



WHEN PRETRIAL JUSTICE FAILS

When a member of the Rezzak family in Bangladesh was arrested, few could have imagined the total cost the family would have to pay, even before any judgement was passed. Over a four month period, the family handed out more than 34 bribes—amounting to the equivalent of over \$2200. The money went mostly to corrupt detention officers—sometimes simply to ensure the delivery of food, sometimes to prevent beatings, and sometimes to avoid the threat of new fabricated charges.

Pretrial detention disproportionately affects people living in poverty: they are more likely to be jailed before a trial, and less able to make bail, have access to legal advice or pay bribes for their release. They are also more likely to be given longer or disproportionate sentences.

People and families placed in pretrial detention can face other costs too. There is the loss of income, which in turn affects dependents and families. Future job prospects can be damaged by the stigma of being in jail, which can also affect family members in the community. Overcrowded and unhygienic cells can expose detainees to the risk of diseases such as TB and HIV, that they then carry back to their families and communities.

The government also incurs the costs associated with overpopulated jails, reduced revenue from lost economic opportunities, and increased corruption in the criminal justice system.

The UN's 2030 Sustainable Development Agenda recognizes the damage to development caused by the excessive and arbitrary use of pretrial detention. One of the indicators (16.3.2) agreed for SDG 16 is for all countries to reduce the number of “unsentenced detainees as a percentage of the overall prison population”—acknowledging the linkage between pretrial detention practices and socioeconomic development.

But with an estimated 3 million people or more held in pretrial detention around the world, more action is needed to meet the ambition of the SDGs. Governments, civil society and international institutions must work in partnership to prioritize justice-sector reforms that reduce the excessive and arbitrary use of pretrial detention.

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The economic impact experienced by detainees' families included both the costs incurred as a result of the detention as well as the loss of the financial support usually provided by detainees.

Case Study

A prisoner in Benin had been in pretrial detention for 30 months, leading his family to try to raise money to pay for a lawyer. As a result of his detention, his wife's plan to start a business—a hairdressing salon—had to be abandoned and she was forced to work instead in the far less lucrative trade of street hairdressing. Not only had her small enterprise been scuttled, but her working hours were reduced by fruitless visits to the prosecutor and her daily visits to take food to the prison. In addition, her expenses increased because of travel demands. Her husband's arrest pushed her from the brink of middle class stability to the edge of poverty.

We need to collect accurate pretrial detention data to inform better practices and the implementation of pretrial justice reforms. We need to go beyond the simple—and sometimes misleading—data point of pretrial detainees as a percentage of overall prison population.

In 2012, a consortium of NGOs surveyed a sample of pretrial detainees in three West African countries. In all three country studies, respondents were typically the household's primary economic earner in the prime of their working lives. Many were married, with dependent minor children and spouses (and sometimes aged parents or even supporting several households at the same time), who relied on the detainees' income for

SUMMARY OF SOCIOECONOMIC CONSEQUENCES OF PRETRIAL DETENTION

% respondents reporting:	Ghana	Guinea	Sierra Leone
Economically active at time of arrest	94%	96%	94%
Family sold household goods	11%	22%	18%
Family fell into debt	44%	37%	12%
Children taken out of school	11%	11%	6%
Family had less food	11%	50%	5%

Case Study

When the head of a household in rural Malawi was arrested and detained, his family had to sell its maize-milling machine to obtain cash for his legal fees, bail, and money to bribe him out of detention. The milling machine had brought steady income into the household, and its sale meant the family would have no money to hire labor or buy seeds for their beetroot plots. The beetroot production ceased and income from the crops was lost. The new owner of the milling machine moved it to a distant location. Now the community no longer has a milling machine, and women in the area have had to go back to pounding maize, which increases their workload and lowers their productivity.

their wellbeing. The economic impact experienced by detainees' families included both the costs incurred as a result of the detention as well as the loss of the financial support usually provided by detainees. The loss of support and expenses incurred most typically led to detainees' families having less food to eat, selling family property to raise money, or accumulating debt. Respondents also identified varying forms of social impact as a result of their detention, with stigma and family separation most frequently cited. These immediate social and economic impacts were felt most keenly by women and children, who were often compelled to take on new roles, fend for the family, and provide assistance to the detained husband or father. The longer the duration of confinement, the greater the socioeconomic impact on detainees and their families. The surveys found that many respondents spent weeks and even months in detention—the median duration ranged between eight and fourteen months—long enough for a business to close, croplands to fall fallow, and families to break apart.

To build on the 2030 Agenda for Sustainable Development's recognition of pretrial detention as a development issue, the Open Society Foundations are working with partners to raise awareness about the nexus between pretrial detention practices and socioeconomic development, and to foster collaboration between civil society and governments in the production of relevant pretrial detention data, and the development of country progress reports on the SDGs which give due attention to pretrial detention. More types of data—such as duration of pre-trial detention and access to legal representation—should be collected analyzed as a part of the Sustainable Development Goals' pretrial detention indicator to ensure that progress towards access to justice for all is assessed more accurately.

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Find out more about
Open Society Foundations
support for SDG Goal 16:

osf.to/Justice2030

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