

Awaiting Care: Health Risks, Human Rights Abuses, and the Need to Reform Pretrial Detention

THE EXCESSIVE USE of pretrial detention—the arrest and incarceration of people who have not yet been convicted of any crime—poses a great risk to public health and human rights, requiring urgent attention from health and prison reform advocates alike. Globally, almost 10 million people yearly spend time in detention without appearing before a judge. Pretrial detainees account for over a third of all the people in jails and prisons around the world, and are frequently held in overcrowded, substandard conditions without medications, medical treatment, or any measures for infection control. The health risks associated with pretrial detention affect not only those detained but also societies at large, as people cycle out of prison and pretrial detention and back into the community.

In recent years, health agencies have established projects to improve health care in prisons, but little attention has been devoted to the health of those in pretrial detention. Because pretrial detention facilities frequently fall under a different jurisdiction than prisons, and because it is assumed that people spend little time in pretrial detention, pretrial authorities are rarely reached by prison reform or health education efforts.

However, pretrial detention poses numerous risks to both individual and public health:

- ▶ People in pretrial detention are often subjected to extreme and erratic overcrowding.
- ▶ Pretrial detainees are held in “temporary” and substandard conditions, without health care, exercise, work, or education programs, often for many months and sometimes years.
- ▶ The pretrial population turns over rapidly, with this flow of prisoners guaranteeing that people are regularly exposed to communicable diseases and carry illnesses out of detention facilities with them.
- ▶ The conditions at pretrial detention facilities often worsen existing health problems. Many pretrial detention centers, particularly in the developing world,

do not provide basic nutrition for detainees, adequate sanitation, clothing, or beds.

- ▶ Human rights abuses including coerced confessions, cruel, inhuman, and degrading treatment, and sexual assault often occur at pretrial, when detainees are particularly vulnerable because they are disoriented or experiencing painful withdrawal from drugs.
- ▶ For people who are under medical treatment at the time of arrest, pretrial detention often leads to an inhumane and dangerous interruption in care.

The Joint United Nations Programme on HIV/AIDS (UNAIDS) has referred to prisons as “incubators” of human immunodeficiency virus (HIV), hepatitis C virus, and tuberculosis. While authorities often claim that pretrial detention is a short-term measure where health protections are impractical, in fact the accused often languish in pretrial detention for months or years, violating their due process rights and threatening their health. Socially marginalized groups such as sex workers and people who use drugs are at particular risk, as they are often swept up in police raids and held in detention centers or forced “treatment” facilities that offer no health care and impose forced labor without right to legal appeals. Incarceration



exposes detainees to a range of health risks, including interruption of critically important medications to treat HIV, TB, or drug dependence, and exposure to new infections. As in prisons, risk behaviors continue in pretrial detention centers, while measures to prevent infection such as condoms, drug dependence treatment, and sterile syringes are largely unavailable—even in jurisdictions where these measures are available in prisons.

International standards clearly state that pretrial detention should be an “exceptional” measure used sparingly. For health, human rights, and prison reform advocates, it is imperative to advocate for programs that provide safe alternatives to pretrial detention for persons accused of low-level crimes, for effective disease prevention and treatment for those who must remain in pretrial detention, and for better conditions of temporary detention.

Examples of Abuse

- ▶ **Ukraine:** Olga Biliak, diagnosed with schizophrenia and HIV, was arrested on charges of robbery in April 2003. She was held in at the Kyiv City Pretrial Detention Centre #13 where she suffered weight loss, gastric problems, respiratory problems, fevers, and hallucinations. Her parents and son brought her case to the attention of the courts, who ordered that she be released pending trial. The order was ignored however, and 10 months after her arrest Olga died from lack of medical treatment inside the pretrial detention center.¹
- ▶ **Thailand:** A hallmark of Thailand’s “war on drugs” since 2003 has been the mass detention of people suspected of using drugs in forced rehabilitation centers without a criminal trial or clinical assessment of their need for drug dependence treatment. According to Human Rights Watch, many have been held for extended periods of time—usually 45 days—in prison-based facilities, even if they are later referred to outpatient treatment. “Rehabilitation” is often provided by security personnel; military drills are at the core of the “treatment” provided. At the same time, people who use drugs in Thailand and actually need drug treatment, have reportedly avoided it for fear of arbitrary arrest, of being added to government “blacklists,” and other human rights abuses.²

OSI Efforts on Health and Pretrial Detention

To address the link between public health and pretrial justice, the Open Society Institute's Public Health Program and Open Society Justice Initiative are collaborating in the Global Campaign for Pretrial Justice. From 2008 to 2011, the Open Society Institute will conduct and galvanize research, develop publications, engage in litigation, and work with local groups to develop programs that address the intersection of pretrial detention and health with an emphasis on the needs of detainees who face some of the most extreme abuses: people living with HIV and tuberculosis, sex workers, and people who use drugs. At this stage the collaboration is strictly an operational program and not a grant-making initiative.

OSI aims to accomplish the following goals:

- ▶ Increase the evidence base on: public health implications of widespread use of pretrial detention; best practices related to provision of health services in pretrial detention; negative health implications of detention for drug treatment; and the viability of community-based treatment alternatives.
- ▶ Develop programs for pretrial release of people with health concerns.
- ▶ Increase collaboration between health and prison advocates to develop solutions to problems related to health and human rights in pretrial detention.
- ▶ Develop data and documentation that will assist prison and health officials to resolve problems of joint concern.
- ▶ Increase the amount of funding targeted at health and human rights interventions in the pretrial stage.
- ▶ Bring cases in front of international decision-making bodies to develop precedents on health rights in pretrial detention.

FOOTNOTES

1. The European Court of Human Rights in Strasbourg found that there had been violations of Ms. Biliak's right to life, of the state's duty to conduct a proper investigation, and her right to liberty, and ordered monetary damages to be awarded to her surviving family members. See court's decision at: <http://cmiskp.echr.coe.int/tkp197/viewbkmn.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=75243&sessionid=17334313&skin=hudoc-en&attachment=true>
2. Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights. Human Rights Watch 2004. On the Web: <http://www.hrw.org/en/node/12005/section/2>

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