

MEASURING PRETRIAL JUSTICE: A COMPREHENSIVE APPROACH

The arbitrary and excessive use of pretrial detention results in a massive and widely ignored pattern of human rights abuses that affects **some 15 million people a year**. Reform efforts to date have been hampered by the lack of proper data and appropriate indicators. Finding effective solutions and identifying the leverage points for reform requires more information—including on the flow of detainees through the system, the decision making processes and the use, or not, of alternatives to detention.

The most frequently cited statistic used to assess the use of pretrial detention **presents the number of pretrial detainees as a proportion of the total prison population**. But this provides a **partial and often misleading picture**; it fails, for instance, to take into account the flow of detainees as they move through the system. Relying on this one indicator risks misguided interventions. We have together developed the following **basket of indicators**, which give a more comprehensive picture of the problem—to enable efficient system management while respecting important principles such as judicial independence, due process, and prosecutorial discretion.

Indicators to Measure Pretrial Justice

CATEGORY	INDICATORS
Risk to liberty	Number of people arrested by the police per 100,000 of the general population
	Number of defendants subjected to pretrial detention
Duration of pretrial detention	Average duration of pretrial detention
	Number and proportion of defendants in pretrial detention in excess of a defined period
Frequency (and exceptionality) of the use of pretrial detention	Number and rate of pretrial detention requests by the prosecution
	Number of pretrial detentions ordered by judicial officers
Defendants' compliance with the conditions of pretrial release	Number and proportion of defendants complying with judicial officers' pretrial measures
Legitimacy of the criminal justice system	Number and proportion of acquitted pretrial detainees
	Number and proportion of pretrial detainees who receive a non-custodial sentence
	Number and proportion of pretrial detainees who receive a custodial sentence shorter than the duration of pretrial detention
	Number and proportion of pretrial detainees who are released due to insufficient evidence

HOW TO USE THE BASKET OF INDICATORS

Indicators help track a particular measure or set of measures over time and document whether the system is making progress or is encountering challenges. When designing indicators it is useful to consider:

- ▶ A **basket of indicators offers a more precise picture**. One indicator in isolation will usually give an inaccurate description of the situation.
- ▶ Indicators need to be **sensitive enough to register changes** over short periods of time—and to track trends over longer periods.
- ▶ **Data should be disaggregated within individual indicators** e.g. by gender, age, ethnicity etc.
- ▶ Indicators should **avoid creating perverse incentives**.

Together, these indicators show different aspects of the pretrial process. Each indicator has its own strengths, weaknesses and ancillary uses, all important factors to keep in mind when analysing the results of the measurements and data. For instance, the average duration of pretrial detention helps us to understand how efficient the criminal justice system is in processing cases and provides guidance as to where interventions for reform might lie.

As policy makers, governmental institutions and reform advocates analyse what types of reforms would improve the pretrial justice process, their work will be greatly aided by data produced through indicators, including comparative costs of pretrial detention vs. alternative measures; dysfunctions of the procedures including case delays or lack of inter-institutional communications; or possible human rights violations.

RECENT DEVELOPMENTS

Recent regional reports and standards confirm the importance of systematic data collection and the use of a basket of indicators.

A 2014 report of the **Inter-American Commission on Human Rights on the Use of Pretrial Detention in the Americas** recommended, amongst other actions, that states: establish indicators that fix measurable benchmarks related to the reasonable use of pretrial detention; and ensure that this information is used to implement public policies aimed at guaranteeing the application of international standards pertaining to the use of pretrial detention, as well as reducing the financial and human costs related to its use.

Also in 2014, the **African Commission on Human and Peoples' Rights adopted guidelines on Conditions of Arrest, Police Custody and Pretrial Detention** that require states to establish processes for the systematic collection of disaggregated data on the use of arrest, police custody, and pretrial detention to identify and address the over-use or inadequate conditions of police custody and pretrial detention.

“One indicator alone is not enough for adequately assessing whether pretrial detention is used in accordance with the applicable legal, constitutional, and international provisions.”

—2014 IACHR Report on the Use of Pretrial Detention in the Americas

INFORMATION

This basket of indicators was developed by the Latin America Network for Pretrial Justice through country studies, analysis from past experience and a series of regional expert meetings. A full guide on the use of indicators will be published by the Open Society Justice Initiative in 2015.

