



# BACKGROUND



## SUPPLEMENT 1

### **United Nations Human Rights Council**

Discussing the Impact of the Arbitrary Use  
of Preventive Detention on Human Rights

**August 15-17 IISP MUN 2024**

## About UNHRC

The United Nations Human Rights Council (UNHRC) was established in 2006 by a resolution passed by the United Nations General Assembly (UNGA) calling for a council to promote universal respect for human rights and the fundamental freedoms and intrinsic rights of mankind. Of the four main aims of the United Nations (UN), the UNHRC focuses mainly on ‘encouraging and promoting respect for human rights,’ and debates agendas and passes resolutions furthering the preservation of human rights across the globe. It is meant to serve as a forum for thematic discussions on all aspects of human rights.

According to the 2006 resolution establishing the UNHRC, its responsibilities are:

1. To address violations of human rights and make recommendations based on the same
2. To promote human rights awareness
3. To provide advisory services and assistance to member states wherever required
4. To make recommendations to the General Assembly whenever required about the development of international law surrounding human rights
5. To periodically review the actions of states regarding human rights

As a committee, the UNHRC does not have any executive powers. This means that it cannot place any sanctions or declare an intervention in any situation. Its powers rest largely in its ability to pass resolutions based solely on a simple majority, and to



The UNHRC in session, June 2015

From: The UN Library

make suggestions to UN bodies with executive powers, such as the UN Security Council (UNSC). Its ultimate function is to serve as a platform for the discussion and promotion of human rights among its members, and the greater members of the UNGA.

Membership of the UNHRC is highly regulated, and it has specific quotas for world regions, as well as specific regulations on the number of terms and the voting process. According to the 2006 resolution establishing the Council, members are elected by a simple majority in the General Assembly, and are elected via a direct and secret ballot. Each member of the Council serves for a term of three years, and no member of the Council may be elected for more than two consecutive terms. Membership is open to any member of the UNGA, but member nations are encouraged to take into account a nation's promotion and conservation of human rights before casting their ballot.

The General Assembly may, by a two-thirds majority, suspend a member of the UNHRC from the Council if the member state has committed several human rights and violations. The only two incidents of suspension from the Council are of Libya in 2011, and Russia in 2022.

Within the framework of the United Nations, the role of the UNHRC is to protect human rights around the world, identify and establish the basis for accusations of violations of human rights, and bring violations onto a larger forum where further action can be taken, ranging from suspensions to sanctions (implementable only by the Security Council).



Eleanor Roosevelt holding a poster of the UDHR in 1949

From: FDR Presidential Library & Museum

## Background to the Agenda

Preventive detention is a practice applied in several countries across the globe, and essentially means the practice of holding a detainee in jail under the reasoning that they pose too great a risk to the community to be safely allowed to be part of the general public. Under the law, this specific form of detention can only accommodate people who pose a real, current threat to society, but who have not been incarcerated or convicted in the past for any crime.

In many cases, preventive detention is used by law enforcement authorities as a means of protecting populations from those who are considered a security risk, even prior to them receiving a fair trial under the law. However, the existence of the policy, and the fact that it can be applied without such a trial, give the enforcing authorities the power and discretion to decide exactly who “poses a threat”. This means that, in effect, preventive detention can be used arbitrarily, or without sufficient cause, essentially incarcerating a detainee in a fully legal fashion without a court-authorized mandate to do so. Preventive detention does not qualify as a jail sentence, and therefore typically does not last more than a year; however, the psychological, emotional, and mental consequences of a long period under detention can be quite severe, and may leave lasting damage, particularly when the detainee is innocent.

Strict authorities in favour of the use of preventive detention often argue that it is used as an important measure for social safety, allowing those considered to be “dangerous” to be kept isolated from the vast majority of the public so that they cannot do any harm. However, that power of making distinctions related to who really counts as “dangerous” is dangerous when placed in the wrong hands, and can often be manipulated to achieve unethical ends, or to discriminate against certain populations. By putting a single individual, or group of individuals, in a position where they can unilaterally determine another human being’s guilt or innocence, the justice system creates a loophole where an individual is temporarily given a verdict without receiving a fair trial, a right that is, in many democracies, guaranteed.

While some consider arbitrary preventive detention to be an effective method of keeping society safe from a dangerous person, critics have pointed out that it

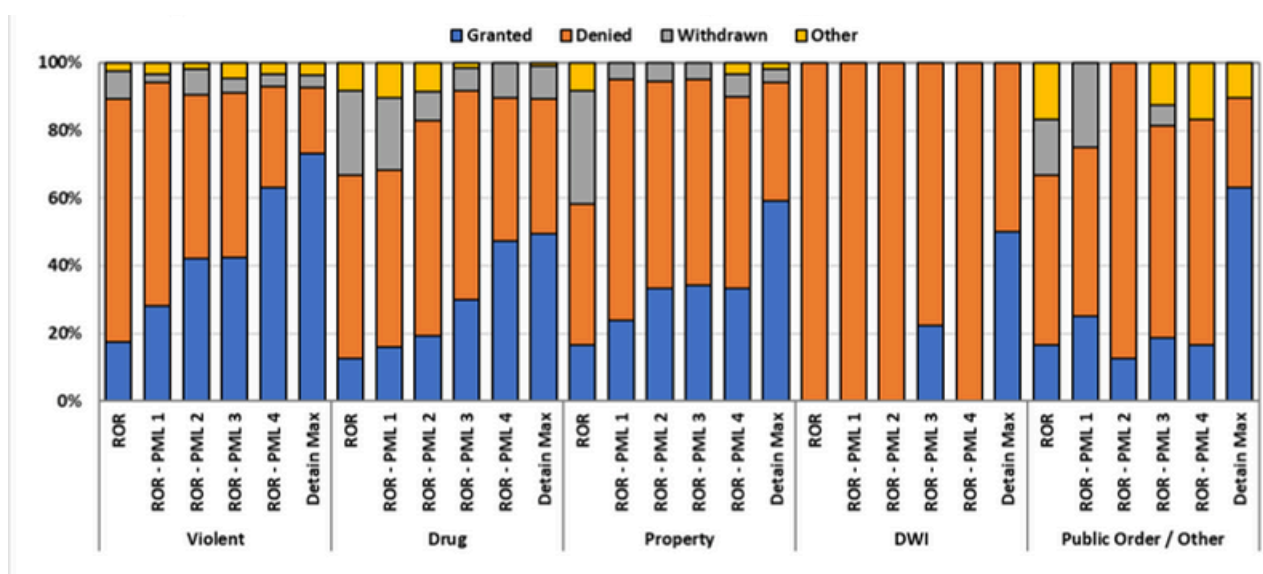


violates freedom of expression, as well as other inalienable human rights, such as the right to liberty and the right to assemble peaceably. Some countries have encoded certain mechanisms into their legal framework to mitigate these human rights violations; Belgium, for example, mandates that an individual must receive a trial every month that the preventive detention lasts, guaranteeing them a tangible date wherein they may present a defense. However, this mechanism is the exception, and in many countries where preventive detention is legally applicable, such as China, India, Singapore, Australia, and New Zealand, no such sureties exist.

In many such systems, arbitrary detention may be used as a form of intimidation or other signaling, in order to instill fear within the larger population and thus reduce incidences of crime. In such cases, arrests are often carried out even without concrete evidence of the perpetrator of a crime, or even a likelihood of the individual having committed that crime. In severe cases, particularly under authoritarian regimes where freedom of speech is discouraged, the detainee is often held under complete isolation, without the ability to contact any friends or family, with their location also being concealed from the public.

Preventive detention is a double-edged sword; proponents consider it a highly effective method of signaling the strictness of the law, as well as of reducing incidences of crime, particularly violent crimes. However, critics have often pointed out the potential for severe abuse of the policy, as well as the high incidence of human rights violations that often occur during its use.

## PREVENTIVE DETENTION OUTCOMES BY CRIME TYPE



Preventive detention outcomes by crime type

From: Institute for Social Research

# Timeline of Events

**June 1215**

The Magna Carta, a royal charter of rights, becomes an important document for the establishment of the law, including but not limited to its definition of the king as someone who was not above the law. Among other things, the Magna Carta establishes laws for habeas corpus (investigations into whether or not an individual has been lawfully imprisoned), leading to one of the first documented civil codes wherein individuals were allowed to question the acts of law enforcement authorities, and in turn, law enforcement authorities were required to be more careful in their application and use of the law in order to avoid investigations.

**1914-1918**

Across the timespan of World War I, several involved countries take measures to prevent espionage, many of which include placing those suspected of being spies under surveillance. Others are also arrested and placed under preventive detention, despite in many cases there being only circumstantial evidence. For many of these individuals, the charges were exaggerated and born out of a sense of exacerbated nationalism and xenophobia, as well as a heightened sense of national security. Countries on both sides end up making use of preventive detention as a way to ensure national security and to further secure their states from antagonistic espionage.

**1933**

The Reichstag fire decree comes into force under Hindenburg's German government, which allows German law enforcement authorities to arrest and detain political opponents without a specific charge, force the dissolution of varied political organizations and movements at their discretion, and suppress the freedom of the press by forcing certain publications to stop putting out new work, especially work of a political nature. It essentially gives authorities the ability to detain virtually any individual throughout Germany without a legal mandate to do so, and incarcerate them for an indeterminate period of time.

1945-1991

Throughout the Cold War, countries with authoritarian governments continue to use preventive detention as a way of silencing political opponents and practicing censorship in order to control the masses. The Soviet Union, after declaring that “no sane person would be against socialism”, uses psychiatric wards as a large-scale method of detaining and silencing political dissenters and spies under the pretext of providing psychiatric care without the need for a legal trial.

1948

The United Nations establishes the Universal Declaration of Human Rights, which explicitly considers arbitrary preventive detention to be a violation of the rights accorded to each and every human being. The UDHR explicitly considers a fair and just trial to be a human right prior to any detention, and states that all individuals must be accorded due process of law before they can be legally detained, under any and all circumstances of detention.

1975-1977

Under the state of Emergency, Indira Gandhi’s government makes extensive and largely arbitrary use of preventive detention under the Maintenance of Internal Security Act (1971) to silence political dissenters and opposition in order to prevent opposing movements from gaining a foothold within the masses. The Emergency state further facilitated this practice, since it gave Indira Gandhi (the then-Prime Minister) the ability to rule by decree, and suspend civil liberties. Throughout the period of Emergency, many of Gandhi’s political opponents are incarcerated without a fair trial.



Maintenance of internal security act article published on December 21, 1977

From: The Indian Express

# Preventive Detention as a Crime Deterrent

When an individual is taken under preventive detention, they are essentially isolated from the general public for a specific amount of time, which varies by country. Rather than being a form of punishment for a past crime, then, preventive detention is ostensibly used to prevent the individual from committing an offence in the near future. In countries where preventive detention is legal, it may be used in cases where an individual is suspected of being a threat to national security or public order, although different countries have different limits for its application; India, for example, allows a maximum detention of 3 months, and no longer.

Proponents of preventive detention argue that the benefits—ridding society of a perceived threat—outweigh the potential implications on human rights. By separating a potential threat from the innocent masses, even without a valid legal warrant to do so, advocates for preventive detention argue that the vast majority benefits from an elevated sense of safety and confidence in law enforcement. Even in occasional cases where the suspicions are unwarranted, and the detainee is declared innocent, or not tried, advocates argue that the occasions when they are right, produce enough large-scale good to outweigh rare mistakes.

In some countries, preventive detention is also used legally by law enforcement in cases where the threat of flight is serious, or in cases where they think the suspect may make an attempt to flee. In other cases, even upon the same or similar suspicions, authorities may not apply preventive detention.



Preventive detention in counter-insurgencies: the case of Kashmir

From: Insight Turkey



Preventive detention in the modern world is often applied rigorously in dictatorships and other authoritarian regimes as a mode of political silencing and censorship. Particularly since the application of preventive detention doesn't require a legal justification, or any sort of legally authorized justification, preventive detention is a useful political weapon for parties and individuals in power to use to neutralize their opposition and effectively ensure unilateral dominance by silencing antagonistic voices, violating internationally established standards for free speech.

In many cases, particularly those which are politically motivated, detainees are not merely detained in prisons or temporary detention centers near to their place of residence or arrest; particularly for long-term detainees, they may be transferred to detention centers in sparsely populated regions, where they are further isolated from the masses.

In particularly vicious circumstances, detainees may also be put through solitary confinement, which can have lasting psychological consequences and can cause severe trauma. This excessive isolation interferes with the mental state, and further affects the ability of the individual to resume their day-to-day life when they are released from detention.

Preventive detention also exists in other, less overtly malicious forms which allow authorities to prevent individuals from being in contact with the public. Many law enforcement authorities allow bail to be restricted in potentially high-risk cases, or when the risk of flight is high, barring such detainees from rejoining society prior to a trial, and confining them to the detention center. Additionally, some courts may also effectively detain individuals by setting conditions for bail which are so impractical that they cannot be met by the average individual—for example, by setting a very high price for bail, one which may not be met by those coming from disadvantaged backgrounds.

It is worth noting, however, that there are often limits on acceptable amounts for bail encoded within the founding legal documents of a state, for example its constitution. Lastly, courts may package along with bail a set of other restrictions which effectively provide for a disguised form of detainment; an individual may be allowed to return to their home upon having posted bail, but may be required to remain confined within the limits of their household.



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# IISP MUN '24

