

16 PEACE, JUSTICE
AND STRONG
INSTITUTIONS



CHRI
Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights
in the countries of the Commonwealth

REPORT ON PROCEEDINGS¹

A. Context & Background

On 12th April 2018, the Commonwealth Human Rights Initiative with support from the Open Society Foundations organised a round table discussion on the 2030 Sustainable Development Agenda and pre-trial detention. In 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development which seeks to reduce the proportion of prisoners in pretrial detention (PTD). While the inclusion of PTD in the Sustainable Development Goals (SDGs) is essential, the challenge is to ensure that it is given the recognition it deserves as a key issue able to create improvements along the whole access to justice chain of sub-systems.

In this context, the roundtable sought to deliberate upon the role of civil society groups esp. from the Commonwealth countries; share information on existing work carried out by roundtable participants on PTD & the SDGs; and, discuss how civil society can raise awareness and understanding about the SDG indicator on PTD and the nexus between PTD practices and socio-economic development.

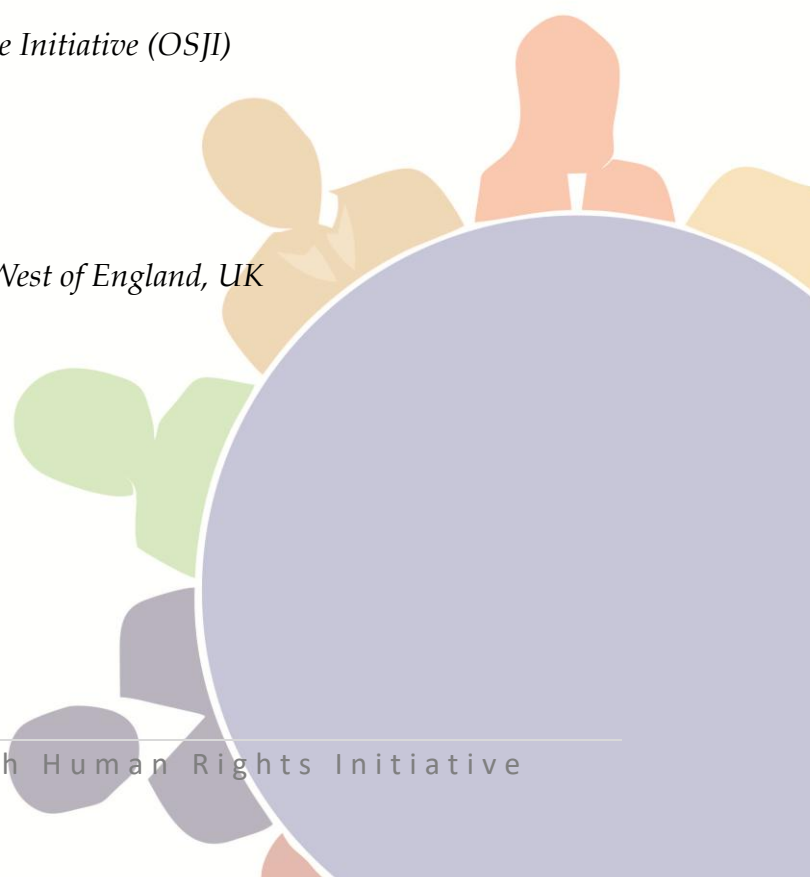
B. Participants

1. *Alison Hannah, Penal Reforms International*
2. *Ambika Satkunanathan, Sri Lanka Human Rights Commission*
3. *Anika Holterhof, United Nations Office on Drugs and Crime*
4. *Catherine Heard, Institute of Criminal Policy Research*
5. *Jago Russell, Fair Trials*
6. *John Clarke, Jamaicans for Justice*
7. *Louchrisha Hussain, Citizens' Constitution Forum*
8. *Louise Edwards, African Policing Civilian Oversight Forum*
9. *Madhurima Dhanuka, Commonwealth Human Rights Initiative (CHRI)*
10. *Maja Daruwala, CHRI*
11. *Marina Ilminska, Open Society Justice Initiative (OSJI)*
12. *Martin Schönsteich, OSJI*
13. *Omar Khan, Justice Focus*
14. *Richard Bourne, CHRI*
15. *Roy Walmsley, World Prison Brief*
16. *Sanjoy Hazarika, CHRI*
17. *Dr Thomas Smith, University of the West of England, UK*

Rapporteurs

1. *Alice Cambon, CHRI*
2. *Deepan Kumar Sarkar, CHRI*

¹ Prepared by Deepan K Sarkar, CHRI.



C. Report on Proceedings

Session 1: Introductions & Context Setting

The participants introduced themselves and thereafter the first session commenced. Ms. Maja Daruwala initiated the discussion. She eloquently provided an insight into the problems plaguing developing countries regarding access to Justice. She said that when it came to getting access to justice, countries such as India and Jamaica find themselves amid serious challenges and road-blocks. She attributed the situation primarily to poor governance.

Despite knowing fully well the causes and elements which result in prolonged pre-trial detention, perhaps, she said, it was civil society which lacked initiative or, better to say, a proper way of functioning which may ease our way towards, if not improving drastically, but making things far less gloomy than what it is at present.

For this, according to her, the primary need of the hour was to both broaden as well as narrow down our approach. There is a chain of causation which has and continues to lead to prolonged pre-trial detention. The dilemma we are faced with is varied and complex.

A major reason, according to her, that threatened any endeavor to contain unnecessary pre-trial detention was archaic and weak laws which provided for inadequate accountability measures, especially in the present scenario where justice increasingly seems like a mirage. Policy making was short-sighted. She drew a parallel with the policing system and the problem of false arrests which could be curbed and contained by putting in place proper police monitoring systems. The role of corruption did not require to be explained.

Maja thereafter stressed on the need to first introspect and identify our biases. She argued that in many Commonwealth nations, incarceration begins even before the commencement of trial and called upon civil society organizations to come to the fore and contribute towards remedial measures to rid the society, and most importantly, the law in the first place, of such malice.

For that to happen, she said, we who have resolved to help people get justice, must try to keep in touch with each other. It is obvious that, unlike policing, prison as a subject does not usually generate a lot of general interest. Thus, it is hard to get media attention which may help in creating enough pressure and public opinion.

Challenges:

- **Poor governance**
- **Archaic and weak laws providing for little or no accountability**
- **Short-sighted policy making**
- **Limited media attention on pre-trial detention**
- **Lack of proactive role by the Commonwealth**
- **Cherry-picking of SDG goals by Governments**

That is where, according to her, Sustainable Development Goals (SDG) assumed importance. SDG helps follow progression. The systematization of progression, the systematization of data collection and sharing must be concentrated on.

She emphasized that the national issues must no more be allowed to stay national, the tag of international must be attached to them while sub-national issues ought to be made national. She asserted that Governments must be persuaded to do away with cherry-picking goals from SDGs for their own convenience, and instead ought to take initiative to achieve all the goals set out in SDG 2030. However, for pre-trial detention, our focus must be amplified on the SDG 16.

Collection of data and maintaining data of progress was necessary, along with sharing of the same with partners across civil society around the world. Progress must be systematic so that the benefits can be reaped in the long run. She hoped that this roundtable would turn out to be fruitful in the sense that we will be able to put on our thinking caps and bring about the changes in our approach necessary for achieving our objectives. But for that, she stressed forcefully, collective initiative was required. Only then would our shafts hit the bird's eye.

For its part, CHRI would also have to come up with ideas which can enrich the Commonwealth. Things have taken a serious turn in 53 countries of the Commonwealth where the human rights were infringed upon by their Governments. Disappointment was obvious but that alone would not help. The

Solutions:

- **Collective and systematic initiative on the part of civil society**
- **Systematic collection of data relating to pre-trial detention**
- **Systematic sharing of data of progress being made in collective initiatives**
- **Sharing of data among civil society organisations**
- **Persuading governments to focus on SDG 16**

Legal system must also come under scrutiny, she said. The Prison system is neglected like an unwanted child and something needs to be done to change the scenario. Reformation is hard to come by if the forest is neglected for the woods. Civil Society would have to come together and play its part. She ended with the

powerful statement, 'There is too much injustice in the Prison system to not knock on every door'.

Mr. Martin Schönreich, introduced his organisation and stated that in many countries, people were detained before trial even for not so serious offences. This defied logic, for without trial, one should not be maligned as an offender, even for accusation of committing serious offences. Pre-trial detention is playing the spider across the globe, he said. Its tentacles had to be sliced off for justice to make its way to its seeker.

In looking for solutions, a lot of experiments were being made with low cost solutions. He suggested that the onus was on legal counsels to see to it that pre-trial detention is kept under check. It was criminal to turn a blind eye to the flip side of the Criminal Justice System: pre-trial detention was a clog in its wheel, ruining people, the poor especially. The chariot wheels of pre-trial detention crush the poor who cannot not afford to bail themselves out or bribe their way to freedom. The poor form the vast majority of those in pre-trial detention.

Martin referred to their exercise of interviewing random pre-trial detention detainees in African nations and the results were horrifying, he said. The impact of pre-trial detention on households was telling. In many cases where the sole-breadwinner of a family is in jail, household income is lost. As a result, the children in these families dropout of school in search of employment. Furthermore, these families have to

bear the legal expenses to continue fighting cases in court. As a result, they are forced to sell off their properties, movable and immovable, and are more often than not, driven to penury in the process. In other words, the impact of pre-trial detention is intergenerational and, in a way, also influences the socio-economic development of a concerned nation.

- ***Persons detained before trial even if accused of minor offences.***
- ***Majority of those in pre-trial detention are poor.***
- ***Pre-trial detention has adverse intergenerational impact.***
- ***Significant link between pre-trial detention and socio-economic development of a country.***

Looking ahead

- ***Pre-trial detention given global recognition by incorporation into SDG 2030.***
- ***Need sustained effort to ensure pre-trial detention as a goal is not lost among hundreds of others.***
- ***Need to develop new indicators and augment existing indicators to better understand and reverse pre-trial detention***

By including pre-trial detention as an SDG in SDG 2030, this issue has now been given global recognition. United Nations has globally recognized pre-trial detention as one of the many indicators of socio-economic development. However, it is one indicator out of hundreds. Therefore, the most challenging part is to make sure that pre-trial detention is not lost among the other indicators.

Having debates on this topic is not enough, he opined. Rather, it was necessary to develop more accurate indicators to understand pre-trial detention in a manner so as to reduce it. For instance, in the United States of America, 20% of prisoners are awaiting trial or the finalisation of trial, which is below the global average of around 30%. Yet, in the USA, there are 146 pretrial detainees per 100,000 of the general population - one of the highest rates in the world. Hence, the percentage or

proportion indicator on its own may be deceiving and may not always be the most accurate measure of the extent or use of pretrial detention. The more indicators we can develop, the better we can understand and reverse pre-trial detention, was his unequivocal suggestion and he ended by calling upon Civil Society and all stakeholders to start a dialogue to look for ways and means to not only develop new indicators, but to augment the existing ones.

Ms. Marina Ilminska said that in 2015, a handful of goals were adopted by the international community. However, instead of adopting an approach to work towards fulfilling all the goals, States have started cherry-picking on certain goals. For instance, out of the 17 goals, some are choosing only one as per their own economic and other vested interests. Nevertheless, she continued, the one which stands out for our consideration is the Goal 16, that which relates to pre-trial detention. She said there ought to be greater concentration on the criminal justice system and its shortcomings.

Striking a note of hope, Marina said that the governments are still dilly-dallying about which goals to choose for the year 2030. Therefore, there was still time to further advocacy by civil society. In this context, she said, a balanced approach was necessary. On one hand, if the governments were allowed to choose only one goal, then one could not expect any serious change to usher in. On the other hand, advocating for selection of all goals could also be self-defeating. Therefore, it was important to undertake the task of prioritizing goals. But for that, the Governments and Civil Society Organizations would have to be aware of which goals to prioritize and which to postpone for the time being. At the grass root level, Maria argued, many were still ignorant of what SDG is all about. Scope of SDGs and their importance is still limited to a few organizations.

Challenges:

- **Governments discarding SDG goals which don't serve their economic and other vested interests**
- **Ignorance about SDGs and their importance at the grass root level**
- **Many SDG goals may be discontinued in 2019**
- **Freedom of information still inadequate**

Marina said she hoped that this roundtable would promote cooperation between organisations, as cooperation is key to any success or achievement. She hoped this meeting would lead to the establishment of a new platform from where civil society groups can all work together.

Marina further said that there was still much time to prepare a coherent strategy to further advocacy, as Goal 16 will be up for review in New York in 2019. Even though we are all wanting in freedom of information, which impedes civil society efforts, a way had to be found to make Governments adhere to the SDG goals on principle. She informed the roundtable participants that there was talk of many indicators being weeded out in 2019. This, however, would be preceded by global discussions

The way forward

- **Prioritizing which SDGs are more important at this juncture and impress this on Governments**
- **Cooperation among Civil Society Organisations.**
- **Persuading governments to adhere to all SDGs on principle**
- **Global dialogue on SDGs to prevent Governments from dropping goals from SDG 2030.**
- **Creation of a new Civil Society platform**

on the indicators and one would have the opportunity to speak for or against these indicators, upon which, it will be decided as to whether they will be kept or discarded. It was here that civil society would have to step up and adopt a serious role and initiate a

global discussion and convince Governments to stay firm on the commitments they made in 2015 while adopting the SDGs. Allowing goals to be discontinued would be a huge set-back.

Ms. Anika Holterhof continuing from where Marina ended said that civil society in general, in many countries, was still in the dark about the possible choices to be made by the respective governments which hindered cooperation, limiting the use of knowledge and resources civil society can contribute to make reform efforts as well-informed, evidence-based and inclusive as possible. She said that many governments, for many reasons, were not happy with the final list of indicators of all SDGs and hence the efforts to drop or change indicators.

She explained the scope of work of the United Nations Office on Drugs and Crime (UNODC), and said that a part of UNODC's work included studying the treatment meted out to prisoners and evaluating the options available for their

Problems

- **Lack of knowledge of intent of governments re SDG goals**
- **Inadequate funding**
- **Heavy reliance on donors**
- **Difficult to measure Access to Justice**

Solutions

- **Increasing scope of work**
- **Commonwealth countries can benefit from UNODC research data**
- **UNODC working towards methods to measure Access to Justice**

rehabilitation. In furtherance of this, UNODC has initiated a discussion about the ways of tackling pre-trial detention and they were also in process of understanding the keenness of donors in funding work relating to

pre-trial detention. The goal of UNODC is to reduce the charge/incidence of pre-trial detention and they have been working to expand their work globally.

Drawing a link between the activities of UNODC and the Commonwealth, she was of the opinion that countries like Nigeria, Mali and Sierra Leone would be easier to work in as the conditions there will offer UNODC the scope to implement its plans and see how things fare. Having worked in the United Kingdom as an Advisor, she felt that Commonwealth countries could benefit from understanding how the research branch of UNODC collects and evaluates data. This could help Commonwealth countries in reaching their respective SDG goals.

Anika further said that even though it was a difficult task to measure access to justice, UNODC has been trying to figure out methods to do so. With this view in mind, a [Global study on Legal Aid was conducted in the year 2016](#). On the basis of this very study, she suggested, one could roughly measure access to justice and asserted that such endeavour would continue in the future.

Mr. Jago Russell then started by saying that despite the world of human rights reform being a crowded field comprising a large number of organisations, it was a challenge to engage organisations to work in the field of pre-trial detention as many are yet to be persuaded about reform potential of this field.

According to Jago, focusing exclusively on pre-trial detention can produce perverse and fruitless outcomes and felt that the criminal justice system as a whole needed to be looked into and pre-trial detention as a part thereof. Explaining the problem of pre-trial detention, he said it was proving to be a thorn in the way of smooth functioning of the criminal justice system in both Europe and America.

- **Challenge to persuade civil society organisations to work in the field of pre-trial detention**
- **Focusing exclusively on pre-trial detention may lead to perverse and fruitless outcomes**
- **Pre-trial detention related problems prevalent across Europe and America**
- **Hasty disposal of cases leads to unnecessary detention**
- **Defence lawyers often ill-equipped**

- Possible solutions**
- **Plea bargaining and waiver of trial**
 - **Creating institutional incentives**
 - **Increasing pre-trial detention compensation**
 - **Support for those claiming compensation for detention**
 - **Money Bail system**

Coming to the issue of detaining people, he said, a study of orders passed by judges and an assessment of the reasons behind such orders has revealed interesting concerns. Some judges interviewed said that they were not persuaded by the defense to stop pre-trial detention resulting in its continuance. Also,

according to Jago, sometimes judges are in a hurry to dispose of matters due to pendency and in the process compromise with the quality of their decision. This ruins many a life and continues unabated till date.

Speaking of solutions, Jago said, pleading guilty or waiver of trial has potential while efforts are on to create an institutional incentive. A project is being undertaken to increase pre-trial detention compensation. Among countries, though outside the Commonwealth [Italy](#) has fared well in implementing the European Court of Human Rights decisions in respect of pre-trial detention. He also suggested that civil society can become the voice of those who are claiming compensation for prolonged detention before trial. This could act as a deterrent. The money bail system in the United States of America could also be looked at. Jago advocated drawing a link between cooperation and pre-trial detention in order to solve the problem in the long run.

Ms. Louise Edwards who has had extensive experience working in the African countries, gave an account of the measures that have been taken for reforming the system of pre-trial detention in Africa. Many African nations are pushing for pre-trial detention reform, even though there is yet no link between SDG 16 and the broader continental movement on pre-trial detention and access to justice. What ails Africa at present is that the wave of reformation is yet to reach a large number of countries in Africa.

The African Commission on Human and Peoples' Rights (ACHPR), the human rights mechanism of the African Union (AU) has adopted the Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa (the Luanda Guidelines) to provide African states with a blueprint for a right based approach to pre-trial detention.² Implementation of the Luanda Guidelines is underway in a number of countries, including members of the Commonwealth such as Ghana, Gambia, Uganda, Kenya, Malawi and South Africa. Amongst other issues, the Guidelines emphasise the need to improve systems for the collection of information about pre-trial detention, which was identified as a critical challenge across Africa during consultations on the draft Guidelines by the ACHPR.

She argued that Governments in general were not always averse to reform. Yet, any such endeavor or project in that regard, in order to be accepted by Governments, would have to be demonstrated to be effective. A project in South Africa is going on following which the Government of South Africa has said that measures of reformation such as reform of data collection system, bail reform and the implementation of regular custody monitoring can only work if their efficacy is shown from evidence. Also, she pointed out, perception of the community needed to be taken into account before considering implementing measures such as those proposed to bail. The physical condition of the detained also needed to be measured.

² http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines_arrest_police_custody_detention.pdf.

She ended with a word of caution saying that notwithstanding the development of international indicators, it is not always possible to replicate them to the local context. Therefore, such measures, before being implemented, ought to be thought over carefully.

Ms. Alison Hannah speaking on the African context, said they at PRI believed that there were too many cases of detention for minor offences. This made it more

Problems:

- **Too much detention for minor offences**
- **Indicators used to measure pre-trial cannot reveal the length of time for which an individual has been detained.**
- **Money Bail system has been demonstrated to be ineffective**

imperative for civil society groups working on pre-trial detention to work in Africa so that unnecessary detention can be reduced. The idea of establishing non-detention community centres must be promoted and supervision/surveillance also be promoted as an alternative to detention, she argued.

Speaking of indicators used to measure pre-trial detention, she said even though these indicators could

illuminate us on the number of pre-trial detainees, it could not give accurate data on the time span for which they had been detained. Criticizing the Money Bail system, she said separate researches initiated on it had demonstrated Money Bail system to be largely ineffective.

Even though PRI did not exclusively work on SDGs or pre-trial detention, they did work in the related fields of poverty and criminalization.

Speaking of information gathering, PRI have found that Kenya has a wonderful information system and was also doing quite well in containing pre-trial detention and poverty etc. It had been found in Kenya that out of the total arrests made, 68% had been for minor offences, which is really left-overs of colonial-era laws. Therefore, the Government of Kenya was now looking to decriminalize smaller offences while also trying to work out a way for dealing with poverty.

The way forward

- **Promoting of non-deletion community centres and surveillance as alternatives to pre-trial detention**
- **Exhaustive review of Criminal Law**
- **Kenya could be looked for best practices**
 - **Well-developed Information System**
 - **Successful efforts in reducing pre-trial detention and poverty**
 - **Efforts to decriminalize smaller offences**

Mr. Omar Khan said two projects related to pre-trial detention were underway with government departments across Uganda, Kenya and Tanzania. Impetus has been on reducing pre-trial detention as well as implementing a gender-sensitive approach to pre-trial assessment and probation. Focus is on local interpretation of international standards, such as the Bangkok Rules, the Tokyo Rules and the Mandela Rules. The government have shown great leadership in and ownership of these projects, which is leading to positive results. In other cases where models have been implanted in the region from international organisations without adaption to the local context, staff and officials have shown resistance. He emphasised the need to focus on supporting local experts to interpret international standards for effective and sustainable reform.

Ms. Catherine Heard started by observing that there has been a rapid rise in the incidence of pre-trial detention in the Americas – both Latin and Central. It has now

- **Rise in pre-trial detention in Central America**
- **Need to look at shortcomings in criminal justice system in developed countries too.**
- **Bail conditions in England unjust and unfair**
- **Methodology outlined to systematically study criminal justice system**
- **Looking simply at legal framework not enough – need to work at the ground level to understand system**

snowballed into a world-wide political issue cutting across borders, quite apart from being a national issue for many countries. She said, while we are biased against poorer countries and tend to focus more on problems relating to the criminal justice system in these countries, one also needs to look at countries like England, where the bail conditions are also unjust and unfair. She outlined a methodology to evaluate the criminal justice system and the problem of pre-trial detention – one would have to start with the bail system vis-à-vis different kinds of cases, then look at plea bargaining systems and thereafter look at the quality of sentencing and time spent in custody.

Catherine asserted that focusing on the legal framework alone would serve no effective purpose. Therefore, she said she was working with the defence lawyers to know the prevailing situation at the ground level.

Shifting her focus to the Commonwealth countries, she spoke about her observations and findings in respect of pre-trial detention in member nations and gave the example of India, which

Jamaica

- **High crime rate**
- **Lack of awareness of human rights among citizens**
- **Arbitrary definition of pre-trial detention – includes only those arrested by order and excludes persons in police lock-ups**
- **Difficult to obtain accurate data of total number of actual pre-trial detainees**
- **Emergency declared in parts of Jamaica**
- **Writ of habeas corpus suspended. No recourse to Courts.**

has been constantly witnessing a high percentage of pre-trial detainees and also Australia, which in recent years, has seen a rapid rise in the incidence of pre-trial detention.

Mr. John Clarke started by giving an introduction to Jamaican for Justice, which was established in 1999, and its field of work, which included working in the field of pre-trial detention and looking at challenges and possible solutions. Speaking on the Jamaican situation, he said that Jamaica has struggled with high crime rates for years. Due to lack of general awareness regarding individual rights, Jamaicans often willingly but unknowingly

Sri Lanka: Efforts at reformation

- **Right to Information Act of 2017 among the best in the world**
- **No dearth of data – regular publishing of prison data by the Government**
- **Study undertaken to reform Lankan Legal System**

surrender their human rights. Any initiative to study pre-detention is problematic since the Government has an arbitrary definition of pre-trial detention. Majority of the pre-trial detainees are holed up in police lock-ups but the Government of Jamaica does not count them as pre-trial detainees as the definition of pre-trial detention is restricted to those arrested by order. Hence the data furnished by the Government of Jamaica vis-à-vis pre-trial detention is hardly reliable.

Hence, even though large numbers of people have been detained before trial, the Government of Jamaica shows the number to be much less. Emergency has been imposed in certain parts and human rights are restricted. The writ of Habeas Corpus has been suspended.

Sri Lanka: Challenges

- **Overpopulation in prisons**
- **Independent institutions not adequately strong**
- **Detention without trial for over a year, in violation of the law**
- **Inadequate knowledge of law on the part of legal authorities**
- **Inability of detainees to bear legal costs**
- **Arrests without evidence of commission of crime; investigation post-arrest.**
- **Pre-trial arrest procedures not in conformity with International standards**
- **Lengthy trials and frequent adjournments**
- **Antiquated laws**
- **Conventions and practises trumping law**

Ms. Ambika Satkunanathan spoke on the situation in Sri Lanka. She explained the mandate of the National Human Rights Commission which was to, inter alia, look at violation of Fundamental Rights and explained the powers exercisable by NHRI. According to her, SDG 16 was very much relevant to Sri Lanka.

The challenges being faced by Sri Lanka re pre-trial detention were many, she said. Independent institutions in the

country needed strengthening. Prisons are getting over-populated. Notwithstanding applicable law which provided that a person cannot be remanded in police custody for over a year without trial, there are many such instances of detention without trial for over a year. The problem, she explained, was compounded by the inadequate knowledge of the law on the part of the legal authorities themselves. Since a large number of detainees come from financially weak backgrounds, family members often cannot afford to pay money for bailing them out. Added to that, arrests are made without adequate or no evidence and investigation commences only after the arrest. The Pre Trial Arrest (PTA) procedures in Sri Lanka do not adhere to International standards and lengthy trials prolong the travails of the detainees. Frequent adjournments add to their woes. Many of laws in Sri Lanka are anachronistic colonial-era laws which required urgent reformation, according to her. The trend of practices trumping law was also problematic and was a roadblock.

However, while there were genuine challenges, efforts at improvement have not remained static, she informed. The Right to Information Act ("RTI Act") of Sri Lanka, promulgated in 2017, has been acknowledged internationally to be among the best in the world in terms of legal efficacy. Furthermore, there was no dearth of data as the Prison Department releases detailed data every year. Even though the data is collected using antiquated methods, a study has been undertaken to review and repair shortcomings in all respects with a view to, as she eloquently stated, '*mend the soul*' of the Lankan Legal System.

Dr. Thomas Smith spoke on the situation prevalent in England and Wales. He suggested that there was an overuse of pre-trial detention and which presently stood at 11%. This number, to be fair, he clarified, had remained stable in the last few years. Yet, there were issues which were required to be addressed.

In England and Wales, there was a great dearth in disclosure of information relating to the case against a person. With limited obligations on the prosecutor to disclose information, defence lawyers are often left without inadequate details of the case. He said, there was presently limited regulation of disclosure of case details and opined that one had to be framed urgently.

England and Wales

- **Limited obligations on prosecutor to disclose information relating to a case at the pre-trial stage**
- **Defence lawyers left with inadequate information to make out a case for clients at the pre-trial stage**
- **Limited legal regulation of disclosure at the pre-trial stage**
- **Hearings largely uncontested.**
- **Repetitive submissions by lawyers**
- **Orders passed by Judges without providing adequate reasons**

Solutions

- **Extension and clarification of law mandating disclosure of information to the defence at pre-trial stage**
- **Urgent collection of data relating to shortcomings.**

He discussed in detail, his research findings on the situation in England & Wales. The hearings in criminal cases, especially at the stage of pre-trial detention, largely go uncontested, he claimed. There were repetitive and formalistic submissions made by lawyers at hearings. At times Judges passed orders without providing adequate reasons.

Having made these observations, Thomas said, that in order to work towards rectifying such practices, data needs to be collected to introduce meaningful improvement. It is true that weekly prison statistics are released by the Ministry of Justice, but these provide little context and therefore offer a poor basis for reformation of this area of practice.

Ms. Madhurima Dhanuka briefly explained the work of the Prison Reforms Programme at CHRI in India. Thereafter, speaking on the issue of SDG 2030 and countries looking to opt out of goals, she said India was yet to take a decision on the indicators which would be chosen. While CHRI and few others are pressing upon the concerned authorities not to be selective, there are two few voices to force the government into anything it does not want to measure. She asserted that SDG 16 relating to pre-trial detention was a very important indicator, not only because of its ramifications on the issue of human rights in general, but also because various other indicators depend on or are affected by pre-trial detention, including socio-economic indicators etc.

India

- **India yet to decide on SDG indicators**
- **Pre-trial detention an important indicator as many other indicators also depend on it.**
- **Intra-governmental cooperation necessary – NCRB and Niti Ayog.**
- **Lack of data available on inflow and outflow of pre-trial detainees**
- **Challenges**
 - **Unnecessary and arbitrary arrest despite legal safeguards**
 - **No scheme to ensure that legal aid is available at the arrest stage.**

Any effort towards progress cannot be made without inter-departmental cooperation in the Government. In order to make impactful changes in the system, it was imperative, in India, for the Niti Ayog (the revamped National Planning Commission of India) and the National Crime Research Bureau of India (NCRB), which, inter alia, publishes detailed crime related statistics, to come together and cooperate with each other, she suggested. There was admittedly no dearth of relevant data in India relating to pre-trial detention. However, the crucial data, relating to the inflow and outflow of pre-trial detainees was not available. Necessary advocacy work was required to be done in this regard, she said. Thereafter, she spoke on the challenges faced by the criminal justice system, including arbitrary arrests and lack of clarity on whether legal aid was available at the arrest stage itself.

Sessions 2 & 3: Data Collection & Discussion on Way Forward

The remaining sessions of the roundtable comprised a presentation by Anika of UNODC on data collection and its methods, followed by an open discussion on ways forward moderated by Marina, Martin and Maja.

Anika, dealt with, in detail, the methods of and efficacy of data collection and data could be used to further the cause of human rights around the world. Amongst other things, she said, when governments publish data through reports, it is imperative that they publish data relating to pre-trial detention as well. This required advocacy work on the part of civil society groups.

During the course of the open discussion, Marina took note of the presentations relating to the situation in Jamaica and Sri Lanka and expressed the willingness on behalf of her organization to look into the matter further and provide help, if necessary. Ambika informed the roundtable that in June/July, 2018 Sri Lanka would be reviewed at the Human Rights Council and so far it had performed well in various indicators, she felt. Nevertheless, there was always scope for improvement, she said, and called for the release of all National Human Rights Commission data in the public domain. Deepan Kumar Sarkar from CHRI spoke, citing the Indian context, on the necessity of looking at judicial reform simultaneously with pre-trial detention as both the issues were intertwined inextricably.

John from Jamaican for Justice revealed that they had had a meeting with the Minister of Justice, Jamaica and he seemed interested in pushing for the necessary reforms despite political pressure. He felt that despite a sense of commitment amongst many government functionaries, what was lacking was political will.

Maja urged the need for international solidarity at a time when civil society at the national level was finding itself more and more vulnerable. She pointed out that there was a Commonwealth Forum of National Human Rights Institutions. The collective mandate is to strengthen its membership but it is yet to find its voice internationally as an influencer that it should be. Nevertheless the forum is one that should be tapped to become an advocate for reducing pretrial detention in the Commonwealth. She called for sustained international advocacy by the assembled group to strengthen this forum. She further suggested that civil society in the Commonwealth countries also undertake measures to educate the prison population of the laws and their rights and empower them. For this, legal education, i.e. spread of civic education and legal literacy should also have been an indicator. Civil society continues to examine the performance of sub systems of the criminal justice system in a bid to see where reforms can be undertaken and prioritized. Illustratively, the Tata Trusts, where she is an advisor, was preparing a comprehensive and integrated State-wise Justice Report to be published in January, 2019. Based on government data it would evaluate amongst other things the structural and performance situations of different subsystems including aspects of pretrial detention. Hopefully,

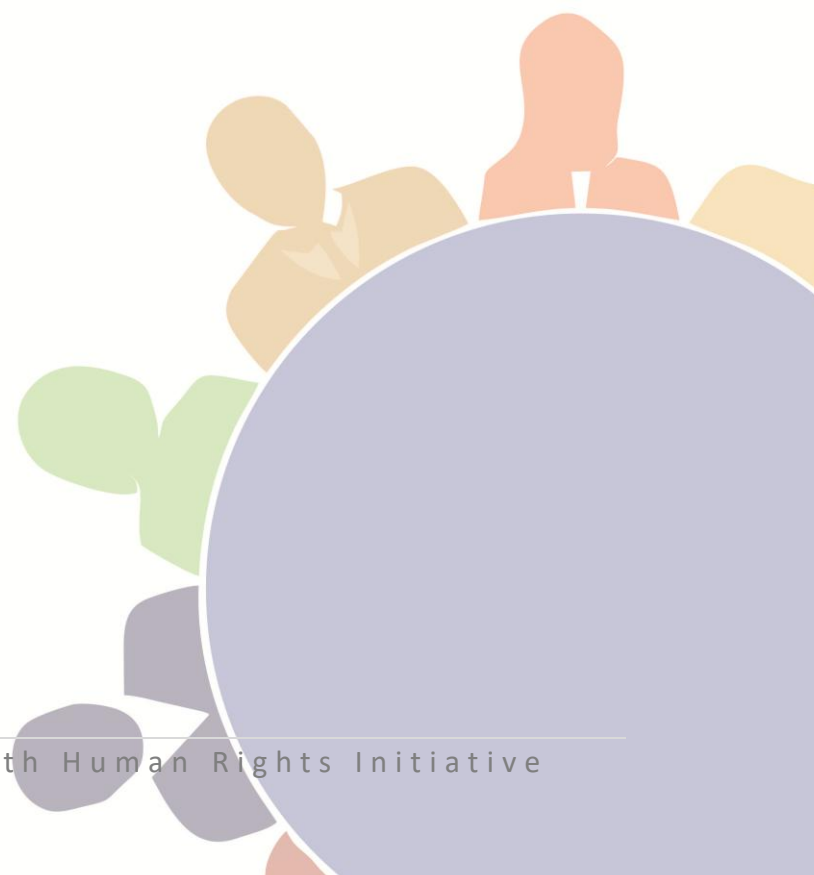
the report would coax governments to make necessary improvements as well as persuade local civil society organisations to do more local evaluations. . Having a broad coalition of civil society groups around the world would enable such groups abroad to support national and sub-national level activities and act as a voice for naming and shaming governments who defy international human rights norms. This could be an effective tool as the local civil society in that country may not be able to name and shame freely. Louise said they were working on various advocacy ideas and projects which she would freely share with other civil society groups whenever cooperation is sought.

D. Conclusion & Next Steps

Marina, summing up the prolonged discussion on data-collection, said, in view of all the discussions which took place at the meeting, it would be wise and prudent to develop country specific fact sheets on pre-trial, which would then act as a ready reference for stakeholders.

The meeting ended with the unanimous commitment to share, to work out ways and means to collect data, devise newer and better indicators and take a systematic approach to its evaluation.

The meeting also ended with the unanimous realization that civil society organizations must come together and form a broad coalition. Even though each organization must continue working independently and individually, in a broader sense, all like-minded civil society groups must work in cooperation with each other. In the modern world, it is no longer possible to make a difference alone. The challenges are many and multifarious. The problems are complex and the road to reform is strewn with impediments. Hence, to make a difference, civil society must work together, systematically and collectively.



Roundtable Discussion on the 2030 Sustainable Development Agenda and Pretrial Detention

12th April 2018

Open Society Foundations

Millbank Tower, Westminster, London SW1P 4QP

Excessive and arbitrary pretrial detention is not just a human rights violation, but also the nexus of related abuses and ill effects, including [torture](#), corruption and the [spread of disease](#), stunting [economic development](#) and undermining the rule of law. In 2015, the UN General Assembly adopted the [2030 Agenda for Sustainable Development](#) which seeks to reduce the proportion of prisoners in pretrial detention (PTD). This is a significant global political recognition of the importance of PTD in the development context.

While the inclusion of PTD in the Sustainable Development Goals (SDGs) is laudable, challenges remain. There is a risk that PTD as a development issue is obscured by the plethora of indicators that drive implementation of the SDGs. The SDG indicator – the proportion of prisoners in PTD – is ambiguous. Moreover, issues around access to accurate national-level PTD data and their uses to reduce unnecessary detention remain unresolved.

The roundtable will discuss what role civil society groups can play in Commonwealth countries to address these challenges; share information on existing work carried out by roundtable participants on PTD & the SDGs; and, discuss how civil society can raise awareness and understanding about the SDG indicator on PTD and the nexus between PTD practices and socio-economic development.

Time	Session	Facilitators
9.30 AM	Registration & tea	
10.00 – 10.30 AM	Introduction CHRI & OSJI introduce the objectives of the meeting, and provide background on work around PTD & SDGs.	Maja Daruwala & Martin Schönteich
10.30 AM - 12.00 PM	Existing work on PTD & SDGs Participants each provide a 7-minute presentation on their work on PTD/SDGs in the countries of the Commonwealth. More specifically, the presentations should discuss: <ul style="list-style-type: none"> a) Three biggest challenges with PTD in the target country. b) PTD data available (both government & CSO) & limitations on using the data as indicators for PTD-related practices. c) Steps the respective governments have taken to develop national PTD indicators based on existing data; whether reporting for the UN's High-Level Political Forum (HLPF) has been undertaken; and how your government views SDG 16 & PTD. 	Marina Ilminska & Madhurima Dhanuka
12.00 – 12.15 PM	TEA BREAK	
12.15 – 12.45 PM	Data collection & analysis by UNODC / OSJI – what do the data really mean?	Anika Holterhof & Marina Ilminska
12.45 – 1.30 PM	Discussion on advocacy opportunities to promote Goal 16.3 nationally / regionally / internationally; fostering coalitions.	Maja Daruwala & Martin Schönteich
1.30 – 2.00 PM	Discussion on next steps – developing a long-term advocacy plan on furthering PTD/SDG. What can be done together?	Marina Ilminska
2.00 PM onwards	LUNCH	

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI, with the conviction that there was little focus on the issues of human rights within the Commonwealth although the organisation provided member countries a shared set of values and legal principles from which to work.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member Governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

CHRI is headquartered in New Delhi, India, and has offices in London, UK and Accra, Ghana.

International Advisory Commission: Yashpal Ghai - Chairperson. Members: Alison Duxbury, Wajahat Habibullah, Vivek Maru, Edward Mortimer, Sam Okudzeto and Sanjoy Hazarika.

Executive Committee (India): Wajahat Habibullah – Chairperson. Members: B. K. Chandrashekar, Jayanto Choudhury, Maja Daruwala, Nitin Desai, Kamal Kumar, Poonam Muttreja, Jacob Punnoose, Vineeta Rai, Nidhi Razdan, A P Shah, and Sanjoy Hazarika.

Executive Committee (Ghana): Sam Okudzeto – Chairperson. Members: Akoto Ampaw, Yashpal Ghai, Wajahat Habibullah, Kofi Quashigah, Juliette Tuakli and Sanjoy Hazarika.

Executive Committee (UK): Joanna Ewart-James – Chairperson. Members: Richard Bourne, Pralab Barua, Tony Foreman, Neville Linton and Sanjoy Hazarika.

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CHRI Headquarters, New Delhi
55A, Third Floor
Siddharth Chambers
Kalu Sarai, New Delhi 110 017
India
Tel: +91 11 4318 0200
Fax: +91 11 2686 4688
E-mail: info@humanrightsinitiative.org

CHRI London
Room No. 219
School of Advanced Study
South Block, Senate House
Malet Street
London WC1E 7HU
United Kingdom
E-mail: london@humanrightsinitiative.org

CHRI Africa, Accra
House No.9, Samora Machel Street
Asylum Down
Opposite Beverly Hills Hotel
Near Trust Towers, Accra
Ghana
Tel/Fax: +233 302 971170
Email: chriafrika@humanrightsinitiative.org

www.humanrightsinitiative.org