



Detention in the Commonwealth : Increasing numbers, Decreasing rights

Commonwealth Lawyers Conference 2023

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Commonwealth Human Rights Initiative

Presumption of Guilt or Innocence?



Pre-Trial Detention in the Commonwealth



1 in every 3 prisoners is a
pre-trial detainee
in the Commonwealth
(not convicted - presumed
innocent)

Points of Discussion

1. Pre-trial detention: Overview of international standards and the situation in the Commonwealth
2. CHRI Report: **Guilty Till Proven Innocent?** Key findings
3. Taking action - Recommendations

International Standards - UDHR

Universal Declaration on Human Rights - Article 11



1. *Everyone charged with a penal offence has **the right to be presumed innocent until proved guilty** according to law in a public trial at which he has had all the guarantees necessary for his defence.*
2. *No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

International Standards - ICCPR

International Convention on Civil and Political Rights - Article 9



1. Everyone has the right to liberty and security of person. **No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**

2. Anyone who is arrested shall be informed, at the time of arrest, of the **reasons for his arrest** and shall be promptly informed of any charges against him.

3. **Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer** authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide **without delay** on the lawfulness of his detention and order his release if the detention is not lawful.

5. **Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.**

International Standards - ICCPR

International Convention on Civil and Political Rights - Article 10



1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

International Standards

Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

International Standards - SDG

Sustainable Development Goal 16

Sustainable Development Goal (SDG) 16 - Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Indicators:

- *16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimisation to competent authorities or other officially recognized conflict resolution mechanisms*
- *16.3.2 Unsented detainees as a proportion of overall prison population*



International Standards

Tokyo Rules

Rule 6.1 of the [United Nations Standard Minimum Rules for Non-Custodial Measures](#) state that

“pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim”.

Pre-Trial Detention in the Commonwealth

Prison Population

DATA & TRENDS IN THE COMMONWEALTH

3,711



Prisons in
54 Commonwealth
countries

India has the highest number
of prisons (**1,306**)

Only

18

Countries
have



Prison
Occupancy
within 100%
capacity

Uganda has the highest prison
occupancy level at **341.5%**



Between 2000 and 2022, the total prison population in the Commonwealth increased by **40.8%**.

The average incarceration rate across the Commonwealth is **177**,
against the global average of **167**.

*number of prisoners per 100,000 of national population



Pre-Trial Detention in the Commonwealth



Asia has highest share of women in prisons at **5.7%** followed by Europe at **5.3%** and Caribbean and American nations at **3%**.

Only **SEVEN** countries
Kenya, Mauritius, Namibia, Nigeria, Uganda, United Kingdom and New Zealand
have made prison population numbers publicly available in 2022.



Highest increase in the
percentage of pre-trial
prisoners is seen in Namibia
from **5.2%** to **54%** since 2000



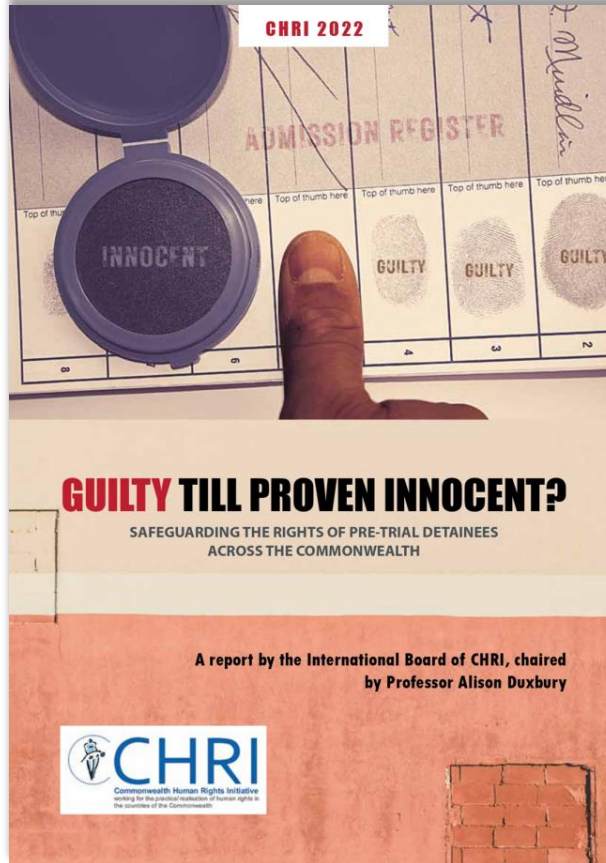
In 2020, Bangladesh had the
highest share of pre-trial
detainees in prisons at **80%**,
followed by India at **76.1%**

CHRI's CHOGM Report 2022

One-of-a-kind
comparative analysis
of legal frameworks
across 54
Commonwealth
Member States

Sets forth 10 basic
safeguards
necessary to
safeguard rights of
pre-trial detainees

Summarises
reporting on SDG
target 16.3.2 by
Commonwealth
Member States



Provides statistical
trends on
imprisonment, prison
overcrowding and
pre-trial detention

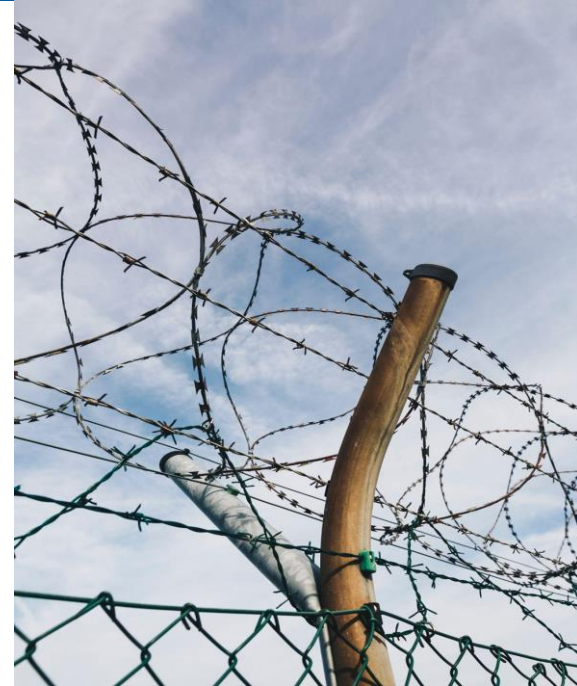
Highlights good
legislative practices
that can be adopted

Recommends
actions that may be
taken by the
Commonwealth
Heads of
Governments

PTD Report: 10 Basic Safeguards

10 Basic Safeguards to protect the rights of pre-trial detainees

1. Review of arrest by a competent authority within a stipulated time;
2. Remedies against illegal and arbitrary arrests;
3. Rights of suspects and accused persons to be informed of their rights by the apprehending authorities;
4. Provision of release on bail by the police;
5. Right to representation by a legal counsel for suspects, arrestees and prisoners;
6. Presence of robust state-funded legal services mechanisms to ensure compliance with right to legal representation;
7. Consequences where accused is unrepresented in a criminal proceeding;
8. Time limits on the period of investigation, trial and detention
9. Mechanisms for periodic review of continued detention for pre-trial detainees; and
10. Availability of non-custodial measures as alternatives to pre-trial detention



Key Findings

1. In **34 countries** criminal proceedings continue despite the absence of a lawyer to defend the accused.
2. There are **no international standards** that specify any consequences in trial proceedings where a lawyer is not available to defend the accused.
3. Mechanisms to periodically review the need for continued detention for pretrial detainees are available only in **11 countries**.
4. Barring two states, in **all other Commonwealth Member States**, arrested persons have the right to be informed of their civil rights immediately upon arrest.

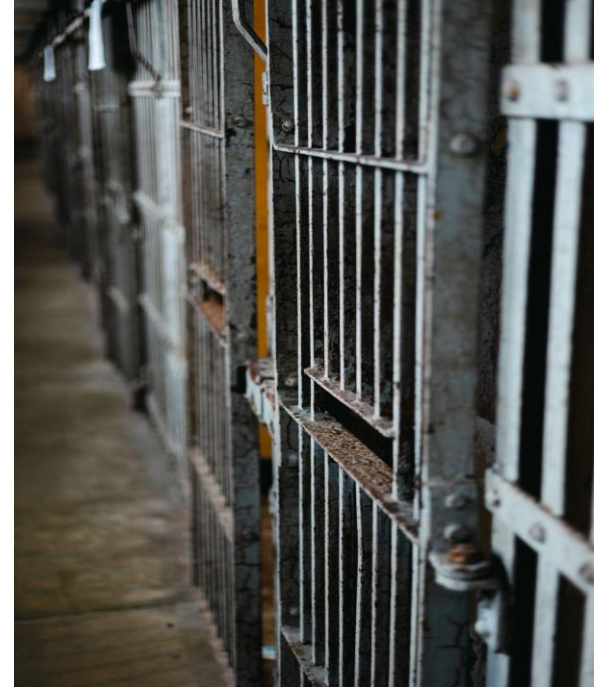


Key Findings

5. Once detained or arrested, the time within which a person is to be brought before a judge or competent authority for review of arrest varies **from 6 hours to 7 days**.

6. **Very few countries** have prescribed timelines for completion of investigation and trial; as well as define the maximum period a person can be detained pre-trial.

7. In **21** of 54 CMW countries, state funded legal aid is available for suspects; in only **25** countries it can be accessed by arrested persons; and in **45** countries prisoners can avail legal aid during the trial.



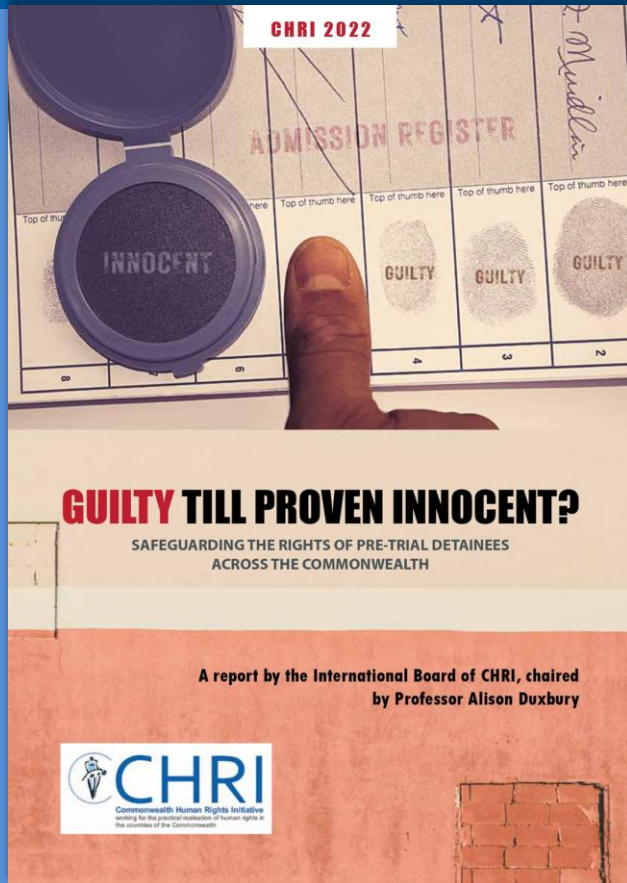
What can we do?

Recommendations

1. Explore ways to ensure the practical realisation of the right to legal representation through **enactment of enabling legislation to uphold the principles of fair trial**.
2. As part of your defence strategy, seek court intervention to **ensure that the grounds for carrying out arrests, even in serious offences, are clearly defined in law, and are subject to review**.
3. Argue for **appropriate remedies or compensation** for every incidence of unlawful detention
4. Get involved with the **legal aid systems** in your country or enrol for pro-bono assistance for those in custody.
5. Explore the **application of alternative measures**, to ensure that in practice pre-trial detention is only considered an exceptional measure and last resort procedure.
6. Explore ways to ensure **reporting of official data** on pretrial detention, practices and prison populations in the public domain.
7. Adapt and use the **good practices** identified in the CHRI PTD Report.



CHRI Report - Available online



Use the QR code to
download the Report



Download:
<https://www.humanrightsinitiative.org/publication/guilty-till-proven-innocent>



Thank you

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