

Why We Need a Global Campaign for Pretrial Justice

ON ANY GIVEN DAY, an estimated three million people around the world are behind bars awaiting trial. Many will spend months and even years in detention—without being tried or found guilty—languishing under worse conditions than people convicted of crimes and sentenced to prison.

Many pretrial detainees are exposed to torture, violence, and disease. They are subject to the arbitrary actions of corrupt officials. Throughout their ordeal, most never see a lawyer or legal advisor and often lack information on their basic rights. When they eventually reach a courtroom—without representation and likely beaten down by months of mistreatment—the odds are stacked against them. The longer a detainee is held before trial, the more likely he or she is to be found guilty.

Excessive and arbitrary pretrial detention, compounded by inadequate representation, leads to egregious rights abuses. Pretrial detainees may lose their jobs and homes; contract disease; and suffer physical and psychological damage that lasts long after their detention ends.

Pretrial Detainees Suffer Tragic Consequences

- ▶ **Exposure to institutional violence**, initiation rituals, and gang violence. Both homicide and suicide rates are significantly higher among pretrial detainees compared to sentenced prisoners.
- ▶ **The spread of infectious diseases** due to overcrowded and unsanitary conditions. When detainees are released, they carry these diseases back to their home communities.
- ▶ **Social stigmatization**, including estrangement from family and community and difficulty finding and retaining employment.
- ▶ **Increased propensity for crime**. Those who experience

prolonged pretrial detention are more likely to commit a criminal offense after release and their children are also more likely to commit a criminal offense later in life.

Pretrial Detention Also Affects Families and Communities

The repercussions of prolonged detention are felt far beyond holding cells. The problem disproportionately affects poor and marginalized communities, whose members are more likely to be arbitrarily arrested and, unable to afford legal assistance, are most vulnerable to spending prolonged periods in pretrial detention. When individuals are detained for excessive periods and lose their employment, their families slip deeper into poverty, facing hunger and homelessness.

Pretrial Detention Is a Global Problem

- ▶ In the course of a single year, **over nine million people** will be held in pretrial detention.
- ▶ **One out of every three people in detention is awaiting trial** and has not been found guilty of a crime.
- ▶ In some countries, **over three quarters of all prisoners are pretrial detainees**. This includes Liberia (97 percent), Mali (89 percent), Haiti (84 percent), Andorra (77 percent), Niger (c.76 percent), and Bolivia (75 percent).
- ▶ The **average time** spent in pretrial detention in the European Union is estimated to be 167 days. In Nigeria, the average time is estimated to be **3.7 years**.
- ▶ The United States has one of the highest rates of pretrial detention ranking **4th in the world** (158 per 100,000 of the population).
- ▶ Most developing countries have a dearth of trained lawyers, with just **one lawyer for every 50,000 people** in some places. In Sierra Leone, just seven lawyers work in the rural areas, where 80 percent of the population lives.

International Law Prohibits Unnecessary and Arbitrary Pretrial Detention

The rule of law is fundamental to all open societies. Fair and effective justice systems must be responsible not only for safeguarding and protecting the rights of the victims, but also the rights of the accused. Yet, gross violations of the principle are perpetuated, with scant attention from governments, media, or even advocates of justice reforms.

Under international standards, people awaiting trial should be allowed to return to their communities on condition that they respect the law and appear for trial on a set date. Individuals should be detained pending trial only in exceptional circumstances: There must be reasonable grounds to believe the person committed the alleged offense and a genuine risk of the person absconding,

posing a danger to the community, or interfering with the course of justice.

Too many countries, however, refuse to comply with these standards. The predominant pattern of an excessive and arbitrary use of pretrial detention not only undermines the presumption of innocence—one of the cornerstones of a rights-based system—but also contributes to the chronic, costly, and counterproductive overcrowding of detention facilities.

A more rational use of pretrial detention would enable governments to reduce overcrowding and channel associated costs to crime prevention, legal aid, and education.

The Global Campaign for Pretrial Justice

The Open Society Justice Initiative, an operational program of the Open Society Institute, is launching a Global Campaign for Pretrial Justice to promote alternatives to pretrial detention, expand access to legal aid services and deploy paralegals to intervene earlier in the criminal justice process.

The scale of the problem calls for long-term policy and funding commitments.

The Global Campaign for Pretrial Justice will do the following:

- ▶ Gather **empirical evidence** to document the scale and gravity of the problem
- ▶ Build **communities of practice** and expertise among NGOs, practitioners, researchers, and policymakers
- ▶ Establish **links with associated fields** such as public health, anticorruption, rule of law, and socioeconomic development
- ▶ **Pilot innovative practices and methodologies** aimed at finding effective, low-cost solutions.

Currently, the Open Society Justice Initiative is working with the Paralegal Advisory Services Institute in Malawi, Timap for Justice in Sierra Leone, and the State of Morelos in Mexico on three initial pilot projects.

For More Information

The Open Society Justice Initiative is looking for other organizations interested in helping to reduce pretrial detention and improve pretrial justice. For more information about the Global Campaign for Pretrial Justice, please contact us in New York or Brussels:

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Further information can be found in

Justice Initiatives: Pretrial Detention (2008): http://www.justiceinitiative.org/db/resource2?res_id=104079

Statistics: International Centre for Prison Studies (ICPS)