



CHRI
Commonwealth Human Rights Initiative



**REDUCING USE OF
PRE-TRIAL DETENTION
IN THE COMMONWEALTH**

**BRIEF REPORT ON THE PANEL DISCUSSION
13TH APRIL 2018
LONDON**

REPORT ON PROCEEDINGS

The horrors of pre-trial detention and its irreparable consequences on the inalienable human and fundamental rights of its victims can never be overstated. A significant number of prisoners across the world, including in the countries of the Commonwealth, are those in custody awaiting trial. In other words, they are incarcerated without being proven guilty. “This, is simply not acceptable,” said Lord Carlile of Berriew, while delivering his keynote address at a discussion organised by the Commonwealth Human Rights Initiative (CHRI), in association with Fair Trials, the Institute for Criminal Policy Research, Open Society Justice Initiative, Penal Reform International and the United Nations Office on Drugs and Crime, and held on the sidelines of the Commonwealth Heads of Government Meeting (CHOGM) in London. The event, appropriately titled “*Reducing use of Pre-trial Detention in the Commonwealth*” was well attended and held at the offices of Clifford Chance, Canary Wharf on 13th April, 2018 in the participation of several experts on Prison Reform and Pre-trial detention, who all came to together to share the challenging issues and best practices towards reducing pre-trial detention. The over-arching aim was to build up and foster cooperation and collaboration between different civil society and other groups working in this field to lend further efficacy to their efforts. As Sanjoy Hazarika, International Director of CHRI, while delivering the welcome address pointed out, the media can play an important role by “shining a sustained light from within” on the issue of pre-trial detention.

The Keynote address of Lord Carlile, a universally respected Barrister and expert in the field of Criminal Law, highlighted concerns about the detention methods in some parts of the Commonwealth and pointed out that the laws were not set to the same standards in all Commonwealth nations. Thereafter, he suggested some solutions of his own, such as training of Courts to effectively dispose of matters expeditiously without compromising on quality as well as discourage the taking of unnecessary adjournments.

This was followed by a presentation by Roy Walmsley, the director of World Prison Brief, who reported data in respect of imprisonment levels and in particular levels of pre-trial detention. He warned that data gathered needs to be fully understood. Giving the example of countries like India, Bangladesh, Pakistan and Sri Lanka, he said that perusal of the prison population of these countries would show that prison population rates were low. Yet, a further scrutiny would reveal the very high proportion of pre-trial detainees among prisoners,

in excess of 60% of total prisoners. He advocated for reform where pre-trial detention was to be effected only a last resort. [View datasheet [here](#)]

The event comprised two panel discussions, both chaired by Lord Carlile, where the panelists highlighted different aspects of pre-trial detention broadly covering the reasons therefor and what could be done to reduce its incidence. Jago Russell of Fair Trials, spoke about three tests for ascertaining whether a legal process was fair or not; fair outcome, public trust in justice and minimal impact. He deprecated the use of pre-trial detention as a tool to coerce victims to confess and as a cheap and immediate (and perhaps, undeserving) punishment by itself. He looked at pre-trial detention from the broader perspective of human rights to highlight its consequences on its victims. [View slide presentation [here](#)]

Martin Schoenteich of Open Society Justice Initiative delved into the socio-economic impact and consequences of pre-trial detention, and reported that the present global cohort of pre-trial detainees will collectively spend 600 million days in detention which constitutes a colossal waste of human resources.. The link between pre-trial detention and poverty was clearly explained and so was the impact on families due to the detention of a family member, who would often be the sole-breadwinner. [View slide presentation [here](#)]

Catherine Heard of the Institute for Criminal Policy Research spoke about the massive disparities in pre-trial detention and highlighted the work of her organisation in mapping and ascertaining trends in pre-trial detention and the various factors that underlie these, focusing on findings of an ongoing comparative project which includes five Commonwealth countries. She argued that effective re-framing of laws after understanding the discrepancies in the system could have a positive impact on pre-trial detention but warned that the long term solution lay only in studying the larger picture relating to decisions about whom we choose to imprison and why. [View slide presentation [here](#)]

An innovative 10 point plan, including decriminalization of petty offences, ensuring international standards, setting time limits for remand in custody, providing legal aid and assistance by lawyers and para-legals, establishing effective file management in prisons, etc was put forward by Allison Hannah of Penal Reforms International [View slide presentation [here](#)] while Anika Holterhof of UNODC first explained the complex problem of pre-trial detention and then suggested measures, such as increasing access to legal aid, particularly at the early stages up to and including the first appearance before a judge for the purpose of determining whether the person is to be detained or released pending trial, including by

implementing the international standards set by the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. [View slide presentation [here](#)]

Finally, Madhurima Dhanuka, Coordinator of the Prison Reforms Programme of CHRI, in her presentation, with emphasis on the situation in India, stated that an effective way to reduce pre-trial detention was the establishment of Periodic Review Committees, a mechanism to review the status of unsentenced prisoners. A carefully constituted Committee comprising District Magistrates, Superintendents of Police, District Judges, Jail Superintendents and Secretaries of District Legal Service Authorities could ensure minimal pre-trial detention, at least, not more than absolutely necessary. She highlighted the efforts of CHRI in advocating their establishment and the role India's Supreme Court has played in having these Committees in place. [View slide presentation [here](#)]

In between the sessions, two videos - 'Presumption of Guilt' by Open Society Justice Initiative which provides a global overview of the extent and consequences of pre-trial detention [view video [here](#)] and 'Nightmare - A film about the Criminalization of Poverty Across the Globe' by Incarceration Nations Network [view video [here](#)] were showcased. The panel discussions were followed by an interactive question and answer session moderated by Lord Carlile.

The session ended with a general consensus that affirmative and concerted action must be taken to respond to this issue which will soon become a global crisis, and which already is a crisis situation for most countries.

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