

Talking points for a panel discussion:
“The role of the Rule of Law in the achievement of the MDGs”

Statement by Mr. James Goldston

1. Background

- The rule of law is fundamental to 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. The predominant pattern of an excessive and arbitrary use of PTD undermines the presumption of innocence – one of the cornerstones of a rights-based system. As a result, international law & standards prohibit unnecessary and arbitrary pretrial detention.
- PTD provides a window into the effectiveness and efficiency of a state’s criminal justice system, as well as its commitment to the rule of law. All too often, the outcomes of criminal proceedings – guilt or innocence, freedom or incarceration – hinge on events which take place during the early pretrial stage of criminal proceedings.
- Problems related to PTD take on added urgency in view of the fact that, on any given day, over **three million people are in PTD. The number of pre-trial detainees across the globe exceeds ten million people per year.**
- Millions more people – detainees’ families and communities – are affected by excessive PTD.
- The socio-economic impact of excessive PTD is profound and overlooked, affecting not just the individuals detained, but their families, communities, and even states.¹

2. Wasted human potential

- The three million persons presently in PTD around the world will spend a combined total of 500 million days in detention. Most of these people have been charged with minor crimes.
- In many parts of the world pretrial detainees languish in worse conditions than convicted prisoners.

3. The hidden costs of PTD

- Around the world, the costs of PTD are painfully high – for the state and its citizens in general, and for detainees and their families in particular. In developed countries, the financial costs tend to accrue to governments or the taxpayer. European

¹ Possibly note that the presentation is about *excessive* PTD? We are not advocating for the abolition of PTD, but rather for its just and appropriate application. PTD, when used properly, serves an important function.

governments, for example, spend some \$20bn annually to accommodate, feed, and care for their pretrial detainees.

- Traditionally, the cost of PTD is calculated solely by adding the state's direct expenses. Largely ignored is the fact that **much of the cost of detention is born by detainees, their families & communities in the form of** lost productivity or diseases transmitted from prison to the community when detainees are eventually released.
- States can reduce the costs of PTD by squeezing ten detainees into a cell designed for four, supplying little or low quality food, and cutting back on security and medical care. Such practices significantly reduce the marginal cost of PTD to the state. However, by skimping on expenses for the maintenance of PTD facilities and the care of inmates, governments do not reduce the overall cost of PTD. Rather, such costs are transferred elsewhere, usually to detainees, their families, and the broader community.
- The excessive and arbitrary use of PTD disproportionately affects individuals and families living in poverty: they are more likely to come into conflict with the criminal justice system, more likely to be detained awaiting trial, and less able to make bail, pay a lawyer, or pay bribes for their release.

4. Cost to individuals and families

- What are the costs to individuals and families? Most pretrial detainees are young adults, some of whom have their education interrupted as a result of their detention. Other detainees may have their job training interrupted, making it harder to find a job upon release and limiting their lifetime earning potential. This stunts economic growth and reduces tax revenues.
- The socio-economic impact of PTD falls not simply on detainees. The employment and income lost as a result of excessive PTD affect the detainee's family. If, for example, the detainee and his spouse are subsistence farmers, it is likely impossible for the spouse to take on any additional work. In such a scenario, the spouse may be forced to sell the family's belongings, hastening the descent into abject poverty.
- In many traditional societies it is not unusual for one breadwinner to financially support an extended family network. (In some particularly impoverished rural areas of Africa, dependency ratios in excess of 1:200 have been reported.)
- Entering PTD not only limits one's income and earning potential – it actually *costs* money. In developing countries, authorities often fail to provide basic necessities, so detainees must pay for food, water, clothing, and bedding. Commonly, they must also pay bribes for “privileges” such as making a phone call, securing a place to sleep, and avoiding or lessening beatings. Families of pretrial detainees must consequently wrestle with legal fees, the cost of bribes to corrupt criminal justice officials, and other expenses.

5. PTD and corruption (example)

- Corruption flourishes in the pretrial phase because it receives less scrutiny and is subject to more discretion than subsequent stages of the justice process, and often involves the lower paid and most junior actors in the system.
- The justice system's credibility suffers when the innocent are arrested and even convicted because they cannot pay, and the guilty go free because they can.
- For example, in a developing country in Asia, the cost of detention to family over a period of four months would be US\$2,250, paid in a total of 34 transactions:
 - \$1,160 to detaining officers, to prevent torture and the fabrication of more charges;
 - \$240 in bribes to lawyers, lawyers' staff and bench clerks; and
 - \$850 for transport to the prison, transport that should normally be provided by the prison service, food for the detainee, copying documents, tracing witnesses.

6. Cost to communities

- Once released from prison, detainees infected with a communicable disease while incarcerated pose a public health risk to the communities to which they return. The effect of this on poor households can be devastating and may impoverish households reliant on the good health and labor of each of its members.
- Diseases such as HIV/AIDS, hepatitis C, and tuberculosis are common in many pretrial detention centers, spread quickly both within and beyond the prison walls, and impose massive costs on the communities they affect.
- PTD can aggravate the disadvantaged characteristics of communities against whom PTD is applied in a discriminatory manner. The over-use of PTD in these communities harms not only those detained, but the community as a whole, depriving it of parents, income-earners, teachers, role models, and community leaders. The community impact of excessive PTD furthers the social exclusion of marginalized groups, increases their poverty, and decreases their political power.

7. Ripple effect – The impact of PTD on a community

- A *hypothetical example* from a poor, rural community in the developing world reveals the medium to long-term economic shocks within a household and community as a result of the detention of one person.
- Example: After the male head of a household is arrested and detained, the family disposes of its maize-milling machine to obtain cash for his legal fees, bail and/or money to bribe him out of detention. As the milling machine brought steady income into the household, the sale of working capital means that the family soon has no money to hire labor or buy inputs for their beetroot plots. Beetroot production ceases, and so does income from the crops. The new owner of the milling machine moves it

to a distant location. The absence of the machine is felt by other households in the village, and women go back to pounding maize, which increases their workload.

8. The Global Campaign

- To address the above, the Justice Initiative is developing 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. Among other activities, the GC:
 - gathers empirical evidence to document the scale and gravity of the problem;
 - builds communities of practice and expertise among NGOs, practitioners, researchers, and policy makers;
 - establishes links with associated fields such as public health, anti-corruption, rule of law, and socio-economic development; and
 - pilots innovative approaches and methodologies aimed at finding effective, low-cost solutions.