



## Justice Systems that Prey on the Vulnerable: Can Funders Get Involved?

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**IHRFG Semi-Annual Meeting, San Francisco, California**  
**Monday, January 25, 2010, 3:30 – 5:00 pm**

*Facilitator:* **Mary Mill Flowers**, Open Society Institute

*Speakers:* **Natalie Rea**, International Legal Foundation; **Yervand Shirinyan**, Open Society Institute;  
**Martin Schonteich**, Open Society Institute

*Sponsor:* Open Society Institute

**Mary Mill Flowers** introduced the session by introducing the panelists and what they will speak about: the system of pretrial detention around the world, what organizations are doing to improve the system, and how HR funders can get involved

**Martin Schonteich** provided an overview of pretrial detention around the world, which is the point from when a person is arrested up to the point at which he/she is convicted and the court enters the sentencing phase of the trial. 10 million people are incarcerated around the world, without being convicted of an offense. The excessive use of pretrial detention around the world is causing an immense loss of human capital. There is also an immense cost incurred to countries because of this. This money could instead be used to feed people. The conditions of pretrial detention are atrocious, the prisons are overcrowded, and public health violations are occurring in these conditions. The consequences can also be seen within communities and families, where TB and other communicable diseases are being spread. People held in pretrial detention are more likely to be convicted than those who are not. The poor are discriminated against in this system, and abuse, torture, and corruption is endemic. In Kazakhstan, Chile, and Malawi, the number of people held in pretrial detention has decreased because of ruling parties attitudes towards the issue, and efforts of civil society organizations, and donors. Similarly, in the US, the Bail Reform Movement made considerable changes in the criminal justice system.

**Natalie Rea** discussed the specific situation in Nepal and how people caught in the pretrial phase were helped by civil society organizations. In Nepal where torture and arbitrary detention is what people expect, and where poor people are victimized, the impact of quality, early representation has made a huge difference. Lawyers file habeas corpus proceedings whenever there is no jurisdiction to hold people in detention. This has caused a change in legislation with regard to juvenile detention. Juvenile cases are no longer handled by District Officers.

[A DVD was shown to the audience of the Paralegal Clinics in Mzuzu, Malawi. Paralegals are trained to provide advisory services to those people held in pretrial detention. They educate detained persons regarding the laws and their rights, and how to fill out forms. This approach has been extremely successful. ]

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**Martin Schonteich** then discussed the Global Campaign to make a sustainable difference and to draw interest from governments, NGOs, and international organizations to advocate for criminal justice reform at the pretrial stages. This is the stage that impacts later stages of the trial process. An example is: someone who is tortured in pre trial detention is more likely to confess to a crime and face serious consequences at later stages of the trial. Empirical evidence has shown that the pretrial phase is a good place to intervene to make sustainable difference to the criminal justice system as a whole. This will also have a positive impact on public health initiatives and economic development. The Malawi paralegal clinics are an example of how this process does not need to rely just on lawyers. To summarize, the goals of the Campaign are:

- 1) Perform more research to find empirical evidence of how pretrial detention impacts the criminal justice system
- 2) Bring together communities of practice
- 3) Broaden the field by drawing in interest from the public health, anti-torture, and anti-corruption sectors
- 4) Focus on and try systems that work

#### **Questions and Answers:**

Q: Should donors work with governments in order to get involved?

A: Yes, studies have shown that donors working with governments have made differences in countries in the past. Examples are post-Soviet Eastern European countries where involvement from civil society vs. just monitoring the situation has helped shed light on the conditions and provide legal aid to prisoners. Civil society has made an impact in many cases.

Q: Does government collaboration compromise the rights of funders?

A: No, because you are working with the government to ensure sustainability of efforts, not compromising your rights as donors.

Q: For funders who focus on specific issues, can they reconcile that framework with that of focusing on criminal justice reform? Isn't it better to focus on the wider problem (such as women's issue or a specific marginalized population)?

A: Studies have shown sustainable changes for vulnerable populations include broader reforms in the criminal justice system by capacity building for government and civil society. It is important to focus on all vulnerable groups rather than just one.

Q: The Campaign sounds very holistic and idealistic-- is there bi-lateral support for it?

A: It sounds more daunting than it is. Many local NGOs are already working towards the goals (ex: Mzuzu Paralegal Clinics). There is already progress out there, but through the Campaign, we want to bring people together to share what their findings and experiences and to persuade large donors to focus on pre-trial detention.

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Q: Are there ways of dealing with criminal activity that do not involve dealing with the justice system and the police, such as informal tribunals?

A: Informal tribunals can be ineffective because marginalized groups remain discriminated against and the central system remains broken. It is therefore, a dangerous route for criminal matters, but may work in civil matters.