

The Socio-Economic Impact of Pre-trial Detention in Kenya, Mozambique and Zambia

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Abstract

The presumed link between the rule of law and development suggests that an operational justice system is key to development. The research sought to understand and quantify how the decision to detain an accused person affects his or her socio-economic situation. Data was collected in Kenya, Mozambique and Zambia. The findings suggest that the use of the coercive power of the state exercised through the deprivation of an individual's liberty has serious socio-economic consequences. While detention pending trial is justifiable sometimes, we argue that it is over-used, frequently resulting in excessively long detention. The deprivation of liberty interferes with the ability of individuals to be agents of their own development, infringing on socio-economic rights of individuals and their dependents. States can justify such infringements only if their coercive power is used within the ambit of democratic and rights-respecting laws complying with human rights standards.

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Notes

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References

Journal Article

Ginsburg T (2000) Does law matter for economic development? Evidence from East Asia. *Law Soc Rev* 34(3):829–856

[CrossRef](https://doi.org/10.2307/3115145) (https://doi.org/10.2307/3115145)

[Google Scholar](http://scholar.google.com/scholar_lookup?title=Does%20law%20matter%20for%20economic%20development%3F%20Evidence%20from%20East%20Asia&author=T.%20Ginsburg&journal=Law%20Soc%20Rev&volume=34&issue=3&pages=829-856&publication_year=2000) (http://scholar.google.com/scholar_lookup?title=Does%20law%20matter%20for%20economic%20development%3F%20Evidence%20from%20East%20Asia&author=T.%20Ginsburg&journal=Law%20Soc%20Rev&volume=34&issue=3&pages=829-856&publication_year=2000)

Liebenberg S (2008) The value of freedom in interpreting socio-economic rights. *Acta Juridica Spec Edn*, pp 149–176

[Google Scholar](https://scholar.google.com/scholar?q=Liebenberg%20S%20%282008%29%20The%20value%20of%20freedom%20in%20interpreting%20socio-economic%20rights.%20Acta%20Juridica%20Spec%20Edn%2C%20pp%20149%E2%80%93176) (https://scholar.google.com/scholar?q=Liebenberg%20S%20%282008%29%20The%20value%20of%20freedom%20in%20interpreting%20socio-economic%20rights.%20Acta%20Juridica%20Spec%20Edn%2C%20pp%20149%E2%80%93176)

[Google Scholar](https://scholar.google.com/scholar?q=Liebenberg%20S%20%282008%29%20The%20value%20of%20freedom%20in%20interpreting%20socio-economic%20rights.%20Acta%20Juridica%20Spec%20Edn%2C%20pp%20149%E2%80%93176) (https://scholar.google.com/scholar?q=Liebenberg%20S%20%282008%29%20The%20value%20of%20freedom%20in%20interpreting%20socio-economic%20rights.%20Acta%20Juridica%20Spec%20Edn%2C%20pp%20149%E2%80%93176)

Book

Nowak M (1993) UN Covenant on civil and political rights. CCPR commentary. N.P. Engel, Kehl-Strasbourg

[Google Scholar](http://scholar.google.com/scholar_lookup?title=UN%20Covenant%20on%20civil%20and%20political%20rights.%20CCPR%20commentary&author=M.%20Nowak&publication_year=1993) (http://scholar.google.com/scholar_lookup?title=UN%20Covenant%20on%20civil%20and%20political%20rights.%20CCPR%20commentary&author=M.%20Nowak&publication_year=1993)

[Google Scholar](http://scholar.google.com/scholar_lookup?title=UN%20Covenant%20on%20civil%20and%20political%20rights.%20CCPR%20commentary&author=M.%20Nowak&publication_year=1993) (http://scholar.google.com/scholar_lookup?title=UN%20Covenant%20on%20civil%20and%20political%20rights.%20CCPR%20commentary&author=M.%20Nowak&publication_year=1993)

Sen A (2000) Development as freedom. Anchor Books, New York

[Google Scholar](http://scholar.google.com/scholar_lookup?title=Development%20as%20freedom&author=A.%20Sen&publication_year=2000) (http://scholar.google.com/scholar_lookup?title=Development%20as%20freedom&author=A.%20Sen&publication_year=2000)

[Google Scholar](http://scholar.google.com/scholar_lookup?title=Development%20as%20freedom&author=A.%20Sen&publication_year=2000) (http://scholar.google.com/scholar_lookup?title=Development%20as%20freedom&author=A.%20Sen&publication_year=2000)

Book Chapter

De Zayas A (2001) The examination of individual complaints by the united nations human rights committee under the optional protocol to the international covenant on civil and political rights. In: Alfredsson G et al (eds) International human rights monitoring mechanisms. Martinus Nijhof Publishers, The Hague, pp 67–121

[Google Scholar](http://scholar.google.com/scholar_lookup?title=The%20examination%20of%20individual%20complaints%20by%20the%20unit ed%20nations%20human%20rights%20committee%20under%20the%20optional%20protocol%20to%20the%20international%20covenant%20on%20civil%20and%20po litical%20rights&author=A.%20Zayas&pages=67-121&publication_year=2001) (http://scholar.google.com/scholar_lookup?title=The%20examination%20of%20individual%20complaints%20by%20the%20unit ed%20nations%20human%20rights%20committee%20under%20the%20optional%20protocol%20to%20the%20international%20covenant%20on%20civil%20and%20po litical%20rights&author=A.%20Zayas&pages=67-121&publication_year=2001)

[Google Scholar](http://scholar.google.com/scholar_lookup?title=The%20examination%20of%20individual%20complaints%20by%20the%20unit ed%20nations%20human%20rights%20committee%20under%20the%20optional%20protocol%20to%20the%20international%20covenant%20on%20civil%20and%20po litical%20rights&author=A.%20Zayas&pages=67-121&publication_year=2001) (http://scholar.google.com/scholar_lookup?title=The%20examination%20of%20individual%20complaints%20by%20the%20unit ed%20nations%20human%20rights%20committee%20under%20the%20optional%20protocol%20to%20the%20international%20covenant%20on%20civil%20and%20po litical%20rights&author=A.%20Zayas&pages=67-121&publication_year=2001)

De Zayas A (2003) Desarrollo jurisprudencial del Comité de Derechos Humanos. In Piernas CJ (ed) Iniciación a la Práctica en Derecho Internacional. Marcial Pons, Madrid, pp 215–277

[Google Scholar](http://scholar.google.com/scholar_lookup?title=Desarrollo%20jurisprudencial%20del%20Comit%C3%A9%20de%20Derechos%20Humanos&author=A.%20Zayas&pages=215-277&publication_year=2003) (http://scholar.google.com/scholar_lookup?title=Desarrollo%20jurisprudencial%20del%20Comit%C3%A9%20de%20Derechos%20Humanos&author=A.%20Zayas&pages=215-277&publication_year=2003)

[Google Scholar](http://scholar.google.com/scholar_lookup?title=Desarrollo%20jurisprudencial%20del%20Comit%C3%A9%20de%20Derechos%20Humanos&author=A.%20Zayas&pages=215-277&publication_year=2003) (http://scholar.google.com/scholar_lookup?title=Desarrollo%20jurisprudencial%20del%20Comit%C3%A9%20de%20Derechos%20Humanos&author=A.%20Zayas&pages=215-277&publication_year=2003)

Online Document

Office of the United Nations High Commissioner for Human Rights (2006) Frequently asked questions on a human rights-based approach to development cooperation

<http://www.ohchr.org/Documents/Publications/FAQen.pdf>

(<http://www.ohchr.org/Documents/Publications/FAQen.pdf>). Accessed 21 Jan 2011

United Nations Development Programme (2013) Country studies: the socioeconomic impact of pretrial detention.

http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/ (http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/). Accessed 21 Jan 2011

World Bank (2007) Law and development movement: world bank note.

<http://go.worldbank.org/F535AXQWEo> (<http://go.worldbank.org/F535AXQWEo>).

Accessed 26 Jan 2016

World Bank (2011) World bank development report 2011.

http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf (http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf). Accessed 21 Jan 2011

World Bank (2016) Rule of law and development.

<http://go.worldbank.org/9OTC3P5070> (<http://go.worldbank.org/9OTC3P5070>).

Accessed 26 Jan 2016

World Bank (2016) Poverty. <http://www.worldbank.org/en/topic/poverty/overview> (<http://www.worldbank.org/en/topic/poverty/overview>). Accessed 26 Jan 2016

International and regional instruments and case law

African Charter on Human and Peoples' Rights, Adopted 27 June 1981, OAU Doc.

CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986

[Google Scholar](https://scholar.google.com/scholar?q=African%20Charter%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Adopted%2027%20June%201981%2C%20OAU%20Doc.%20CAB%2FLEG%2F67%2F3%20rev.%205%2C%2021%20I.L.M.%2058%20%281982%29%2C%20entered%20into%20force%2021%20October%201986) ([https://scholar.google.com/scholar?](https://scholar.google.com/scholar?q=African%20Charter%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Adopted%2027%20June%201981%2C%20OAU%20Doc.%20CAB%2FLEG%2F67%2F3%20rev.%205%2C%2021%20I.L.M.%2058%20%281982%29%2C%20entered%20into%20force%2021%20October%201986)

[q=African%20Charter%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Adopted%2027%20June%201981%2C%20OAU%20Doc.%20CAB%2FLEG%2F67%2F3%20rev.%205%2C%2021%20I.L.M.%2058%20%281982%29%2C%20entered%20into%20force%2021%20October%201986](https://scholar.google.com/scholar?q=African%20Charter%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Adopted%2027%20June%201981%2C%20OAU%20Doc.%20CAB%2FLEG%2F67%2F3%20rev.%205%2C%2021%20I.L.M.%2058%20%281982%29%2C%20entered%20into%20force%2021%20October%201986))

African Commission on Human and Peoples' Rights, Principles and Guidelines on Rights to a Fair Trial and Legal Assistance in Africa

[Google Scholar](https://scholar.google.com/scholar?q=African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Principles%20and%20Guidelines%20on%20Rights%20to%20a%20Fair%20Trial%20and%20Legal%20Assistance%20in%20Africa) ([https://scholar.google.com/scholar?](https://scholar.google.com/scholar?q=African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Principles%20and%20Guidelines%20on%20Rights%20to%20a%20Fair%20Trial%20and%20Legal%20Assistance%20in%20Africa)

[q=African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Principles%20and%20Guidelines%20on%20Rights%20to%20a%20Fair%20Trial%20and%20Legal%20Assistance%20in%20Africa](https://scholar.google.com/scholar?q=African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%2C%20Principles%20and%20Guidelines%20on%20Rights%20to%20a%20Fair%20Trial%20and%20Legal%20Assistance%20in%20Africa))

Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003)

[Google Scholar](https://scholar.google.com/scholar?q=Committee%20on%20Economic%2C%20Social%20and%20Cultural%20Rights%2C%20General%20Comment%203%2C%20The%20nature%20of%20States%20parties) ([https://scholar.google.com/scholar?](https://scholar.google.com/scholar?q=Committee%20on%20Economic%2C%20Social%20and%20Cultural%20Rights%2C%20General%20Comment%203%2C%20The%20nature%20of%20States%20parties)

[q=Committee%20on%20Economic%2C%20Social%20and%20Cultural%20Rights%2C%20General%20Comment%203%2C%20The%20nature%20of%20States%20parties](https://scholar.google.com/scholar?q=Committee%20on%20Economic%2C%20Social%20and%20Cultural%20Rights%2C%20General%20Comment%203%2C%20The%20nature%20of%20States%20parties)

%E2%80%99%20obligations%20%28Fifth%20session%2C%201990%29%2C%20U.N.
.20Doc.%20E%2F1991%2F23%2C%20annex%20III%20at%2086%20%281991%29
%2C%20reprinted%20in%20Compilation%20of%20General%20Comments%20and%20
20General%20Recommendations%20Adopted%20by%20Human%20Rights%20Trea
ty%20Bodies%2C%20U.N.%20Doc.%20HRI%2FGEN%2F1%2FRev.6%20at%2014%2
0%282003%29)

International Covenant on Socio-Economic and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

Google Scholar (<https://scholar.google.com/scholar?q=International%20Covenant%20on%20Socio-Economic%20and%20Cultural%20Rights%20Adopted%20and%20opened%20for%20signature%2C%20ratification%20and%20accession%20by%20General%20Assembly%20resolution%202200A%20%28XXI%29%20of%2016%20December%201966>)

International Covenant on Socio-Economic and Cultural Rights ‘General Comment 3’ Adopted 1 January 1991, para 7

Google Scholar (<https://scholar.google.com/scholar?q=International%20Covenant%20on%20Socio-Economic%20and%20Cultural%20Rights%20%28General%20Comment%203%29%20Adopted%201%20January%201991%2C%20para%207>)

International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976

Google Scholar (<https://scholar.google.com/scholar?q=International%20Covenant%20on%20Civil%20and%20Political%20Rights%2C%20Adopted%20and%20opened%20for%20signature%2C%20ratification%20and%20accession%20by%20General%20Assembly%20resolution%202200A%20%28XXI%29%20of%2016%20December%201966%2C%20entry%20into%20force%2023%20March%201976>)

***Peter Joseph Chacha v the United Republic of Tanzania*, Application No. 003/2012, African Court of Human and Peoples’ Rights**

Google Scholar (<https://scholar.google.com/scholar?q=%20Application%20No.%20003%202012%2C%20Peter%20Joseph%20Chacha%20v%20the%20United%20Republic%20of%20Tanzania%2C%20Application%20No.%20003%202012%2C%20African%20Court%20of%20Human%20and%20Peoples%E2%80%99%20Rights>)

***Prosecutor v. Furundzija* ICTY (Trial Chamber) judgment of 10 December 1998**

Google Scholar (<https://scholar.google.com/scholar?q=%20Prosecutor%20v.%20Furundzija%20ICTY%20%28Trial%20Chamber%29%20judgment%20of%2010%20December%201998>)

***Rights International v Nigeria*, African Commission on Human and Peoples Rights, Communication no. 215/98**

Google Scholar (<https://scholar.google.com/scholar?q=%20Rights%20International%20v%20Nigeria%2C%20African%20Commission%20on%20Human%20and%20Peoples%20Rights%2C%20Communication%20no.%20215%20F98>)

UN Committee on ESCR General Comment No 14, UN Doc E/C/12/2000/4, The Right to the Highest Attainable Standard of Health

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