



COMMODIFICATION OF DETAINEES IN DEMOCRATIC REPUBLIC OF CONGO

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Figures on detention in Democratic Republic of Congo

22.000 people are currently being detained in prisons in Democratic Republic of Congo (DR Congo), 82% of whom are believed to be under preventive detention whilst awaiting a judgment¹. The detention conditions for prisoners are terrible, largely due to prison overcrowding, and fall far short of the minimum standards in this respect. The overcrowding rates in the country's prisons are alarming, sometimes reaching 400%, as in the Makala prison in Kinshasa.

Living in the prison society

The decision to place a person in detention has grave consequences, following which the *"detainee immediately loses their freedom, and may also lose their family, state of health, home, job and links with the community"*². In the Congolese detention system, prisons represent a form of institutionalised detention, regarded as offering greater protection than informal detention centres such as cells. However, public services do little to take care of detainees while they are in prison.

Within the prison walls, a "prison society" is created, in which the physical detention conditions are unbearable. Depending on the prison, each detainee has a sleeping area measuring a mere half a metre squared, sometimes even less.

The inequality that characterises social relations outside the prison walls is inevitably replicated on the inside. A system of resource distribution is set up among detainees depending on their means, which works to the benefit of the strongest and to the detriment of the weakest. In this system, nothing comes for free: every good, every right of access, every privilege has a value. Prisons, like other human societies, are thus made up of different social groups acting within a set of power relations. These groups are formed according to economic, social and cultural factors, such as the length of a person's sentence and their stay in prison, their social status, their financial resources or their criminal record. The power relations among the groups govern access to goods and services.

Other factors, such as moral and material support from families, also have an influence on living conditions in prisons. Given the shortage, or sometimes total absence of public services within the prison walls, it is mainly families who provide detainees with the means to survive. The level of support received depends on how far away the family lives, their financial resources, and their circles of influence. Detainees rely on their relatives to take care of them, who are often already simply trying to economically survive and now have an extra charge to take on. Suffering the consequences of a sentence that they did not receive, the detainees' families become impoverished as they cover the various detention-related costs (court fees, visits, material support, loss of wage-earner, etc.).



The system of capitas

The self-governance conditions rife in Congolese prisons also affect the prison administration. The lack of human and material resources is compensated for by way of an informal system commonly known as the "system of capitas". The system of capitas is not answerable to any law or regulation. It is the product of a private arrangement between the public prison authorities and the prisoners. Teams of varying sizes are formed around a "capita general", the latter usually being appointed by the prison administration amongst the sentenced prisoners. The capita general himself chooses the members of his team.

From the prison administration's point of view and given their insufficient means, the capitas ensure discipline and security inside the prison. From the detainees' point of view, the capitas impose an illegitimate system of domination based on fear and coercion.

The team of capitas governs every aspect of life inside the prison walls. They organise the services neglected by the State (receiving prisoners, discipline, maintenance of the premises, distribution of food, conflict management, etc.), and have the necessary prerogatives to do so: a chain of command, communication with the prison authority, the right to free movement, and the use of physical coercion on other prisoners.

Yet the capitas are neither civil servants nor employees – they are fully-fledged prisoners. Under the authority of the capita general, the group of capitas controls the balance of power between detainees to their own benefit. They collect the maintenance fees demanded of every new arrival at the prison, organise work for detainees who are unable to pay these fees (cleaning the septic tank and the facilities in the cells), collect fees for access to health services, tax the goods received by detainees from outside, and claim fees linked to the movements of detainees (family visits, movement within the prison, visits from lawyers). The system of capitas demonstrates the intrinsically discriminatory nature of the prison society.



Health risks of imprisonment

The crowded conditions in which the detainees live foster the exchange of germs, which is particularly hazardous due to the poor sanitary and nutritional conditions and the absence of appropriate care. Severe illnesses such as malaria, typhoid fever, tuberculosis and certain STDs are particularly prevalent, as are skin diseases resulting from poor hygiene (scabies and ulcers). In 2014, eight people died in one urban prison as a result of illnesses they contracted while in detention. The poor sanitary conditions in prisons also have an impact on the outside world. The transfer of seriously ill detainees to general hospitals is often necessary due to the lack of suitable healthcare structures in prisons and the need to limit contagion within their walls. However, due to a lack of security resources, these transfers facilitate the escape of detainees who prefer to be free than to receive care. Therefore, as well as deaths during detention, there are often deaths linked to periods in detention, which remain the prison's responsibility even though they occur outside of its walls.





"Detainees are commodities"³

Detention conditions in Congolese prisons are largely a result of severe overcrowding. The Congolese prison population is rising unabated, primarily due to the "*criminal code centred on custodial sentences*" and the "*overuse of detention*"⁴. The judicial system, responsible for deciding whether or not to detain individuals awaiting judgment, plays a decisive role in the growth of the prison population and the difficult living conditions for detainees.

The rule of law provides that everyone is equal before the law, regardless of their social, economic or cultural status. Those responsible for applying the law must be capable of putting aside their own personal interests to pursue the interests of society as a whole. In DR Congo, the line between private and public interests is blurred, and sometimes non-existent. The power granted to law enforcement officers is a particular source of abuse, and gives rise to confusion between their needs and those of the society whose interests they are supposed to defend.

Observation of judicial practices has brought to light a persistent and systematic disparity between legal procedure and reality. In practice, the process of placing a person in detention is often founded upon economic considerations negotiated between individuals. People who are arrested are systematically requested to pay a sum of money in order to regain their freedom or to have the charges against them dropped. It is a person's economic and social capital that determines whether they are placed in detention, and not the law.

In addition, the discretion left to law enforcement officers in classifying offences allows them to frame them in such a way as to tilt the balance of power to their advantage, and to the detriment of the individual arrested. The decision as to who to arrest is based in part on an economic strategy pursued by the law enforcement officer, aimed at people with the means to pay or who are likely to be easily influenced. Although there have been efforts to get this practice under control, it remains widespread, and continues to undermine the credibility of the criminal justice system.

Once arrested, any person accused of committing a common law offence and unable to negotiate his/her freedom with the law enforcement officer (or who refuses to do so, as paying the fine implies an admission of guilt) is systematically placed under arrest, and is deprived of his/her freedom until the case is resolved. This suggests that decisions by Public Prosecution Service officials to place someone under arrest are dictated by economic considerations, as demonstrated by numerous members of civil society, including former detainees and families of detainees.

In DR Congo, there are more detainees awaiting judgment than there are convicts. In principle, they must be presumed innocent as they have not yet been found guilty of an offence. However, far from being the standard procedure, the right to remain free until judgment is a privilege the detainee earns only by paying large sums of money, often in connection with corrupt practices.

The amounts paid for bail vary, even for similar offences. The sum of the bail money paid, which often goes straight into the pocket of the magistrates of the Public Prosecutor's Office, is rarely the same as the amount actually received by the Treasury. According to a number of observers, arrest warrants are a financial weapon in the hands of Public Prosecution Service officials, who have at their disposal an effective tool for putting pressure on people seeking justice in order to obtain financial benefits.

¹ Information from www.prisonstudies.org.

² Open Society Justice Initiative, 2011.

³ Expression used by various members of Congolese civil society.

⁴ Circular on the Congolese government's penal policy on detention, 31 August 2013.

A flawed chain of responsibility

When it comes to detention conditions, identifying duty-bearers is complicated by an obsolete and sometimes silent legal framework. On one hand, management of prison establishments is a legal competence shared by the central and provincial administrations. On the other, the overlapping of certain competences is dealt with in practice by way of horizontal responsibility-sharing. This means that the technical supervision of detention centres is the task of the deconcentrated authority of the Ministry of Justice, whilst political decision-making is shared between the central and provincial governments. This allows various stakeholders to disregard their responsibility for detention conditions, depending on the circumstances. This breakdown of responsibility causes confusion and hampers the establishment of an effective and structured chain of communication that would enable stakeholders to resolve problems encountered on the ground.



Supporting change

Profound change, and more efficient and effective legal mechanisms, are needed to improve the situation of people in detention. To achieve this, Avocats Sans Frontières (ASF) is taking advantage of the justice system reform initiated by the Congolese authorities to take action. It is crucial to ensure respect of the principle of freedom, and to guarantee that this remains a free and effective right for everyone in DR Congo. Abusive practices by certain stakeholders must be acknowledged, dealt with, and remedied in conformity with the legal and political frameworks put in place by the State. To support this change, ASF is establishing detention committees in every province in which it is active, enabling stakeholders in the penal chain to work together to come up with good practices in this area.

Avocats Sans Frontières' approach towards detention before judgment

In collaboration with its partners in Democratic Republic of Congo, Burundi, Tunisia and Uganda in particular, Avocats Sans Frontières (ASF) is taking structured action in defence of persons placed in detention before judgment (custody and preventive detention), who require access to a high-quality justice system which respects the rule of law.

Several interdependent factors justify ASF's intervention in this field:

- The persons placed in detention find themselves in a severely vulnerable situation:
 - The prison population is largely composed of persons who were already in a fragile situation before entering prison.
 - Detention exacerbates their vulnerable situation by stopping them from continuing their pre-existing economic activities, and places them in poor sanitary conditions.
 - Detention results in marginalisation of individuals, who will subsequently have to reintegrate themselves into society. It also gives rise to spiralling criminality.
- Within the countries where ASF is active, detention before judgment is one of the main causes of prison overcrowding.
- It is also a frequent source of major human rights violations.

Based on these findings, ASF recommends:

- Enhancing the ability of the detainees to act effectively as fully-fledged stakeholders, in particular through awareness-raising activities and legal advice.
- High-quality legal advice and judicial assistance from lawyers and providers of legal aid for persons placed in detention before judgment.
- Commitment on the part of those involved in providing access to justice to establish a penal system that respects the rule of law.

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1000 Brussels, Belgium



Founded in Belgium in 1992, Avocats Sans Frontières (ASF) is an international NGO specialising in the defence of human rights and support for justice in countries in fragile and post-conflict situations. For more than 20 years, ASF has been implementing programmes which improve access to justice for persons in vulnerable situation.

For more information about ASF's projects on detention before judgment, visit **www.asf.be/detention**

Detention before judgment: at what cost?

A video by ASF
www.youtube.com/asfinmotion

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