Court of Human Rights, *Ilijkov v Bulgaria*, nº 33977/96, 26 July 2001, para. 81.
[257] European Court of Human Rights, *Sulaoja v Estonia*, nº 55939/00, 15/05/2005, para. 64.
[258] European Court of Human Rights, *Muller v France*, nº 21802/93, 17 March 1997, para. 43.
[259] European Court of Human Rights, *Wemhoff v Germany*, nº 2122/64, 27 June 1968, para. 15.
[260] European Court of Human Rights, *Muller v France*, nº 21802/93, 17 March 1997, para. 44.
[261] European Court of Human Rights, *Muller v France*, nº 21802/93, 17 March 1997, para. 44.
[262] European Court of Human Rights, *Sulaoja v Estonia*, nº 55939/00, 15/05/2005, para. 64.

there is a presumption in favour of release and continued detention "*can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty*"[263].

4.3. Strategies to improve the implementation of alternatives to imprisonment

During interviews, the respondents suggested some strategies that can help to improve the use of alternative measures to imprisonment. In general, the study proposes the following main strategies: (i) organising trainings on alternatives to imprisonment, (ii) putting in place adequate laws on alternatives to imprisonment, and (iii) partnership with civil society organisations. More details about these and more strategies are provided in Figure 17.

Figure 17: Actions to carry out to promote a more frequent use of these alternative measures to imprisonment



[263] European Court of Human Rights, *Mark MCKAY v United Kingdom*, nº 543/03, 3 October 2006, para. 42.

4.3.1. Organising trainings on alternatives to imprisonment

Majority of respondents (65.5%) revealed that they have limited knowledge on the implementation of some alternatives. Therefore, trainings are needed in order for them to gain deeper understanding of the implementation of alternatives to imprisonment. The training can target investigators, prosecutors, criminal defense lawyers, judges, prison officers and other actors in the criminal justice chain.

4.3.2. Putting in place adequate laws on alternatives to imprisonment

The study shows that the 2018 Law on offences and penalties in general presents some limitations regarding the implementation of alternatives to imprisonment. For example, it contains many articles with mandatory minimum sentences, and unavailability of alternatives about many petty and misdemeanor offenses. Therefore, more adequate laws are needed for effective implementation of alternatives. The laws should achieve the following in order to address the identified challenges:

- ✓ Review statutory minimum sentences and sentencing guidance;
- ✓ Extend the availability of community service to more offenses;
- ✓ Decriminalise some offences;
- ✓ Provide statutory minimum sentences and sentencing guidance
- ✓ Lower thresholds for minimum and maximum sanctions for a wide range of crimes such as property crimes not involving threats to life or injury, drug related crimes (personal consumption), etc
- ✓ Tailor the sentence to the characteristics, needs and risks associated with the accused and/or convicted person.

4.3.3. Partnership with civil society organisations

The study had revealed that the involvement of the civil society organisations which provide alternative sentencing options such as rehabilitation programs, access to justice and legal aid, etc. is also needed for smooth implementation of alternatives to imprisonment. Their contributions can[264]:

- ✓ support research on alternatives to imprisonment;
- ✓ promote community support for the alternatives through sensitisation campaigns;
- ✓ collect statistics to measure the effectiveness of community service;
- ✓ help with supervision of community services;
- ✓ organize trainings for authorities in charge of the implementation of alternatives to imprisonment;
- ✓ assist with the reintegration and rehabilitation programmes for offenders.

[264] See also Penal Reform International, *Alternatives to imprisonment in East Africa: Trends and challenges*, London, UK, 2012.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The findings presented in this report show that various alternatives to imprisonment are available in Rwanda. The legal and institutional frameworks have been put in place to regulate these though some improvements are still needed. From a general perspective, Rwandan legislation provides for (a) alternatives to pre-trial detention (bail, negotiations, fine without trial, electronic monitoring, plea bargaining and orders to do or not to do something such as remain at a specific address, report to a specified authority on a daily or periodic basis, surrender passports or other identification papers and electronic monitoring), (b) alternative sanctions at the sentencing level (suspended prison sentences with conditions attached, community service, compensation/restitution), and (c) alternatives after sentencing (parole and presidential pardon).

However, the study found that the implementation of the alternatives faces different challenges. These include limitations imposed by the legislation on alternatives, limited political will in putting in place different orders and policies related to the implementation of alternatives to imprisonment, lack of harmony between legislation and practice, limited resources to support systems on the implementation and monitoring of alternatives and excessive use of imprisonment, especially the pre-trial level.

Furthermore, the study found out that the available alternatives to imprisonment (at the pre-trial, sentencing and after sentencing levels) are sometimes or rarely used in spite of the availability in the legislation. This limited use of alternatives to imprisonment affects the role of these alternatives in reducing prison overcrowding and promoting access to justice.

Based on the findings of this study, the following recommendations have been formulated in order to improve the effectiveness of the implementation of alternatives to imprisonment in Rwanda.

Recommendations

No	Issues	Recommendations	Intended Actor/ institution(s)
1	Mandatory minimum sentences provided for by the 2018 Law on offences and penalties in general	The 2018 Law on offences and penalties in general should be amended to review all offenses with related mandatory minimum sentences. Furthermore, this law should be harmonized with the practice as recommended by the Supreme Court in its judgement *KABASINGA Florida vs Government of Rwanda*, Case no RS/INCONST/SPEC 00003/2019/SC of 04/12/2019	MINIJUST, RLRC
2	Lack of a criminal justice policy with clear statements on the implementation of alternatives to imprisonment	A criminal justice policy be put in place to clearly explain the implementation of alternatives to imprisonment.	MINIJUST, JUDICIARY
3.	Excessive use of pre-trial detention	The study found that 18% of the prison population for "common law offenses" are detainees. The following measures are recommended to reduce the overuse of pretrial detention: A) to explore the removal of the obligation for pre-trial detention for offences whose sentence is a prison term of at least 6 months. These are petty offenses and it would be better to replace imprisonment with other alternatives. B) to prohibit the use of pre-trial detention for all offences which can be punished by a fine as alternative to imprisonment. The research has identified many offenses in which a sentencing judge or a prosecutor has an option to impose a fine instead of an imprisonment/detention. Overall, alternatives to imprisonment should always be imposed whenever possible	JUDICIARY, NPPA, RIB

		and detention and imprisonment should be used as the last resort.	
4	Lack of orders (ministerial and presidential) related to the implementation of alternatives to imprisonment.	The publication of the order of the Minister in charge of justice determining the modalities through which a suspect may be monitored through technology should be speeded up. Furthermore, the publication of the Presidential order determining modalities for the execution of the penalty of community service should also be speeded up.	MINIJUST, OFFICE OF THE PRESIDENT
5	Limited resources to support the systems for the implementation of alternatives to imprisonment.	Provide adequate resources (human, financial and infrastructure) to all institutions in charge of implementing alternatives to imprisonment for an effective implementation of alternatives.	MINECOFIN
6	Limited knowledge on the implementation of alternatives to imprisonment	Organize continuous trainings on alternatives to imprisonment for all the actors who implement alternatives to imprisonment such as investigators, prosecutors, lawyers, judges, prison officers, etc.	MINIJUST, JUDICIARY, RWANDA BAR ASSOCIATION

REFERENCES

I. Laws

A. Conventions and declarations

1. United Nations Convention against Corruption, New York, 31 October 2003, entered into force on, 14 December 2005.
2. UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, *Treaty Series*, vol. 1577.
3. Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990).
4. Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
5. UN General Assembly, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), resolution / adopted by the General Assembly, 2 April 1991, A/RES/45/110,
6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988.
7. UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"): resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/33.
8. UN General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) : note / by the Secretariat, 6 October 2010, A/C.3/65/L.5.
9. Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, E/RES/2002/12.
10. UN General Assembly, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 17 December 1991, A/RES/46/119.
11. The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, adopted on 20th September 2002.
12. UN General Assembly, "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems", resolution / adopted by the General Assembly, 28 March 2013, *A/RES/67/187*.
13. UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly, 29 November 1985, *A/RES/40/34*.

B. National laws

1. GoR (2015). The Constitution of the Republic of Rwanda of 2003 revised in 2015. *Official Gazette*, n° Special of 24/12/2015.

2. Law nº 027/2019 of 19/09/2019 relating to Criminal Procedure, in *Official Gazette*, n° Special of 08/11/2019.
3. Law nº68/2018 of 30/08/2018 determining offences and penalties in general, in *Official Gazette*, no. Special of 27/09/2018, as amended by the Law nº 69/2019 of 08/11/2019 amending Law nº 68/2018 of 30/08/2018 determining offences and penalties in general, in *Official Gazette*, n° Special of 29/11/2019.
3. Law no 71/2018 relating to the protection of the child, in *Official Gazette*, nº 37 *bis* of 10/09/2018.
4. Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, in *Official Gazette*, n° Special of 02/06/2018.
5. Law nº014/2018 of 04/04/2018 determining the organization, functioning and competence of the National Public Prosecution Authority and of the Military Prosecution Department, in *Official Gazette*, nº Special of 30/05/2018.
6. Law nº12/2017 of 07/04/2017 establishing the Rwanda Investigation Bureau and determining its mission, powers, organization and functioning, in *Official Gazette*, nº Special of 20/04/2017.
7. Law n° 34/2010 of 12/11/2010 on the establishment, functioning and organization of Rwanda Correctional Service (RCS), in *Official Gazette*, n°04 of 24/01/2011.
8. Presidential Order nº 112/01 of 11/10/2019 granting mercy, in *Official Gazette*, no Special of 11/10/2019.
9. Presidential Order nº 047/01 of 04/04/2019 granting mercy, in *Official Gazette*, no Special of 04/04/2019.
10. Presidential Order nº 067/01 du 19/05/2020 granting collective pardon, in *Official Gazette*, n° 14 of 19/05/2020.
11. Presidential Order nº 10/01 of 07/03/2005 determining the modalities for the implementation of community service as alternative penalty to imprisonment, as modified and complemented.
12. Ministerial Order nº 08/MOJ/AG/20 of 19/05/2020 granting release on parole, in Official Gazette, n° 14 of 19/05/2020.
13. Ministerial Order nº005/MOJ/AG/19 du 24/04/2019 granting release on parole, in *Official Gazette*, nº Special of 26/04/2019.
14. Ministerial Order nº 08/MOJ/AG/20 of 19/05/2020 granting release on parole, in *Official Gazette*, n° 14 of 19/05/2020.
15. Ministerial Order no.005/MOJ/AG/19 of 24/04/2019 granting release on parole, in the *Official Gazette* no. Special of 26/04/2019, in *Official Gazette*, no Special of 27/04/2019.
16. Ministerial Order nº 18/MOJ/AG/19 of 11/10/2019 approving release on parole, in *Official Gazette*, nº Special of 11/10/2019.

II. Court cases

National court cases

1. Supreme Court, *KABASINGA Florida vs Government of Rwanda*, Case no RS/INCONST/SPEC 00003/2019/SC, on 04/12/2019.
2. Court of Appeal, *Nzafashwanimana Jean de Dieu vs The Prosecutor*, case no RPAA 00032/2019/CA, on 28/02/2020.
3. Rubavu Intermediate Court, *Tuyisabe Epiphanie and others vs Prosecutor*, case no RDPA00258/2021/TGI/RBV, 28/12/2021.
4. Musanze Intermediate court, Sindaheba Eric vs Prosecutor, case no RDPA 00227/2021/TGI/MUS, 25/08/2021.
4. Huye Intermediate Court, *Havugimana Célestin vs Prosecutor*, case no RP 00391/2021/TGI/HYE, 31/05/2021.
5. Huye Intermediate Court, *Munyaneza vs Prosecutor*, case no RP 00573/2021/TGI/HYE, 09/07/2021.
6. Rubavu Intermediate Court, *Bigirimana Célestin vs Prosecutor*, case no RP 00122/2019/TGI/RBV, on 23/12/2020.
7. Huye Intermediate Court, *UWIHOREYE Emmanuel vs Prosecutor*, case no, RP00166/2020/TGI/HYE, on 01/04/2021.
8. Huye Intermediate Court, *NKUNDABAGENZI Emmanuel vs Prosecutor*, case no RP 00414 /2021/TGI/HYE, on 11/06/2021.
9. Nyagatare Intermediate Court, *Mwiseneza Janvier vs The Prosecutor*, case no RP/Min 00032/2021/TGI/NYG, 14/04/2021.
10. Huye Intermediate court, *Ndahimana Gratien vs Prosecutor*, case no RP 00393/2021/TGI/HYE, on 31/05/2021.
11. Huye Intermediate Court, *Nshimiyimana Emmanuel vs Prosecutor*, case no RP 00552/2021/TGI/HYE, on 28/06/2021.
12. Huye Intermediate court, *Munyaneza vs Prosecutor*, case no RP 00573/2021/TGI/HYE, on 09/07/2021.
13. Musanze Intermediate Court, *Prosecutor vs Mugabonake Juvenal*, case no RP 000133/2020/TGI/MUS, on 14/10/2021.
14. Rubavu Intermediate Court, *Kubwimana Réponse and Mushumba Jean Paul vs Prosecutor*, case no RP/MIN 00002/2021/TGI/RBV, on 15/02/2021
15. Intermediate Court of Nyagatare, *Mwiseneza Janvier vs The Prosecutor*, case no RP/Min 00032/2021/TGI/NYG, 14/04/2021, paras.18-20.

Foreign court cases

1. European Court of Human Rights, *Tomasi v France*, nº 12850/87, 27 August 1992.
2. European Court of Human Rights, *Ilijkov v Bulgaria*, nº 33977/96, 26 July 2001.
3. European Court of Human Rights, *Sulaoja v Estonia*, nº 55939/00, 15/05/2005.
4. European Court of Human Rights, *Wemhoff v Germany*, nº 2122/64, 27 June 1968.

5. European Court of Human Rights, *Muller v France*, nº 21802/93, 17 March 1997.
6. European Court of Human Rights, *Mark MCKAY v United Kingdom*, nº 543/03, 3 October 2006.

III. Books

1. Center for Human Rights, *Human Rights and Pre-Trial Detention: A Handbook of International Standards relating to Pre-Trial Detention*, Professional Training Series no. 3, New York, United Nations, 1994.
2. Penal Reform International, *Alternatives to imprisonment in East Africa: Trends and challenges*, London, UK, 2012.
3. UNODC, *Handbook of basic principles and promising practices on Alternatives to Imprisonment*, United Nations, New York, 2007.
4. UNODC, *Handbook on Restorative Justice Programmes*, United Nations, New York, 2006.
5. UNODC, *Handbook on strategies to reduce overcrowding in prisons*, Criminal Justice Handbook Series, United Nations, New York, 2013.

IV. Articles, papers and Reports

1. African Commission on Human & Peoples' Rights, "*Principles and guidelines on the right to a fair trial and legal assistance in Africa*", p. 15., available at https://archives.au.int/handle/123456789/5430, accessed on 30/06/2022.
2. Britannica, " *Plea bargaining*", available at https://www.britannica.com/topic/plea-bargaining/Benefits-of-plea-bargaining, accessed on 23/06/2022.
3. Collins Dictionary of Law, "Mercy", (2006), available at https://legal-dictionary.thefreedictionary.com/mercy, accessed on 24/05/2022.
4. Sabiiti, Daniel, "*Rwanda Moots Alternative Measures to Reduce Prison Congestion*", available at https://www.ktpress.rw/2020/10/rwanda-moots-alternative-measures-to-reduce-prison-congestion/, accessed on 30/04/2021.
5. Kagire, Edmund, "*President Kagame Pardons 10 Girls Convicted for Abortion, 4,781 Convicts Get Parole*", published on July 31, 2021, available at https://www.ktpress.rw/2021/07/president-kagame-pardons-10-girls-convicted-for-abortion-4781-convicts-get-parole/, accessed on 22/06/2022.
6. Institute of Legal Practice and Development (ILPD), "Study of Alternatives to Imprisonment in Rwanda Focusing on the Mainstreaming of TIG ("Travaux d'Intérêts Général") and Best Practice Guidelines for Judges in the Exercise of their Discretion when Imposing Non-Custodial Sentences", *Research Paper*, no 1, 2013.
7. Michael A. Foster, "Presidential Pardons: Overview and Selected Legal Issues", Report, *Congressional Research Service*, January 14, 2020.
8. Miller, M. and Wright, R. (2008), The Black Box, *Iowa Law Review*, https://papers.ssrn.com/sol3/papers. cfm?abstract_id=1264010, accessed on 23/06/2022;
Minijust, "Overview: responsibilities", available at https://www.minijust.gov.rw/about, accessed on 20/06/2022.

9. National Commission for Human Rights, "*Annual Activity Report-July 2018 - June 2019*", September 2019.
10. National Commission for Human Rights, "*Annual Activity Report-July 2019 - June 2020*", September 2020.
11. Open Society Justice Initiative, "*The socioeconomic impact of pretrial detention*", Report, September 2010
12. Penal Reform International, "*Kadoma Declaration on Community Service Orders in Africa*", available at https://www.penalreform.org/resource/kadoma-declaration-community-service-orders-africa/, accessed on 12/05/2022.
13. Penal Reform International, "*Kampala Declaration on Prison Conditions in Africa*", available at https://www.penalreform.org/resource/kampala-declaration-prison-conditions-africa/, accessed on 12/05/2022.
14. Rwanda Broadcasting Agency (RBA), "*Statement on Cabinet decisions of 28 November 2019*", available at https://www.rba.co.rw/post/Cabinet-communiqu-of-28-November-201901, accessed on 23/05/2022.
15. Sam Rugege, "Some aspects of judicial reform in Rwanda from 2004-2019", in *Rwanda Law Journal*, issue nº 1, March 2020,
16. The European Court of Human Rights, "*Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial*", 30/04/2022, available at https://www.echr.coe.int › guide_art_6_criminal_eng, accessed on 30/06/2022.
17. The Judiciary of Rwanda, "*Strategic plan 2018-2024*".
18. The Law Firm of Krisor and Associates, "*Why bail is important to the defendant and the criminal justice system*", available at https://www.krisorlaw.com/why-bail-is-important-for-defendants-and-the-criminal-justice-system, accessed on 19/05/2022.
19. Thomas H. Cohen and Brian A. Reaves, "*Pretrial Release of Felony Defendants in State Courts: State Court Processing Statistics, 1990-2004*", U.S. Department of Justice, Special Report, November 2007.
20. Turner, J. I., "Plea Bargaining. In Luna, E. (ed), Reforming Criminal Justice: Pretrial and Trial Processes", *Academy for Justice*, vol. 3, 2017, available at https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_3.pdf, accessed on 23/06/2022.
21. Turner, J.I. "Judicial Participation in Plea Negotiations", *The American Journal of Comparative Law*, vol.54, issue no 1, 2006.
22. UNODC, "*Alternatives to imprisonment*", available at https://www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-alternatives-to-imprisonment.html, accessed on 18/06/2021.
23. Vera Institute of Justice (2018), *Unlocking the Black Box of Prosecution*, https://www.vera.org/unlocking-the-black-box-of-prosecution, accessed 23/06/2022.

ANNEXES

Annex 1: The mapping of some Offences and their applicable alternatives

Offenses punished by a penalty ranging from 6 months to 1 year with or without an alternative

Offense	Range of Penalty	With alternative	Without alternative
Manslaughter	6 months to 2 years	Fine	NA
Unintentional bodily harm causing death	6 months to 2 years	Fine	NA
Bestiality	6 months-1 year	No	Yes
Public indecency	6 months-2 years	No	Yes
Adultery	6 months-1 year	No	Yes
Sexual harassment	6 months-1 year	No	Yes
Secretly listening to conversations, taking photos or disclosing them	6 months-1 year	Fine	NA
Publication of edited statements or images	6 months-1 year	No	Yes
Collection of individuals' personal information in computers	6 months-1 year	No	Yes
Forging or alteration of keys	6 months-1 year	Fine	NA
Illegal operations of currency sale or exchange	6 months-2 years	Fine	NA
Rebellion against the authority	6 months-1 year	No	Yes
Hindering implementation of ordered works	6 months-1 year	Fine	NA
Unlawful break of seals	6 months-1 year	Fine	NA

Breaking of seals affixed by judicial organs or bailiffs on seized property	6 months-1 year	Fine	NA
Non-disclosure of a felony or misdemeanour	6 months-1 year	No	Yes

Offenses punished by a penalty from 1 year to 2 years with or without alternative

Offense	Range of Penalty	With alternative	Without alternative
Punishment for offences against humanitarian organizations in wartime	1-2 years	No	Yes
Advertising the means of abortion	1-2 years	Fine	NA
Use of threats	1-2 years	Fine	NA
Indecent assault	1-2 years	No	Yes
Bigamy or officiating at bigamy	1-2 years	No	Yes
Abandonment of a dependent unable to protect himself/herself	1-2 years	No	Yes
Playing a role in forced cohabitation	1-2 years	No	Yes
Harassment of a spouse	1-2 years	No	Yes
Obstruction of smooth running of religious rituals	1-2 years	No	Yes
Breach of professional secrecy	1-2 years	No	Yes
Offences committed against correspondences in the various telecommunication channels	1-2 years	No	Yes
Theft	1-2 years	Fine	NA

Selling or pledging as a security a property of another person	1-2 years	No	Yes
Embezzlement or destruction of a mortgaged property	1-2 years	No	Yes
Arson by the property's owner	1-2 years	Fine	NA
Setting fire on other person's property (not building or transport means)	1-2 years	Fine	NA
Demolition of monuments	1-2 years	Fine	NA
Damaging or plundering of trees, crops and agricultural tools	1-2 years	Fine	
Discrediting the value of national currency	1-2 years	No	Yes
Disrespect of employment badges	1-2 years	Fine	NA
Interfering with the smooth running of activities of the Parliament	1-2 years	Fine	NA
Interference with the activities within the premises of the Office of the President of the Republic or the Cabinet	1-2 years	Fine	NA
"Aggravated" unlawful break of seals	1-2 years	No	Yes
Concealment of objects obtained from an offence	1-2 years	No	Yes
Intentional destruction or embezzlement of seized or confiscated property	1-2 years	No	Yes

Refusal to testify	1-2 years	No	Yes
Refusal to answer questions from judicial authorities	1-2 years	Fine	NA
Misleading witnesses or judges	1-2 years	No	Yes
Refusal to take oath before judicial or intelligence organs	1-2 years	No	Yes
Influencing assistants in judicial organs	1-2 years	No	Yes
Insulting or causing violence to personnel in the judicial organs	1-2 years	No	Yes
Discrediting a decision of judicial organs	1-2 years	No	Yes
Production, sell or prescription of prohibited substances in medicine	1-2 years	Fine	NA
Illegal use of marks	1-2 years	No	Yes

Offenses punished by a penalty from 2 years to 5 years with or without alternative

Offense	Range of Penalty	With alternative	Without alternative
Administering to another person a substance that may cause death or seriously alter the person's health	2-3 years	No	Yes
Transmission of an illness to another person	2-3 years	No	Yes
Intentional assault or battery	3-5 years	No	Yes
Self-induced abortion	1-3 years	No	Yes
Performing an abortion on another person	3-5 years	No	Yes

"unintentionally" performing an abortion on another person	1-3 years	Fine	NA
Blackmail	1-3 years	No	Yes
"aggravated" violation of domicile	3-5 years	Fine	NA
Extortion	3-5 years	No	Yes
Fraud	2-3 years	No	Yes
Breach of trust	3-5 years	No	Yes
Deliberate demolition or damaging another person's construction	3-5 years	No	Yes
Demolition of tombs, memorial symbols or defilement of tombs or graveyard	3-5 years	Fine	NA
Inciting the public to undermine the financial sector	2-3 years	Fine	NA
Escape of detainees or prisoners	3-5 years	No	Yes
Failure to assist a person in danger	1-3 years	No	Yes
Obliteration of evidence	2-3 years	No	Yes
Use of threats or intimidation to influence a complaint	2-3 years	No	Yes
Giving false testimony	1-3 years	No	Yes
False declarations by an expert before judicial organs	3-5 years	No	Yes
Threats against judicial personnel	3-5 years	No	Yes

Facilitating a person to use narcotic drugs or psychotropic substances	3-5 years	No	Yes
Counterfeiting negotiable instruments, their use or circulation	3-5 years	No	Yes
Issuance of a document to a person who is not entitled	3-5 years	No	Yes
Usurpation of titles and wearing a uniform with an intention to mislead the public	2-3 years	No	Yes
Taking a decision which hinders the enforcement of a law	3-5 years	No	Yes
Continued use of authority after termination of a service in accordance with the law	2-3 years	No	Yes
Commission of an act which violates individual liberty	3-5 years	No	Yes

ANNEX 2: Questionnaire and interview guides

Questionnaire on alternatives to imprisonment in Rwanda

Interviewee details	
Position	Judge
	Prosecutor
Organisation/institution address	
Gender	Male
	Female
	Other
Years of experience	
Education level	
Specialisation	

I. Questions related to the awareness of alternatives to imprisonment

1. What alternatives to imprisonment are available in Rwanda? Please, list them.

2. Do you think they are important in facilitating access to justice in Rwanda?

3. To whom should the alternatives to imprisonment be applied?

4. What are your views on alternative sanctions?

a. Does the failure of a non-custodial alternative automatically lead to the imposition of imprisonment? Yes ◯ No ◯

b. What does the failure consist of?

i) Non-compliance with community sanction

ii) Reoffending (recidivism)

iii) Other reasons; please specify.

5. Which of the following constitute an obstacles to the implementation of alternatives to imprisonment?

a) Limited political willi,
b) Inappropriate legislation regarding the use of the alternatives;
c) Potential for a disconnect between practice and legislation/policy.
d) Lack of financial and human resources and social support systems
e) Limited public awareness about the effectiveness of alternatives to imprisonment
f) Fear that alternatives to imprisonment will not have an impact on the behavior of the detainee/convicted.
g) Others; please specify.

II. Questions related to the effectiveness of the implementation of alternatives to imprisonment

1. To what extent the alternatives to imprisonment are implemented in Rwanda?

Name of the alternative	Always	Sometime	Rarely	Never
Bail				
Negotiations				
Fine without trial				
Remain at a specific address				
Report to a specified authority on a daily or periodic basis				
Surrender passports or other identification papers				
Accept supervision by electronic tagging and tracking				
Alternative aimed at replacing prison sentences	**Always**	**Sometime**	**Rarely**	**Never**
Fine without trial				
Fully or partially suspended prison sentences				
Electronic monitoring				
Community service				
Compensation/restitution				
Alternatives aimed at reducing the duration of a prison sentence	**Always**	**Sometime**	**Rarely**	**Never**
Parole				
Plea bargaining				

Why other alternatives are not used, if applicable?

……
……
……
……
……
……

2. For each alternative, please specify whether the offender's consent is required or not?

Alternatives	Consent required	Consent not required
Bail		
Negotiations		
Fine without trial		
Remain at a specific address		
Report to a specified authority on a daily or periodic basis		
Surrender passports or other identification papers		
Accept supervision by electronic tagging and tracking		
Community service		
Compensation/restitution		
Parole		
Plea bargaining		

3. Which authority makes decisions on the imposition of the different alternatives (Investigator, Prosecutor, court, Prison authority, others [please specify]?

Alternatives	Authority to impose them (tick)			
	RIB	NPPA	Court	RCS
Bail				
Negotiations				
Fine without trial				
Remain at a specific address				
Report to a specified authority on a daily or periodic basis				
Surrender passports or other identification papers				
Electronic monitoring				
Fully or partially suspended prison sentences				

Community service				
Compensation/restitution				
Parole				
Plea bargaining				

4. Do you think that the compliance and the completion of the alternatives to imprisonment are monitored in Rwanda?

1	YES	2	NO

If yes, which institutions are responsible for monitoring the compliance and completion of the alternatives to imprisonment?

……

If not, what are the reasons?.....

……

……..

5. Do you think courts use the following criteria in deciding which alternative is appropriate?

Criteria	**Yes**	**No**
Nature and gravity of the offence		
Personality, attitude and background of the offender		
Purpose of sentencing		
Rights of the victim		
Others, please specify		
None of them		

6. How often does the sentencing judge use the following information in determining the appropriate sentence?

Information	**Always**	**Sometimes**	**Rarely**	**Never**
Offender's profile/background report				
Offender's medical report				

Plea bargaining agreement				
Mediated agreement				
Others, please specify				

7. Using the scale table and actions below, please rate how effective the alternatives to imprisonment are in contributing to the actions

Actions	**Very effective**	**Effective**	**Fairly effective**	**Not effective**	**Not at all effective**
Promoting rehabilitation and educational programmes					
Reducing prison overcrowding					
Reducing court caseload					
Reducing the chances of reoffending					
Reducing cost burdens on the government					
Ensuring access to justice for all persons.					

III. Questions related to the role of alternatives to imprisonment in the access to justice

1. In your opinion what is the role of the following alternatives to imprisonment in promoting access to justice?

Alternatives to pre-trial detention	Roles	Strongly Agree	Agree	Disagree	Strongly disagree	Do not know
Bail	Ensure the accused does not leave a given place or miss specified trial dates in court.					
	Protect the right to be presumed innocent until guilt is proven					
	Reduce prison overcrowding					
Negotiations	Obtain the best possible outcome					
	Secure the best possible concessions on sentence					
	Secure the prosecution's cooperation to get a favourable result to the offender					
Fine without trial	Deter the offender					
	Punish the offender					
	Compensate the state for the offense					
Remain at a specific address	Ensure that the individual					

	remains in a designated place.					
	Reduce prison overcrowding					
	Reduce financial costs of imprisonment					
Report to a specified authority on a daily or periodic basis	Reduce prison overcrowding					
	Reduce financial costs of imprisonment					
Surrender passports or other identification papers	Ensure that the individual remains in a designated place					
	Reduce financial costs of imprisonment					
Accept supervision by electronic tagging and tracking	Ensure that the individual remains in a designated place					
	Reduce the cost of administering custodial sentences					
	Can reduce prison populations					
Alternative aimed at replacing prison sentences	**Frequency of use (number of cases)**					
Fine without trial	Deter the offender					
	Punish the offender					

	Compensate the state for the offense					
Fully or partially suspended prison sentences	Reduce the potential negative impact of imprisonment					
	Reduce prison overcrowding					
	Reduce the cost of administering custodial sentences					
Electronic monitoring	Ensure that the individual remains in a designated place					
	Reduce prison populations.					
	Improve rehabilitation and reintegration of offenders					
	Reduce the cost of administering custodial sentences					
Community service	Serve as prison diversion					
	Serve as a stand-alone punishment					
	An option to work off a fine by an impoverished offender.					
Compensation/restitution	Punish the offender					

	Pay to the victims of a crime.					
Alternatives aimed at reducing the duration of a prison sentence	**Frequency of use (number of cases)**					
Parole	Give an opportunity for a prisoner to transition back into society.					
	Encourage good behavior after incarceration					
	Reduce prison overcrowding					
	Help the government to cut down the high costs of maintaining large prison populations					
Plea bargaining	Reduce a defendant's punishment					
	Reduce the number of trials that judges need to handle					
	Allow prosecutors to focus their time and resources on other cases.					

IV. Strategies to improve the implementation of alternatives to imprisonment

What should be done to promote the use of these alternatives to imprisonment?

Actions	**Yes**	**No**
Organise more trainings on alternatives to imprisonment for better understanding of these.		
Broaden community-based sanctions for a wider range of crimes (extending availability of community service to more offenses)		
Decriminalise some offences		
Lower thresholds for minimum and maximum sanctions for a wide range of crimes, i.e property crimes not involving threats to life or injury, drug related crimes, etc.		
Abolish mandatory minimum sentences.		
Review statutory minimum sentences and sentencing guidance.		
Tailor the sentence to the characteristics, needs and risks associated with the accused and/or convicted person		
Involve civil society organisations which provide alternative sentencing options.		
Others; please specify.		

Interview guide

Questions to Judiciary/MINIJUST/NPPA/RIB, RNP, ILPD

1. The 2019 Law on criminal procedure does not define a bail but provides that bail may be in form of cash, immovable property or guaranteed by a third party. What are the challenges related to the imposition of bail?

2. The order of the Minister in charge of justice that could determine the modalities through which a suspect may be monitored through technology is yet to come into force.

a) How is the practice of electronic monitoring in Rwanda, considering this lack of clear modalities through which a suspect may be monitored through technology?

b) Are you aware of any document related to the practice of electronic monitoring in Rwanda? If Yes, what is it?

3. A Presidential order determining modalities for the execution of the penalty of community service was approved by the Cabinet on 28th November 2019 but it is not yet published in the Official Gazette.

a) How is the punishment of community service being practiced in the absence of this presidential order?
b) What are the challenges related to the implementation of community service as an alternative to imprisonment?

4. The 2019 law on criminal procedure allows judges to admit or reject an agreement of plea bargaining (Article 27, para. 2-3).

a) Are there any criteria that the judge should consider to admit or reject an agreement of plea bargaining? If Yes, what are these?

b) Are there the guidelines on the judicial oversight on the agreements of plea bargaining to verify how the prosecution obtains the pleas? If Yes, what are these?

5. Are there any reports, documents or other information about alternatives that you would be willing to share with us? If Yes, can you please share them with us?

6. Are there any other issues relating to alternatives to imprisonment that you think we should consider? If Yes, could you please explain these?

Specific questions to officials from Rwanda Correction Service

1. Are there files for each offender/probationer sentenced to alternative to imprisonment? Are files kept up-to-date? Are the files computerised?

2. Which ministry/institution is responsible for the management of the probation or similar supervision/ monitoring system?

a) at national level?.....
b) at local levels (District)? ……..

3. Is the ministry/institution referred to above different from the one that is responsible for managing the prison system?

4. Is there any other national body (e.g. National Committee or Working Group) responsible for policy formulation, planning, implementation, research and evaluation relating to alternatives to imprisonment? If Yes, which one is it?

5. Are there NGOs involved in the implementation of alternatives to imprisonment? If yes, what is the role of these NGOs?

6. What is the annual budget allocated to the RCS in general and to the implementation of alternatives to imprisonment (community services, parole, etc..) in particular ?

7. Are there any reports, documents or other information about alternatives that you would be willing to share with us? If Yes, can you please share them?

8. Are there any other issues relating to alternatives to imprisonment that you think we should consider? If there are, we would like to hear these.

Specific questions for CSOs

1) What is your experience about the alternatives to imprisonment?

2) Is your organisation involved in activities related to the implementation of alternatives to imprisonment? (i.e. training of local people about the law to increase the public awareness about alternatives to imprisonment, provide training for probation officers or others responsible for supervising non-custodial sanctions and measures, provide useful work for community service schemes, assist with reintegration programmes for offenders, etc.)

3) Is your organisation involved in other forms of alternative criminal justice processes, such as running informal dispute resolution/mediation services recognized by formal courts? What are they and how would you rate their success (please provide the number of mediated cases if possible)?

4. Do you have any suggestions for effective implementation of alternatives to imprisonment?

5. Are there any reports, documents or other information about the use of these alternatives that you would be willing to share with us? If Yes, can you please share them with us?