Pretrial Detention and Public Health: Unintended Consequences, Deadly Results

THE EXCESSIVE USE OF PRETRIAL DETENTION leads to overcrowded, unhygienic, chaotic, and violent environments where pretrial detainees—who have not been convicted—are at risk of contracting disease. But they are not the only people whose health is threatened by overreliance on pretrial detention: From tuberculosis in Russia to hepatitis C in California and HIV/AIDS in South Africa, outbreaks of disease that begin in pretrial detention centers quickly spread to the general public. The global overuse of pretrial detention is not just a human rights problem, but also a looming public health crisis.

Pretrial holding facilities, which include police lock-ups not designed for large numbers or extended stays, often force detainees to live in filthy, overcrowded conditions without access to fresh air, minimal sanitation facilities, health services, or adequate food. In the worst cases, detainees die from the conditions and associated disease, and surviving detainees sleep with the corpses. In some cases, pretrial detention centers are so bad that innocent people plead guilty just to be transferred to prisons where the conditions might be better.

In prisons and other post-conviction detention centers, incoming prisoners may be screened for disease, get health care, and/or have access to methadone therapy and condom distribution. But with rare exceptions, none of this is available in pretrial detention. Instead, arrestees are brought in, locked up in a pretrial detention center where they are exposed to disease, and then in many cases released into society to spread the illnesses they have contracted. This is also a danger for prison guards and other employees. In 2001 in Tomsk, Russia, the local detention center had a shocking TB infection rate of 7,000 cases per 100,000 inmates. Outside the prison gates, the rate was not much better: 4,000 cases per 100,000 residents.[1]

Health Rights of Pretrial Detainees under International Law

People in detention have the right to "the health services available in the country without discrimination on the grounds of their legal situation."[2] Health and medical provisions of the Standard Minimum Rules for the Treatment of Prisoners[3] are wide-ranging and include:

- a medical officer should examine every prisoner "as soon as possible after his admission and thereafter as necessary;"
- the prison medical officer should "daily" see prisoners who are ill or complain of illness and should report to the prison director any cases where a prisoner's health is "injuriously affected by continued imprisonment or by any condition of imprisonment;"
- prisoners awaiting trial are to be kept separate from convicted prisoners, and should be held in single occupancy rooms;
- prisoners awaiting trial have the right to all services, including medical care, accorded to all prisoners and in addition should be allowed to be visited by their own doctor or dentist if there is "reasonable ground" for such a visit.

Why Excessive Pretrial Detention Threatens Public Health

While both convicted prisoners and pretrial detainees face disease and other threats to their health, the risks are often more severe for pretrial detainees.

Overcrowding: In many countries overcrowding is more likely in remand than in prison. Overcrowding has dire health consequences. It is a principal determinant of the extensive tuberculosis epidemic in pretrial detention and prisons in Eastern and Central Europe, and contributes to the spread of HIV, especially in Africa.

Inadequacy of health services: Health services are frequently limited, inadequate or even nonexistent in remand facilities. The absence of qualified medical personnel to conduct intake screenings leads to failures of detection and management of tuberculosis, sexually transmitted diseases, and other conditions.[4] Pretrial detention facilities are also less likely than prisons to involve ministries of health in the design, implementation or evaluation of health services. Health authorities are thus unable to provide care, act as a check on detainee abuse, or advocate for the health of people in pretrial detention.

Lack of access to longer-duration treatment and care: Even when health services are present in remand facilities, there is often a reluctance to start treatment for infectious diseases that requires a sustained period of therapy, such as for tuberculosis, HIV or hepatitis C, or for methadone maintenance. This means that detainees may be convicted and transferred to prison, or released into the community at large, in worse health than when they entered pretrial detention.

Population less likely to be under medical care: Pretrial detainees who are not granted bail tend to be low-income and many belong to marginalized

communities. As such, they are likely to enter detention with more serious health conditions but without being diagnosed or having received treatment. Similarly, drug users are more likely to be arrested, more likely to be infected with disease, and less likely to be receiving medical care.

Ineligibility of pretrial detainees for educational and other programs: Pretrial detainees seldom have access to exercise, sports, educational, vocational, and other programs that may be available to convicted prisoners—services that could enhance physical and mental health. This absence undermines the effectiveness of whatever health services may exist for pretrial detainees.

Spread of HIV/AIDS and tuberculosis: Pretrial detention plays a crucial role in what has been termed the "mixing bowl effect" of putting HIV-positive and HIV-negative people together where sex and drug use are prevalent and where condoms and sterile injection equipment are rarely to be found. Moreover, pretrial detainees are often held long enough to contract tuberculosis but not long enough to ensure the disease is detected and treated. Management of TB is particularly difficult in pretrial detention due to detainee turnover, movement of detainees within remand institutions, and movements to other institutions within the criminal justice system. A study from Brazil concluded that the early weeks of incarceration were the riskiest for tuberculosis transmission.[5]

A study based on longitudinal TB data from 26 countries in Eastern Europe and Central Asia concluded that the rate of growth of prison populations was the most important determinant of differences in the TB infection rates in these countries.[6]

Special Populations

Female Detainees

Women in remand are more likely than men to face violations of international standards for the treatment of unconvicted detainees because special facilities for remanded women rarely exist.[7] Furthermore, because women constitute a minority of the detainee population, specialized health services for women are seldom available. Pretrial detention puts women at extremely high risk of sexual abuse and violence, particularly where women detainees are housed along with convicted offenders and/or men. Sexual violence, heinous in itself, also exacerbates mental disorders and increases the risk of HIV and other sexually transmitted diseases. Finally, because women are often detained for crimes that by definition heighten their need for health care, such as attempting an illegal abortion, the circumstances of women in detention can be particularly catastrophic in terms of health.

People with Mental Illness

As an entry point to correctional systems, pretrial detention facilities receive people with mental illness who are not yet diagnosed or treated, including those who should be remanded to a psychiatric hospital or institution. For people with mental illness, the factors most likely to contribute to improved mental health are those least likely to be present in pretrial detention—namely, maintaining an atmosphere of protection from violence, access to educational and physical activity, and access to specialized care and support.

A recent study found that women in pretrial detention in Moscow, of whom 79 percent were sex workers, had higher HIV rates than juvenile prisoners and homeless women tested at the same time. Other sexually transmitted infections were also highly prevalent among these women. Another study estimated that between 30 and 50 percent of women entering prison in Russia from 2000 to 2002 had sexually transmitted diseases.[8]

Recommendations

> Reduce the excessive and arbitrary use of pretrial detention to ensure that pretrial detention is used as an exceptional measure, in accordance with international law. A smaller number of people in pretrial detention is the first line of defense against disease in remand facilities. Such reduction also helps alleviate the overall problem of prison overcrowding.

> Provide early access to medical assistance to ensure the medical needs of suspects are addressed upon arrest. Early identification of contagious diseases minimizes their spread and provides a check against instances of torture. The presence of external professionals also contributes to increased openness and transparency of the system.

> Promote the participation of health professionals in monitoring pretrial detention centers.

> Develop training on pretrial detention in the curricula of health professionals.

This is a summary of the forthcoming report, **"Pretrial Detention and Public Health,"** by Joanne Csete (Columbia University Mailman School of Public Health) with contributions from Dirk van Zyl Smit (School of Law, University of Nottingham), which will be published by the Open Society Justice Initiative and the Open Society Institute Public Health Program in 2010.

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