

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.

1 Introduction¹

It is widely believed that well-functioning law and justice institutions and a government bound by the rule of law are important to economic, political and social development.² The rule of law for the purpose of this article is understood to mean a system in which political and state actors do not take decisions arbitrarily but instead take decisions in accordance with the law. Most definitions would add a substantive component, for example that such laws should comply with international or continental human rights standards.³

The presumed linkages between the rule of law and economic, political and social development have been poorly mapped out in theory and empirically. Initially, the discourse tended to be that of the “law and development movement” whose argument was that a rational system of law is necessary for economic development in order to permit

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² World Bank, ‘Rule of Law and Development’ <http://go.worldbank.org/9OTC3P5070>. Accessed 26 January 2016.

³ For a discussion of definitions of the rule of law in the development context, see World Bank, ‘Rule of Law as a Goal of Development Policy,’ <http://go.worldbank.org/DZETJ85MD0>. Accessed 26 January 2016.

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