

# Why imprison?

The realities of imprisonment in the Democratic Republic of the Congo

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ounded 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.



or more than 20 years, ASF has been implementing programmes which improve access to justice for persons in vulnerable situation.



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"The prisoner is an economic asset"

Statement often made by observers of the prison system in Kongo Central



### LIST OF ABBREVIATIONS AND ACRONYMS

APJ Agents de police judiciaire (officials of the police responsible for criminal

investigations)

ANR Agence nationale de renseignement (National Intelligence Agency)

ASF Avocats Sans Frontières

CDMJ Chef de division provincial du ministère de la justice (Head of provincial

division of the Ministry of Justice)

CPP Code de procédure pénale congolais (Congolese Code of Criminal Procedure)

FARDC Forces armées de la République démocratique du Congo (Armed Forces of the

Democratic Republic of the Congo)

CDF Congolese Francs

MAP Mandat d'arrêt provisoire (provisional arrest warrant)

MONUSCO United Nations Stabilisation Mission in the Democratic Republic of the Congo

STD Sexually Transmitted Disease

OMP Officiers du ministère public (Officials of the Public Prosecutor's Office)

UN United Nations

OPJ Officiers de police judiciaire (Officers of the police responsible for criminal

investigations)

PARJ Programme d'appui à la réforme de la justice (Programme of Support for

Justice Reform)

GDP Gross Domestic Product

DR Congo Democratic Republic of the Congo

TGI Tribunal de grande instance (higher-level court)

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## **Executive Summary**

This analysis of imprisonment in the Kongo Central province examines a phenomenon whereby criminal proceedings are abused by public officials as part of a money-making process. In practice, private interests pursued by the officers of the *police judiciaire* (police responsible for criminal investigations) and the officers (*magistrats*) of the Public Prosecutor's Office play a decisive role in determining whether or not people are imprisoned. Decisions on criminal proceedings and practices relating to imprisonment are thus shaped by socio-economic motives and not by the application of the law. These practices are rooted both in a difficult socio-economic context and in a breakdown of responsibilities surrounding the management of prisons and detention centres.

As a public institution, the prison operates within a different framework to that set out in Congolese legislation. The practices of the institutional players do not comply with the laws and regulations one might expect to be decisive in a state governed by the rule of law. This parallel system is poorly regulated and has structural deficiencies in its operations that allow those involved to deny responsibility for issues surrounding the care of prisoners. A breakdown in conditions of imprisonment can thus be observed, the causes of which cannot be addressed by any of those in charge.

Due to the ineffectiveness or absence of public provision, the people living in the two prisons examined in this study are forced to organise their own lives within the prison walls. Extreme pressure on resources in the sector leads to systems of self-regulation by prisoners that violate the principle of equality in relation to imprisonment. Prisoners import their own economic, social, and cultural resources into the prison, to the detriment of the weak and to the advantage of the strong. Left to its own devices, this system is damaging for the people who have to spend time within it.

This system also has an impact beyond the walls of the prison. The sanitary conditions of imprisonment have consequences for the state of prisoners' health which cannot be addressed by the extremely inadequate services within the prisons, and which threaten the rest of Congolese society. Consequently, various structures in society are affected by people being imprisoned, especially those that are key to prisoners' economic survival. In place of the state, prisoners' families bear an extremely heavy economic burden. The prisoners themselves spend their time within the prison walls developing strategies for survival and have their economic and social development disrupted, with no internal programmes available to mitigate these effects. Thus imprisonment breaks prisoners' social ties, leaving them alone to face the void of their time in prison; the only training they receive is in the mechanics of violence, predation, and survival within the prison walls.

This raises a fundamental question about how useful prison is for Congolese society. The prisons do not have the means at their disposal to fulfil a useful societal function, whether in the removal of offending individuals, the deterrence of offending behaviour, or the rehabilitation of people who offend. The prison therefore makes do with punishing, with extreme harshness, a population whose composition is largely determined by the inner workings of the judicial system.





### INTRODUCTION

### **GENERAL PRESENTATION** 1. OF THE CONTEXT

The Democratic Republic of the Congo (DR Congo) is the largest country in Central Africa and the second-largest in Africa, with an area of 2,345,000 km<sup>2</sup>.1 It extends from the Atlantic Ocean to the East-African plateaux and encompasses most of the basin of the Congo River; DR Congo is bordered by Angola and the Republic of the Congo to the west, the Central African Republic and South Sudan to the north, Uganda, Rwanda, Burundi, and Tanzania to the east, and Zambia to the south.

Since the end of the one-party system in 1990, DR Congo has known various periods of political instability. This instability culminated in a complex civil war involving domestic and foreign forces, which the Pretoria Accord put an end to in 2002.2 In 2015, the security situation in the east of the country (the former Orientale Province, the provinces of North Kivu and South Kivu) was still unstable. Sporadic waves of violence and serious human rights abuses continue to affect that part of the country. The longest peacekeeping operation in the history of the United Nations is still in operation in the east of the country, where the United Nations Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO)<sup>3</sup> took over in 2010 from the United Nations Mission in the Democratic Republic of the Congo (MONUC),<sup>4</sup> which had been in place since 1999.

In socio-demographic terms, the population of DR Congo was estimated in 2014 at 77 million inhabitants (10 million in the capital, Kinshasa, alone),⁵ while socio-demographic indicators reveal a life expectancy at birth of 56 years and a literacy rate of 67%.6

The entire country is in a difficult economic situation. With a gross domestic product (GDP) per capita of 451 USD in 20117, DR Congo ranks among the poorest states in the world. The human development of the Congolese population also remains weak, coming 186th out of 187 countries classed by the Human Development Index.8

The socio-economic situation in the country is characterised by widespread corruption. In 2014, DR Congo ranked 154th out of 177 countries in the Corruption Perceptions Index published by Transparency International.9 This situation has a negative impact on the country's economic and institutional situation, not least because of the loss of fiscal resources.

<sup>1.</sup> The CIA World Factbook: www.cia.gov/library/publications/the-world-factbook.

In 1997 and 1998, Zaire, now the Democratic Republic of the Congo, experienced two complex civil wars, involving domestic and foreign forces. Peace
was restored in 2002 with the Pretoria Accord, which lead to the retreat of Rwandan troops based in the east of the country.

<sup>3.</sup> On the 1st July 2010, resolution 1925 of the UN Security Council renamed the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC), the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO). On 28 March 2013, the Security Council adopted resolution 2098, which extended the mandate of the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) until 31 March 2014 and created an "intervention brigade" to enforce peacekeeping operations. The mandate of MONUSCO and of the Intervention Brigade were extended again in 2014 (resolution 2147) and 2015 (resolution 2211). Their current mandate runs until 31 December 2016.

<sup>4.</sup> MONUC was created on 30 November 1999, by Security Council resolution 1279. This mission was put into effect after the signing, in July 1999, of the Lusaka Ceasefire Agreement between the Democratic Republic of the Congo and five other states in the region (Angola, Namibia, Uganda, Rwanda and Zimbabwe).

<sup>5.</sup> The CIA World Factbook, ibid.

<sup>6.</sup> The CIA World Factbook, ibid.

<sup>7.</sup> GDP per capita expressed in PPP, UNDP data on countries: hdr.undp.org/en/countries/profiles/COD.

8. The Human Development Index was 0.338 in 2013, ranking DR Congo in 186th place out of 187 countries and territories included, UNDP, Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience Explanatory note on the 2014 Human Development Report composite indices

<sup>9.</sup> Website of NGO Transparency International: www.transparency.org/country#COD.

At the institutional level, the political and administrative organisation of the country is regulated by the Constitution of 18 February 2006, according to which "The Democratic Republic of the Congo is... a state governed by the rule of law, independent, sovereign, united and indivisible, social, democratic, and secular." The Congolese institutional system is historically concentrated around the capital, Kinshasa. However, this situation is changing because of a process of effective decentralisation towards the provinces.

The country has 26 official provinces. However, in its current configuration, DR Congo comprises just 11 provinces that have legal personality, including the city-province of Kinshasa. The Constitution (Article 175) provides for a system of sharing budgetary income in which the central administration collects all tax revenue and then redistributes 40% to the provincial governments. The authority exercised by the two levels of government is divided into domains that come under the exclusive authority of the central government (Article 202) and those shared with the provinces (Article 204), such as "the administration of the courts, *maisons d'arrêt* [holding facilities for people awaiting judgement], correctional facilities, and prisons".

Since 2010, the central government has been carrying out an extensive justice reform project. This reform involves major improvements in the justice system, particularly in terms of putting frameworks in place to uphold people's rights. However, there continues to be a discrepancy between the general orientation of the justice system and the practice of the courts and public prosecutors.

### 2. PRESENTATION OF THE STUDY

This study was conducted within the framework of the "Na Bosembo Tokokani" project, or "Garantir l'accès systématique à la justice pour les personnes en détention préventive" ("Guarantee systematic access to justice for individuals in pre-trial custody"). This project, implemented by Avocats Sans Frontières (ASF) and funded by the Belgian Development Cooperation, was conducted in the provinces of Kinshasa, Equateur, and Kongo Central from May 2014 to April 2016.<sup>12</sup>

### 2.1 WHY THIS STUDY?

This study results from a series of observations made by ASF in its experience in DR Congo in relation to the justice sector in general and imprisonment in particular.<sup>13</sup>

Conditions of imprisonment in DR Congo are unanimously described as unsatisfactory. <sup>14</sup> All of those involved in the justice system point out the dilapidated condition of the prison buildings (the entire

Centre d'Etudes et de Formation Populaires pour les Droits de l'Homme, Etat des lieux de la situation des prisons dans la Province du Kasaï oriental en République démocratique du Congo, Results of an investigation carried out from September 2012 to June 2013 in the towns of Mbuji-Mayi and Mwene Ditu. June 2013.



<sup>10.</sup> Constitution of the Democratic Republic of the Congo 2006, as amended in 2011, Article 1.

<sup>11.</sup> Law No. 11/002 of 20 January 2011, revising certain articles of the Constitution.

<sup>12.</sup> The "Na Bosembo Tokokani" project recommends various courses of action for reducing the number of prisoners awaiting trial in the prison population. ASF attempts to raise awareness among prisoners of their rights, informing them that the assistance of a lawyer is obligatory in certain circumstances, of the necessity of grounds for imprisonment, etc. Systematic ongoing legal advice is also provided by lawyers of different partner bar associations in the prisons concerned in an effort to reduce the number of people held illegally in custody on remand.

<sup>13.</sup> A permanent ASF mission has been present in DR Congo since 2002.

<sup>14.</sup> See in particular:

Coalition des Volontaires pour la Paix et le Développement, Rapport sur les violations des droits de l'Homme constatées dans les prisons et cachots à Kinshasa, CVPD ASBL, 15 March 2014.

prison infrastructure dates back to the colonial era), the overcrowding in prisons, and the lack of material provision for prisoners by the state<sup>15</sup> as the principal causes of the poor conditions in prisons and detention centres. The situation within the prison walls is chaotic, since the prison administration is unable to cope materially and has to manage resources that are greatly inferior to the needs of the prison population in terms of food, accommodation, equipment of various kinds, hygienic facilities, etc. In a socio-economic context as precarious as that of DR Congo (see above), it can be assumed that being placed in these under-resourced prisons and detention centres presents those concerned with additional obstacles to the satisfaction of their basic needs.

Imprisonment in Congolese prisons results, accordingly, in serious breaches of human rights, which those involved in the field have frequently drawn attention to: for instance, although there are no precise statistics showing the extent of the phenomenon, many deaths are reported every year in prisons and police cells in DR Congo.<sup>16</sup>

These conditions of imprisonment have been widely condemned as human rights abuses<sup>17</sup>, by DR Congo's international partners, by Congolese civil society, and by institutional players. The Congolese prison is characterised by the following failures: breaches of DR Congo's international commitments (international human rights law, international humanitarian law), infringements of the normal rights of prisoners (Congolese penal legislation), inadequacies in the rules of governance (decentralisation provisions), and a lack of political action (justice reform). What's more, though seriously underresourced, the prisons accommodate an ever-increasing population, particularly due to "a penal code that focuses on the penalty of imprisonment and an over-use of the deprivation of liberty observed on the ground".18

With a view to going beyond this approach to imprisonment, a number of observations can be made. For one thing, the vast majority of the Congolese prison population is composed of prisoners who are awaiting judgement; 82% of this population is made up of people in pre-trial custody, whose judicial investigation is not yet complete.19 In this study, we do not question the utility of this procedure, so long as it remains an exceptional measure<sup>20</sup> and respects the strict material<sup>21</sup> and procedural<sup>22</sup> conditions laid down by the law, as one is entitled to expect in a state governed by the rule of law.

The extent of the systematic recourse to pre-trial custody, however, must be seen as a decisive factor in the overall size of the prison population and, in the case of DR Congo, a major cause of overcrowding in prisons and detention centres. On the other hand, given the lack of resources in the Congolese judicial system, a significant number of remands in custody are rendered illegal by a failure to meet the relevant procedural deadlines. The controls on the legality of this kind of imprisonment thus become another decisive factor in the size of the prison population.

Those working in the judicial system are, of course, not the only people involved in the process which leads to people being placed and held in prison. Members of the prison administration, including the prison director (gardien or directeur), have important powers in the regulation of the prison population, including the power to suggest prisoners for parole and, where there are irregularities, to refuse to take in a new prisoner.23

<sup>15.</sup> The names of the people spoken to in the course of this study are not recorded as such, but the organisations that they belong to, and their roles within them, are described in Annexe 1 of this document; the observations highlighted here in relation to the system of imprisonment are a subject of consensus among the representatives of a variety of players, including institutional and non-institutional, national and international, civil and religious

<sup>16.</sup> According to the MONUSCO, 211 people died in the prisons and police cells of DR CONGO between January 2010 and December 2012, BCNUDH (MONUSCO-HCDH), Rapport sur les décès dans les lieux de détention en république démocratique du Congo, March 2013.

17. Avocats Sans Frontières, Les conditions de détention en RD Congo violent les droits des prisonniers, press release, 12 January 2015, http://www.asf.

be/fr/blog/2015/01/12/the-conditions-of-imprisonment-in-dr-congo-violate-prisoners-rights/.

<sup>18.</sup> Circulaire n°003/CAB/MIN/1&SD/2013 of 31 August 2013 relative à la politique pénale gouvernementale en matière de privation de the liberté, Democratic Republic of the Congo, Ministry of Justice and Human Rights.

<sup>19.</sup> Information from the Prison Studies website: www.prisonstudies.org.
20. Article 28 of the Code of Criminal Procedure: "Pre-trial custody is an exceptional measure."

<sup>21.</sup> According to the Congolese Code of Criminal Procedure, a person can only be placed in pre-trial custody if there are genuine indications of their guilt and if the acts they are accused of constitute an offence and carry a sentence of at least six months of penal servitude (Article 27 paragraph 1). However, placement in pre-trial custody is possible if the act constitutes an offence that is punishable by law with a sentence of less than six months of penal servitude, but more than seven days, "where there is reason to fear that the accused might flee, or if the identity of the accused is unknown or in doubt, or in serious and exceptional circumstances in which imprisonment is urgently required in the interests of public safety" (Article 27 paragraph 2).

22. Placement in pre-trial custody is preceded by a "provisional arrest warrant" (MAP), which is issued by the investigating judge (magistrat instructeur)

and is valid for five days. By the fifth day at the latest, the official of the Public Prosecutor's office must bring the accused before the judge to request their placement in pre-trial custody (Art. 28 para. 2 of the CPP). The investigating judge must take the case to court to obtain a ruling on whether the person subject to the MAP should be placed in pre-trial custody. The accused also has the right, "once these deadlines have expired [the MAP is valid for 5 days], to request that the judge who has jurisdiction should release the accused or release the accused on bail". (Article 28, para. 5 CPP) Pre-trial custody is authorised by the justice of the peace (juge de paix) (Art. 29 CPP), who sits in Chambre du Conseil (in camera) on the basis of the criteria set out in Article 27 of the CPP. Only the judge hearing the case can issue orders to place or continue to hold a person in pre-trial custody. The order authorising placement in pre-trial custody is valid for 15 days (including the day that it is issued). However, it can be extended (ordonnance de prorogation/extension order) for a duration of one month (Art. 31 CPP), just once, if the penalty that can be imposed is less than two months of penal servitude, or three times consecutively, if the penalty that can be imposed is six months of penal servitude or more. 23. Article 30 of Regulation No. 344 of 17 September 1965 on the prison system.

A person's imprisonment should, therefore, be seen as the result of a chain of events that begins outside the prison walls. The prison system doesn't operate in a vacuum: it is clearly linked with the operations of the judicial process, since the size of the population in its charge is determined by the actions and decisions of the players in the judicial system. The prison, which should, by definition, function separately from general society, inevitably interacts with the society in which it exists.

### 2.2 OBJECTIVES AND APPROACH OF THE STUDY

The object of this study is to highlight the issues involved in and the consequences of the excessive and unregulated recourse to pre-trial custody, in order to make an appeal to the individuals involved in imprisonment and to the institutional players, with the aim of making opposition to this phenomenon a priority.

This study attempts to establish the realities of imprisonment for people in the prisons of Matadi and Boma. In order to understand this reality, this analysis sets out in particular to report and explain the practices of, and interactions between, the different players who are involved in decisions to place or hold people in prison. Our study, accordingly, seeks to identify, understand, and describe the logic of these operations, both within prisons and detention centres and in the long chain of events that can lead to a person being imprisoned or not and kept imprisoned or not.

To that end, this study attempts to describe prison and imprisonment more generally for what it is, in other words, as it is observed in the lives of the various players: prisoners, prison personnel, families, policy-makers, those active in civil society, etc. The starting point, for this study, therefore, is the actual reality of lived experience, rather than ideas about what prison should be according to the law, according to international standards, or according to the vision of those who work in the institutions of the prison system.

References to the legal framework are made in this study, insofar as they are helpful for understanding and analysing reality. The analysis is sufficiently clear and detailed to permit the different players to make the link between this reality and their own legal framework, their own mission, the objectives of the institution to which they belong, and their own value system.

This approach stems from a desire to promote knowledge and analyses derived from the realities on the ground. The need to make use of local knowledge and an awareness of the limitations of the theoretical frameworks imported by international workers are major issues for the effectiveness of programmes aimed at developing the rule of law in weak states.<sup>24</sup>

### 2.3 METHOD OF COLLECTING AND ANALYSING DATA

To understand imprisonment as it is experienced by the people it affects, we have to start with the individual, whether a prisoner on remand, a convicted prisoner, a political decision-maker, a civil servant, or any other type of official who plays a role in imprisonment. According to the law, each individual involved in the process has a prescribed role, that is to say an ideal way of behaving, defined by a legal and regulatory framework.

By making use of the testimonials and experiences of the various players involved in imprisoning people, we attempt to shed some light on the thinking that underlies imprisonment. In this context, shedding light on that thinking means understanding what a person's reasons are for behaving in a particular way. We assume that, when choosing a course of action that could lead to a person's imprisonment, each player has a different perspective and different strategies and objectives. Therefore, the action or series of actions taken by a player, or type of player, must correspond to a particular way of thinking, which this study will attempt to understand.

However, in reality, the actions of individuals are influenced by more complex factors than those resulting from their own standards. Those involved in imprisonment are human beings who live and survive in a difficult socio-economic environment. Every prisoner, every police officer, and every prison director is also a member of society, who belongs to a family, has certain economic activities, etc. The underlying motivations for their actions are, of necessity, complex and multifaceted.



In this examination of the relationship between imprisonment and the socio-economic environment, we believe that the imprisoned person is best placed to provide a complete view of imprisonment, from the time of their arrest to the time of their release, taking in the daily realities of each stage. The prisoner will therefore be the starting point for this study. It is by looking at prisoners' experience that we attempt to understand the factors that shape imprisonment in DR Congo and to answer this general question: what are the links between a person's socio-economic characteristics and their experience of imprisonment?

That is why the data collected in the course of this study is qualitative and prioritises the accounts, points of view, and perceptions of those involved themselves. The data necessary for this study was collected during a field survey, which was carried out in the following stages:

- Document review: from 4 to 11 February 2015 in Kinshasa (Kinshasa Province);
- Data collection: from 11 to 26 February and from 28 February to 3 March 2015 in Matadi, from 26 to 28 February 2015 in Boma (Kongo Central Province);
- Field survey debriefing: from 4 to 5 March 2015 in Kinshasa (Kinshasa Province);
- Analysis of the data: from 6 to 9 March 2015 in Goma (North Kivu Province).

A semi-structured questionnaire was drawn up by the research team and used as a guide in the interviews with groups and individuals. By the end of the survey, information had been gathered in the following sessions:

- 33 qualitative interviews with key players (see list in Annexe 1);
- 2 group discussions (5 to 10 people) with families of prisoners in Boma and in Matadi<sup>25</sup>;
- 2 group discussions with former prisoners (10-15 people) in Boma and in Matadi<sup>26</sup>;
- 1 detailed observation of the urban prison in Boma;
- 1 detailed observation of the central prison in Matadi;
- 2 group discussions with lawyers active in the area of legal aid for prisoners in Matadi and in Boma.

To a lesser extent, this study also made use of a variety of data gathered by ASF teams in the course of their various activities relating to legal aid for prisoners in the prisons of Boma and Matadi.

### 2.4 SCOPE OF THE STUDY

Kongo Central province was chosen from among the various provinces targeted by the "Na Bosembo Tokokani" project, according to a variety of criteria, such as geographic accessibility and the size of the prison population. Of the seven prisons operating in the province, we chose to concentrate on those of Matadi and Boma because of their physical proximity as well as their differences in administrative status. Matadi Prison is one of the country's central prisons<sup>27</sup> and is run directly by the central government, whereas Boma Prison is one of the urban prisons<sup>28</sup> that are primarily the responsibility of the Kongo Central provincial government. The details of these variations in status can be found in Part One of this report.

In order to produce a detailed and robust analysis, this study focused on the situation of people imprisoned in the prisons of Matadi and Boma, while also attempting to develop a general perspective on imprisonment in Kongo Central province; the empirical observations made hereafter are thus rooted in a provincial context with its own specific features.

In DR Congo, people can be imprisoned in different types of location. A significant number of Congolese prisoners find themselves in holding cells, temporary prison facilities run at the level of police stations or local police stations or by the National Intelligence Agency (ANR). However, in our study, we chose to focus on imprisonment in its institutionalised form, within the prison. Apart from

<sup>25.</sup> The group encountered in Boma was made up of the immediate families (close relations, spouses, brothers, and sisters) of people imprisoned in Matadi prison; the group encountered in Matadi was made up of the immediate families of people imprisoned in Matadi prison. This similarity allowed us to understand the effects of distancing prisoners from their families.

us to understand the effects of distancing prisoners from their families.

26. The group in Boma was made of people who had been imprisoned in Boma urban prison; the group in Matadi, of people who had been imprisoned in Matadi central prison.

<sup>27.</sup> In the prisons targeted by the "Na Bosembo Tokokani" project, lawyers trained by ASF hold awareness-raising sessions with prisoners. Participants in these sessions fill out a basic personal identification form: age, sex, level of education, the alleged crime that is the grounds for imprisonment, the judicial document justifying imprisonment.

<sup>28.</sup> In DR Congo, every province has a central prison, which is situated, geographically, in the administrative centre (provincial capital) of the province and answers directly to the central or national justice authority (the ministry in charge of justice).

and answers directly to the central or national justice authority (the ministry in charge of justice).
29. In every town in DR Congo, there is an urban prison which is managed by the local provincial authority.

considerations of the practicality of the research, focusing on the prisoner within the prison enables us to consider imprisonment within the context of its societal function, in other words to examine the conditions of imprisonment in terms of the legitimate role given to prison by current Congolese legislation and regulations (see below). It should be noted, nonetheless, that imprisonment in holding cells is an unavoidable feature of people's experience of imprisonment and would require an entire analysis in and of itself.

Finally, this study does not in itself provide an analysis of the legality of the conditions of imprisonment in the Matadi and Boma prisons. However, Congolese law<sup>30</sup> and international human rights law<sup>31</sup>, as well as various non-binding texts<sup>32</sup>, contain numerous provisions relevant to the subject. Establishing the link between the material conditions reported hereafter and the invocation of those various legal considerations is a separate exercise, which would require an in-depth analysis of Congolese judicial practice.

### 2.5 DIVISION OF ROLES

This study was carried out by a lead researcher and a research coordinator. This partnership benefited from the remote assistance of legal experts and of the coordinator of the ASF's research programme, as well as the logistical support of the ASF'S project assistant for Kongo Central province.

### 2.6 ETHICS AND CONFIDENTIALITY

Researching issues of imprisonment requires particular attention to the sensitive nature of the information that is gathered. For example, the investigation had to look at individual accounts that involved ongoing criminal cases or that could directly involve the political and legal responsibilities of some players in Kongo Central province. Similarly, the discussions with families touched on particularly sensitive subjects, such as the measures taken by the families to ensure prisoners' survival.

In consideration of these factors, all the people encountered were given the option of their contributions being confidential. The vast majority of them chose to speak to the research team under cover of confidentiality. This study is obliged to respect their choice and to report their contributions accurately.

In order to guarantee the ethical nature of the information collected, the semi-structured questionnaire used in the interviews with key players, and as a foundation for the group discussions, even though these discussions were actually more or less open, is reproduced in Annexe 2.

<sup>32.</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the United Nations Economic and Social Council in its resolutions 663 c ( XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.



<sup>30.</sup> See, in particular:

The Constitution of 2006, Article 18 of which guarantees that "all prisoners must be treated in such a way that their life, physical and mental health, and dignity are preserved."

Regulation No. 344 of 17 September 1965 on the prison system, Articles 16, 30, 31, 33, 34, 39, 40, 41, and 44.

<sup>31.</sup> See, in particular: African Charter on Human and Peoples' Rights, Nairobi, 27 June 1981;

African Charter on the Rights and Welfare of the Child, which was adopted in July 1990 and entered into force on 29 November 1999; Convention on the Rights of the Child, New York, 20 November 1989; The Universal Declaration of Human Rights, 1948.

The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly in resolution 2200 A (XX I), 16 December 1966:

The International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in resolution 2200 A (XX I), 16 December 1966.



# Part one: PRISON SOCIETY

"To be sentenced to prison in DR Congo is to be sentenced to death."

A member of civil society

There are 22,000 people incarcerated in the prisons of DR Congo, of whom about 82% are in pre-trial custody, awaiting a court ruling on the allegations against them.<sup>33</sup> Often reduced to its repressive role, the prison is home to the thousands of people who find themselves there.

### 1. "WHO RUNS THE PRISONS?"

### 1.1 PRISON'S ROLE IN SOCIETY

In states governed by the rule of law, prison is a particularly widespread mode of punishment. It is an institution regulated by the law, which accommodates people who represent a danger (proven or alleged) to society as a whole.

In relation to the development of the concept of punishment in European society since the Middle Ages, social sciences literature generally identifies two main moral justifications for punishment: the retributive (or punitive) approach and the utilitarian approach (John Rawls, 1955). In the first, and older, conception, punishment is a form of "civilised revenge"<sup>34</sup> on a person whose behaviour has broken a rule. This conception lacks perspective for society as a whole as it merely consists of an act of revenge for an offence that has already been committed.

In the second conception, considered the more modern, punishment does not only affect the individual but performs a useful function for society, broadly defined by three objectives: *neutralisation* (removing the offending individual from society), *deterrence* (by the threat of removal) of the repetition of the offence, and the *rehabilitation* of individuals in order that they may re-enter society.

This anthropological approach to punishment, while somewhat ethnocentric, provides a framework for analysing the perceived role of the prison in Congolese society. The vast majority of people encountered in the course of this study, whether institutional players, leaders of civil society, or simply observers, ascribe a utilitarian role to prison, based on a perception that involves two objectives: removing dangerous individuals from society and enabling their social rehabilitation. Over and above those conceptual categories, it should be noted that they all believe that prison has a role that is in the interests of Congolese society.

### 1.2 TYPOLOGY OF THE PRISONS IN THIS STUDY

In DR Congo, prisons and detention centres are public institutions, the existence and functioning of which are based on rules of a general nature underwritten by the state.

In legal terms, the mission and operation of these sites are regulated by Regulation No. 344 of 17 September 1965 on the prison system (referred to hereafter as "Regulation No. 344 of 1965"). According to the Regulation, one place of imprisonment among others, the "prison", is charged with accommodating persons referred to in Article 9 of the text.<sup>35</sup> The text distinguishes between "prisons" and "maisons d'arrêt" (holding centres for people awaiting judgement), which are intended to accommodate persons referred to in Article 10 of Regulation No. 344 of 1965, 36 that is, people who are awaiting a court ruling. The "prison" as defined in Article 9 of Regulation No. 344 includes several different categories, which differ depending on the nature of the court under whose jurisdiction they come<sup>37</sup> or of the authority that established them.<sup>38</sup>

In practice, while distinctions do exist between different types of prisons and detention centres, the reality on the ground is that the terminology and criteria used to distinguish between them are different from those found in the legislation. For instance, there are "central" prisons and "prison camps" which are managed by the central administration, as well as "urban", "district", and "local" prisons that are overseen by decentralised administrations. However, there doesn't seem to be any distinction between the types of prisoners held in different locations in Kongo Central province, with the exception of a social centre which exercises the delegated function of accommodating juveniles (see Box No. 1).

While the term "prison" is used to refer to all prisons and detention centres used for the enforcement of sentences and the judicial custody of prisoners before trial, this fails to acknowledge the actual variations between prisons in terms of their public supervision.

In general, there are structural differences between the prisons which are run directly by the central administration and those managed by the decentralised administrations. The former are covered by a budget line that is set out in the general state budget and follow the regulations set down in the Ministerial Decree on judicial organisation No. 87-025 of 31 March 1987 on the establishment of committees for the management of penitentiary establishments.<sup>39</sup> In practice, however, the way they are managed differs considerably from the official regulations.

<sup>39.</sup> Ministerial Decree on judicial organisation No. 87-025 of 31 March 1987 on the establishment of committees for the management of penitentiary establishments, Article 1: "The administration of every central prison and of every prison camp is entrusted to a management committee. The management committee is made up of a director, an assistant director, and two civil servants."



<sup>35.</sup> Article 9 of Regulation No. 344 of 1965:

<sup>1.</sup> Individuals who have been sentenced by a court ruling or irreversible judgement: a) to the death penalty; b) to a penalty (not suspended) of penal servitude; c) to a penalty of subsidiary penal servitude. 2. Individuals placed at the disposal of the government by a definitive ruling made: a) in accordance with § 6 of Section II of Book 1 of the Penal Code; b) in accordance with Articles 3 and 4 of the order of 23 May 1896, as amended by the orders of 11 July 1923 and 6 June 1958 on vagrancy and begging. 3. Persons who are imprisoned for debt: a) in accordance with Article 17 of Book 1 of the Penal Code; b) in accordance with Articles 195 and following of Annexe 1 to the law of 10 July 1963 on income tax."

<sup>36.</sup> Article 10 of Regulation No. 344 of 1965:
"Maisons d'arrêt are intended to receive the individuals referred to in paragraphs 1 and 2 of Article 9 whose sentence or judgement is not irreversible or in whose cases a ruling is not yet definitive, as well as prisoners awaiting trial.

They can also serve as: 1. A place of imprisonment, before they can be brought before the relevant judicial authority, for persons who are subject to an arrest warrant [mandat d'amener] and those subject to a procès-verbal de saisie de prévenu issued by an officer of the police judiciaire.

<sup>37.</sup> Article 5 of Regulation No. 344 of 1965: There will be. 1. a central prison in every locality where a court of first instance usually sits; 2. a district prison in every locality where a district

court usually sits, excluding localities where a central prison has been established; 3. a police prison in every locality where a police court usually sits, excluding localities where a central prison or a district prison has been established. Art. 6. A maison d'arrêt is to be established as an annexe to each of the prisons referred to in Article 5. 38. Article 7 of Regulation No. 344 of 1965:

<sup>&</sup>quot;The Minister for Justice of the central government can also create prison camps in all localities, either in order to ease the burden on central prisons or in order to put prisoners to work.

Thus, according to a member of the prison administration, Matadi Central Prison (the only prison in the province under the direct control of the central administration) has a quarterly budget of more than 33,000,000 Congolese Francs (CDF)<sup>40</sup>, for a population of about 520 people<sup>41</sup>, a ratio of about 21,000 CDF (about 23 US dollars) per prisoner per month. This monthly budget is managed by a committee made up of the governor of the province, the provincial head of division of the Ministry of Justice, the public prosecutor (Procureur général), a delegate of the central government, the director of the prison, and two members of civil society. Its composition corresponds to the Local Budgetary Supervisory Committee established by the Ministerial Decree of 28 January 2013 on the establishment, organisation, and operation of local committees for overseeing the budgets of central and provincial prisons and prison camps (Article 3). According to one committee member in Kongo Central, this budget does not cover the basic needs of the prisoners, forcing the committee to be selective in the choices it makes in order to meet prisoners' needs.

For prisons that are managed by the decentralised administrations, the situation is different. There are no legal provisions regulating the management of these establishments and members of the decentralised administrations accuse the central administration of failing to respect the principle of a budget rebate set out in Article 275 of the Constitution<sup>42</sup>, placing limits on their capacity to care for prisoners.

In theory, Boma urban prison is run by the provincial administration of Kongo Central and the Boma town hall. According to a member of the prison administration, the provincial government of Kongo Central provides a monthly budget varying between 1,000,000 CDF and 1,500,000 CDF for a population of about 275 people, a ratio of between 3,500 and 5,400 CDF (equating to between 4 and 6 US dollars) per prisoner per month. Due to these budgetary constraints, the director of Boma prison is forced to take a case-by-case approach to fulfilling his duties in relation to the prison; feeding the prisoners, maintenance of the premises, etc.

This contrast between the ideal vision of the operation of prisons and the practices observed illustrates how out of date the legal basis of Congolese prisons is. The relevant legislation is several decades old and the organisational frameworks they propose have long since been altered by the practices of those involved. In the light of this situation, a proposal for reforming Regulation No. 344 on the prison system is currently being examined by the relevant authorities in an effort to address the legitimate criticisms and demands of those involved in the prison system.

### 1.3 PRISON: PLAYERS AND RESPONSIBILITIES

In practice, prison administrations do not make use of the provisions in Regulation No. 344 of 1965 which dictates that the public authorities are responsible for guaranteeing certain minimum standards for imprisonment.44 Consequently, the vast majority of players we encountered, including people working in the justice sector and in prison administration, claim that duty-bearers are failing to meet their obligations with regards to the conditions of imprisonment in the prisons in this study.

For instance, it is striking that some of the prisons and detention centres observed do not have a perimeter that is physically closed. Boma Prison has a gap in its outer wall which is several metres wide and is accessible to those prisoners who are permitted to exit the main courtyard ("capitas" [see below] and prisoners who have access to work). 45 This situation is reproduced on a larger scale in several of the seven prisons in Kongo Central, according to participants in the Programme d'appui à la réforme de la justice (PARJ) (Programme of Support for Justice Reform) encountered in the course of this study; observers of the Congolese prison system therefore use the term "voluntary prisoners" to refer to these inmates.

<sup>40.</sup> This fund is paid into an account in a private bank in Matadi.

<sup>41.</sup> Number observed on the day of the research team's visit, 12 February 2015.
42. MONUSCO, Administration pénitentiaire en RD Congo, Etat des lieux et perspectives, Corrections Unit, Kinshasa, 24 June 2013. 43. Number recorded in the course of the basic research for the "Na Bosembo Tokokani" project, conducted from 14 to 17 July 2014.

<sup>44.</sup> Regulation No. 344 of 17 September 1965 on the prison system provides, inter alia, for: the separation of prisoners (Article 44), the provision of hygiene facilities (Article 48), the provision of clothes (Article 51), the right to walk and partake in physical exercise (Article 53), access to medical treatment (Article 54), the provision of good food (Article 61) and of three meals a day (Article 62), the right to work (Article 64), etc.

<sup>45.</sup> Observations made on location by the research team on Thursday 26 February 2015.

This breakdown in conditions of imprisonment is to be analysed within the context of a general confusion about who is responsible for the prisons. As observed by one of the players we spoke to: "we are asking, who runs the prisons?" In practice, the deterioration of the organisational framework of the prison system (Regulation No. 344) and the lack of implementation of proposals for improvement have a detrimental effect on the administration of prisons, particularly on the "chain of command, internal management of personnel, and communication from the bottom up".46 These operational failures facilitate corruption and a denial of responsibilities relating to the management of the prison service.47

The management of prisons is organised along horizontal lines, whereby a multitude of actors intervene in various aspects of the imprisonment, or continued imprisonment, of individuals: the police judiciaire (police responsible for criminal investigations), the Forces armées de la République démocratique du Congo (FARDC - Armed forces of the Democratic Republic of the Congo), the public prosecutors and the officers (magistrats) of the prosecutor's office, officials of the central and decentralised administrations, political authorities and administrations at local and provincial levels (such as the Boma town hall), prison directors, etc. There is no effective coordinated regulation of this horizontal system, as the officials concerned belong to different bodies and answer to different hierarchies. For example, the prison directors we encountered are not in charge of the external security (or perimeter security) of their facilities, as this is overseen by the national police and elements of the FARDC.

Numerous calls have been made for the establishment of a single prison body to organise the various functions necessary for the professional and responsible management of prisons, as was put forward in the recommendations made at the Justice Consultation (Etats généraux de la justice) held between 27 April and 2 May 2015.

In general, all the representatives of political, administrative, and judicial authorities encountered in the course of this study acknowledged the discrepancies between the legal provisions and the conditions of imprisonment, albeit without accepting responsibility for them. The members of the prison administration consider the prison population to be the responsibility of the judicial system, while those involved in the judicial system claim that the management of prisons and detention centres is the responsibility of the central and decentralised administrations.

As a result, there is a discrepancy between the responsibilities for the management of the prisons established in the legislation and those operated in practice by those in charge. In practice, those in the front line put in place palliative systems that depend on individual initiatives undertaken by leaders from civil society or by certain members of the prison administration, particularly prison directors.

These front-line players are faced with a situation of confusion about institutional responsibilities that makes it difficult for them to raise issues effectively. The civil society players encountered in this study unanimously asserted that the processes of appealing with the institutions are in disarray, arguing that the institutions ignore their attempts to identify needs and their projects for operational improvements.48

Thus, prisoners face a series of duty-bearers and volunteers, who claim that they both lack the necessary material resources and are partially responsible for their care.

<sup>48.</sup> A person who is active in an organisation campaigning for the rights of prisoners reported having proposed to the central and provincial authorities a system of rotation for civil society volunteers in Matadi prison. The aim of the system was to distribute roles between the different civil society organisations and coordinate their interventions, as an improvement on the unilateral contributions they currently make. According to the person, this proposal was flatly turned down by the authorities.



<sup>46.</sup> MONUSCO, Administration pénitentiaire en RD Congo, Etat des lieux et perspectives, ibid, p.2.

<sup>47.</sup> This observation was made by the MONUSCO Corrections Unit, which recommended in 2011 that a new organigram should be put in place, to organise responsibilities relating to the management of the prison service, MONUSCO, Administration pénitentiaire en RD Congo, Etat des lieux et

#### BOX NO. 1

### The Centre for the Relocation, Supervision, and Recovery of Orphans

The placement of juvenile offenders is also regulated by Regulation No. 344, Article 39 of which states that "juveniles under 18 years of age must only be held in prisons when there is no state custodial educational facility within the jurisdiction of the court of first instance. In the absence of such an establishment, they are to be held in a special section." In practice, these state custodial educational facilities are very rare, non-existent even, so juveniles are still being placed in prisons by default.

On the outskirts of the town of Boma, the research team was able to visit the Centre for the Relocation, Supervision, and Recovery of Orphans (Centre de regroupement, d'encadrement et de récupération des orphelins), also called the "Maison familiale des enfants en rupture familiale" (Home for children whose family relationships have broken down). The centre was founded in 1997 and has been run ever since by Father Antoine. The Centre accommodates children who are in a situation of social isolation and works towards their re-entry into society. On the day of the research team's visit, 104 minors were present in the centre. The Centre's social mission is carried out by a team of ten volunteers who assure the care of the minors who stay there. The Centre also provides free education up to primary year 6 and free psychosocial counselling. Despite limited resources<sup>49</sup>, the material conditions of care are satisfactory (sleeping arrangements, food, access to healthcare, hygiene facilities, etc.), particularly thanks to a level of self-sufficiency with regards to food.<sup>50</sup>

However, for several years now, the Centre has been accommodating juvenile offenders who are subject to a placement order by the *juge pour enfant* (judge for juveniles); on the day of the visit, 12 children in conflict with the law were present in the centre by order of the court. According to its director, the Centre is not opposed in principle to receiving these juvenile offenders. Nonetheless, they present a serious problem for the Centre, given the difficulties of adapting its structure to receive them. The Centre simply does not have the necessary resources at its disposal for accomplishing the mission of state custodial educational facilities as defined in Regulation No. 344 of 1965.

On the one hand, the premises are not equipped with either a secure perimeter or guards to ensure the physical confinement of the minors placed there. The Centre is a place of imprisonment only to the extent that the juvenile prisoners want to stay. The effectiveness of a placement order is seriously brought into question by this situation of "voluntary imprisonment" which, while not unique to the centre in question, poses a general threat to its mission. The lack of strict physical controls on the minors placed in the Centre is damaging to the way it is perceived by the local community. According to the director, a certain resentment has developed among people living near the Centre since it began accommodating children in conflict with the law. Furthermore, the juveniles placed there are boarded alongside the other inhabitants of the Centre with no particular effective surveillance in a place where freedom of movement is the norm. The director reports several cases of sexual abuse of young girls in the Centre, committed by juvenile placed there, as well as the theft of a lot of equipment belonging to the Centre. Given this situation, the director deplores the lack of adequate training for his team in the care of children in conflict with the law.

Furthermore, placing children in conflict with the law in the Centre puts pressure on the resources at its disposal for the accomplishment of its mission. No state subsidies are provided to support the increase in the population it accommodates, while the Centre has to put new services in place to ensure that the care it provides is in conformity with its mission. To that end, a lawyer who used to be an inmate regularly visits the centre to ensure access to justice for the children in conflict with the law.

The Centre thus exercises a function which is delegated by the state, assuring the care of children in conflict with the law without actually being a "state custodial educational facility" as defined by Regulation No. 344. The minors placed in this private centre benefit, nonetheless, from material conditions which are far superior to those experienced in any of the prisons of Kongo Central. They also benefit from educational and legal services and leisure activities, which are extremely rare in Congolese prisons.

The Centre thus provides a public service that is inconsistent with Congolese law, without receiving any support from the state.

<sup>49.</sup> The centre exists mostly thanks to the generosity of private donors, who include former inhabitants who have since emigrated to Europe.

<sup>50.</sup> The centre has 5 hectares of cultivated land and some thirty pigs, as observed on location by the research team, Sunday 1 March 2015

<sup>51.</sup> This expression is frequently used by the people we met to designate places of imprisonment which no longer fulfil the necessary security conditions for the physical removal of prisoners from the general population.

### LIFE IN THE PRISONS 2. OF MATADI AND BOMA

The prisoners in the Matadi and Boma prisons are members of a veritable society within the prison walls. This society, as detailed earlier, is characterised by the poor quality of the material conditions necessary for individuals' survival and quality of life. In theory, the prison society should be managed by the state and based on strict principles governing the equal distribution of resources among the prisoners (Regulation No. 344 of 1965). However, a very different system is observed in practice.

### 2.1 WITHIN THE PRISON WALLS

The material conditions of imprisonment in Matadi central prison and Boma urban prison52, constructed in 1934 and 1905 respectively, are under extreme pressure due to overcrowding. When the "Na Bosembo Tokokani" project was launched in July 2014, Matadi prison had a population of 521 people (including six women) for a capacity of 150, while Boma prison had a population of 320 (including six women) for a capacity of 180: occupancy rates of 350% and 178% respectively. It should be noted that the occupancy of these prisons fluctuates every day, depending on new arrivals and departures, so the figures presented above merely serve as an indication.

Given the public provision for prisons (see above), these numbers make it impossible for prisons to meet the minimum standards for imprisonment. For example, three toilets and only one shower are available for use by men in Matadi prison,53 a ratio of 178 people per toilet.54

The prison administration has neither the material nor the human resources at its disposal to discharge all of its duties in relation to the care of prisoners; a palliative system of self-regulation by the prisoners therefore overrides the legal framework.

For example, Matadi central prison contains nine pavilions measuring 13 metres by 3.5 metres and three cells<sup>55</sup> measuring 3.5 metres by 3.5 metres. A legal principle of separation of prisoners is applied for women, minors, and members of the military, categories of prisoner that each have a pavilion of their own. The rest of the prison population, some 386 people (74% of the population), is, in theory, randomly assigned to the six pavilions of identical size, which each house between 26 and 94 occupants. The average sleeping space per prisoner is, accordingly, 0.5 m<sup>2</sup> in the pavilions and 1.02 m<sup>2</sup> in the cells, excluding women and minors.<sup>56</sup> While it is clear that the sleeping conditions for all prisoners are poor, the considerable variations between prisoners reveal the existence of an organised system for the allocation of resources.

On the one hand, the allocation of prisoners to the pavilions is not an objective process. In Matadi Prison, as in Boma Prison and numerous other prisons in the country,57 a system of payment for allocation is operated among the prisoners and, to an extent that is less clear, by the prison administration. In Matadi prison, pavilion number 7, ironically named "Hôtel Leydia"58 by the prisoners, is accessible to new arrivals in exchange for the payment of a flat rate of 50 US dollars.<sup>59</sup> This pavilion accommodates just 26 people, as opposed to the 80-90 or so in the other pavilions, excluding women, children, and military prisoners. 60 Former prisoners say this payment is made to the director on entering the prison.



<sup>52.</sup> Boma prison is the oldest penal establishment in DR Congo. Simon Kimbangu was held there at the beginning of the 20th century. Kimbangu's cell was shown to the research team by the director of the prison.

<sup>53.</sup> Observations made on location by the research team, Monday 23 February 2015.

<sup>54.</sup> By comparison, the minimum internationally recognised standard for refugee transit and reception camps is 50 people per toilet: Humanitarian Charter and Minimum Standards in Humanitarian Response: www.spherehandbook.org.

<sup>55.</sup> These cells are used for separating specific prisoners: in particular, those that are sick and those subject to disciplinary measures. Observations made on location by the research team, Monday 23 February 2015.

<sup>56.</sup> These two categories of prisoner each have a specially assigned pavilion: the average sleeping space for the women is 4.6 square metres, while the average sleeping space for the juvenile prisoners is 3.5 square metres, observations made on location by the research team, Monday 23 February

<sup>57.</sup> L'Obiectif, Les prisonniers du CPRK déplorent leurs conditions de vie, 26 May 2015.

<sup>58.</sup> L'hôtel Leydia is a hotel in the town of Matadi, which is considered very upmarket.

<sup>59.</sup> Group discussions with former inmates of Matadi prison, Tuesday 3 March 2015. 60. Observations made on location by the research team, Monday 23 February 2015.

On the other hand, even within the cells, a commercial system determines the prisoners' level of comfort. It is possible to rent a mattress for the sum of ten US dollars or a mat for six US dollars; the prisoners call this kind of sleeping accommodation a "sous-résidence". The lowest level of comfort is called " $3^{rd}$  class" and entails sleeping on the ground in the most unsanitary parts of the pavilion. Former prisoners report that they had to sleep squashed up against each other due to the lack of space.

As mentioned above, the pavilions and cells are closed during the hours when the prison staff (the director and his team) are not present, which means that prisoners cannot leave them between 5 pm and 7.30 am. They therefore spend more than 14 hours a day squashed together in pavilions with metal roofs, in a hot and humid climate.

This situation also means that access to sanitary facilities is only available between 7.30 am and 5 pm. The prisoners therefore, have to attend to their bodily functions within the overcrowded pavilion. While it is possible to buy a plastic bag from another prisoner, for the purpose of throwing excrement out of the skylight of the pavilion, for 500 CDF, many prisoners are obliged to relieve themselves in a corner of the pavilion. This dedicated corner is part of "3rd class" and is where people must sleep who are unable to pay the "frais de corvée" ("chores fee"), collected from the prisoners for cleaning the pavilion. As well as emptying the septic tank for the entire prison, which is permanently full.

This system for determining sleeping arrangements is illustrative of the overall situation reported by former prisoners and the families of prisoners encountered in the course of this study: the total unavailability of free goods or services in the prisons.

This situation results in the establishment of an informal but structured trading system, as demonstrated by the fixed charges for various services in any given prison.<sup>65</sup> This system can be said to go beyond the purely contingent nature of self-regulation of the material conditions of imprisonment and actually constitutes a genuine social organisation. Among the prisoners, the existence of distinct social groups can be observed, whose interactions determine how prison society is run.

<sup>61.</sup> Group discussions with former prisoners of Matadi prison, Tuesday 3 March 2015.

<sup>62.</sup> Idem.

<sup>63.</sup> According to the capita général of Matadi prison, the duty of cleaning the cells applies for the first two weeks of a person's imprisonment.

<sup>64.</sup> Group discussions with former inmates of Matadi prison, Tuesday 3 March 2015.

<sup>65.</sup> However, reports on the size of certain fees vary depending on whether the information was collected from families or from former prisoners: chore fees and taxes (between prisoners) on goods brought into the prison. It is possible that the amounts communicated by the prisoners to their families were part of a strategy for obtaining maximum support.

### BOX NO. 2

### Profile of the prison population

In the course of the various awareness-raising sessions conducted by lawyers during the "Na Bosembo Tokokani" project, it was possible to gather information on the profile of the populations of Matadi and Boma prisons. Though the following is by no means an exhaustive description, a few relevant characteristics can be noted.

The prison population being studied, and by extension that of Kongo Central, is mostly made up of young men. In fact, almost 60% of prisoners encountered were between 18 and 30 years old<sup>66</sup>, while the combined number of women prisoners in the two prisons varied between 12 and 20 people over the course of the ASF project.

These young men come from relatively insecure social situations: more than 60% of them are unmarried and the majority were either out of work or engaged in low-wage activities prior to imprisonment.

However, there seems to be a certain amount of diversity among the members of this population in terms of their level of education: more or less equal numbers of people encountered had received primary and secondary school levels of education (without finishing them), while many individuals had received no school education at all.

It is worth noting that both prisons have very low numbers of juvenile prisoners. According to the directors of the two institutions, the number of minors in the combined population of both prisons never exceeds ten people. <sup>67</sup> In Matadi central prison, children in conflict with the law are housed in a special pavilion<sup>68</sup> under the surveillance of an adult prisoner.

The prison population is, however, fairly homogeneous in terms of the reasons that people are in prison. More than half of the prisoners encountered were prosecuted or convicted for one of the three following offences: breach of trust, rape, and theft.

It is impossible to draw any conclusions from these reasons for imprisonment, without a criminological analysis on a national scale. However, as we well see later on, certain aspects of judicial practice tend to standardise the classification of offences for which prisoners are prosecuted.

Finally, it is worth noting that almost half of the prison population (47% of prisoners in Matadi and 51% of prisoners in Boma in July 2014) is made up of prisoners awaiting trial, who haven't been judged and are thus innocent until proven otherwise. These figures show a strong discrepancy with the national average of 82%,69 which, according to the players encountered in the course of this study, is due to the relatively functional system for checking the legality of pre-trial custody in these two prisons: inspections by the Public Prosecutor's office, the holding of chambres de conseil (hearings that consider the legality of pre-trial custody and that can result in the granting of bail), etc.

In conclusion, the average profile of a prisoner in the context of this study is that of a man who is less than 30 years old. This young man is unmarried and has probably only received a primary or secondary school level of education. Before being imprisoned, he held a low-wage occupation (if any) and he has probably not been found guilty of any offence.



<sup>66.</sup> Average age of participants in awareness-raising sessions conducted between July 2014 and February 2015.

<sup>67.</sup> According to the information gathered, minors brought to Boma prison by the police are systematically released by the public prosecutor's office or transferred to the Centre for the Relocation, Supervision, and Recovery of Orphans.

<sup>68.</sup> Placing juvenile offenders in prisons is in contradiction with Congolese law, but tolerated in practice due to the absence of dedicated facilities.

<sup>69.</sup> Information from the website www.prisonstudies.org.

### 2.2 | POWER GAMES

At the centre of prison society is one particular group of prisoners: the "capitas". The nature and the role of this group can only be understood in the more general context of the administration of prisons in DR Congo. As explained earlier, the prison authorities have to manage a large population with extremely limited material and human resources. The external security of the prisons is delegated to the security services (police and army); the internal security of prisons and detention centres is not dealt with by a specialised professional body either. In the absence of internal capacities for the management of prisoners, prison directors in DR Congo systematically rely on particular groups of prisoners, generally known as "capitas". The practice of using capitas is well-established in the operation of prisons in Kongo Central: none of the institutional players encountered questioned the role of the capitas in the running of prisons and detention centres.

It was possible to analyse how the *capitas* work through direct observation in Matadi and Boma prisons and in the discussions with former prisoners. Several factors appear to shape the way these groups operate. In both prisons, the groups of *capitas* have a pyramidal structure. At the top is the "capita général", who is chosen by the director of the prison.

The *capita général* of Matadi prison, at the time that the research was carried out, was a young man sentenced to five years in prison, of which he had served four, for criminal conspiracy. The *capita général* of Boma prison was a sergeant major in the FARDC, sentenced to five years in prison for robbery, who had served two years of his sentence at the time of the survey.

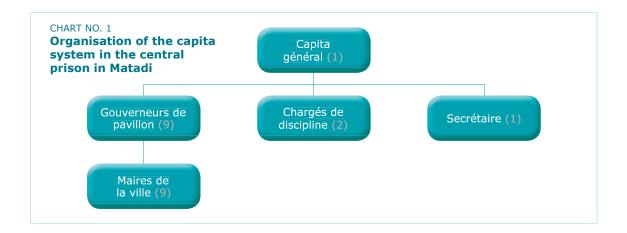
Subject to agreement by the director of their prisons, the two *capitas généraux* are able to put together a team, which can vary in size, in order to carry out their mission of maintaining order and discipline among the prisoners. In particular, they are responsible for:

- inducting new prisoners;
- disciplinary measures;
- preventing escapes;
- controlling movement within the prison;
- organising the distribution of food and supervising sanitary facilities.

They both have the power to physically coerce other prisoners, as do their teams, and are in regular communication with the director of their prison. The *capita général* of Boma prison also has the right to accompany prisoners who have to leave the prison, for example, in the event of the transfer of a sick prisoner to a hospital.

From the point of view of the prison administration, accordingly, the *capitas* are a necessary palliative for the management and control of prisoners. However, from the point of view of other prisoners, the *capitas* are a predatory social group within the prison. During the group discussions carried out in Boma and Matadi, former prisoners reported traumatic experiences at the hands of the *capitas*. The *capitas* can decide independently to coerce other prisoners, for example by placing them in solitary confinement, and benefit from the best material conditions of imprisonment: accommodation, food, freedom of movement, etc. The *capitas* are omnipresent in the lives of the prisoners, for whom they represent the coercion, arbitrariness, and inequality that dominate life within the prison walls. The group of *capitas* in Matadi prison, for example, operates according to a system of division of labour among its members. The organisation of the work is overseen by the *capita général*, who deals with and reports to the prison director.

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The secrétaire is responsible for the allocation of pavilions. It is not clear from the data collected whether it is the secrétaire or the director of the prison who collects the fee for a position in pavilion No. 7 (the best pavilion).

The chargés de discipline ("disciplinary supervisors") or "délites" maintain order during the time spent by the prisoners in the prison courtyard (7.30 am-5 pm). According to former prisoners, it is generally forbidden to move around without paying a tax to the capitas. The chargés de discipline also receive new prisoners.

The gouverneurs de pavillon manage the pavilions and ensure order within them once the doors are shut. They assign new prisoners to the different classes according to the payments they are able to make.

The maires de la ville ("town mayors") collect the "frais de corvée" ("chore fees") and ensure that cleaning duties are carried out by new prisoners who are unable to pay the waiver fee.

Given that this group is so structured, and that its role is sanctioned by the legitimate authority in the prison, the rest of the prisoners find themselves dominated by the group of capitas. In the context of the self-regulation of scarce material goods, the capitas control the power plays between prisoners, to their own advantage.

In fact, observation suggests that the capitas become richer during their time in prison. In the prisoners' daily lives, the capitas acquire a number of material and financial resources: internal movements, access to food, access to sanitary facilities, receiving visitors to the prison, taxes on goods brought by visitors to the prisoners, frais de corvée, payment for the classes of comfort in the pavilions, etc.

These resources are only redistributed to a very limited extent to the other prisoners (see below) because of the social and physical domination of the group of capitas; they are, to an extent, above the self-regulated system of trading goods and services in the prison.

While it is possible to find organisational differences in the capita systems from one prison to another, the self-regulation of interactions between prisoners in general totally violates the principle of equality before the law. Conditions of imprisonment vary considerably depending on the social group to which the prisoners belong in prison. Furthermore, the system observed within the prison walls is particularly harsh for prisoners staying for short periods (regular pre-trial custody and short sentences). Entering the prison is a particularly violent process in which new prisoners' capacity to pay a series of charges will directly determine the conditions of their imprisonment. New prisoners are confronted with a hierarchy which is illegitimate in their eyes and which there are no available means of challenging, since the capitas basically have a monopoly on communication with the director and his official team. Recommendations from former prisoners for the improvement of conditions of imprisonment have highlighted the need to "reduce the power of the bosses".70

The conditions of imprisonment in which people find themselves are therefore directly determined by their capacity to function within prison society, particularly from a financial point of view. Each individual possesses their own economic and cultural capital: income, economic assets, social relationships, level of education, etc. The inequalities between members of Congolese society are thus imported within the prison walls.





# Part Two: THE PRISON IN CONGOLESE SOCIETY

"We are all potential prisoners."

A member of civil society

Founded on the principle of separation from the rest of society, the prisons of Kongo Central have a complex relationship with life outside the walls. Interactions between the prisons and the outside world are mostly governed by the money-making systems which determine both the conditions in imprisonment and the probability that a person will at some point be imprisoned. As with the health risks of prison, these interactions between the prison and its surrounding environment mean that imprisonment is a concern for the whole of society.

# 1. SOCIO-ECONOMIC ASPECTS OF IMPRISONMENT

### 1.1 THE HEALTH RISKS OF PRISON

The sanitary situation in Congolese prisons is the cause of numerous deaths within prison walls every year. 71 In Boma urban prison alone, eight deaths were reported in 2014 by a member of the prison administration. The figures are not available for Matadi prison.

As described above, access to food is a daily worry for prisoners, while access to good food is a luxury many prisoners are denied (see below). Furthermore, the sanitary facilities in Matadi and Boma prisons cannot meet the needs of the population (reminder: in the Matadi prison, there is a ratio of 178 people per toilet).

The lack of sanitation in the pavilions in which the prisoners live (see above) is only slightly alleviated by the attempts at cleaning undertaken and financed by the prisoners themselves. In practice, this privatisation of cleaning services excludes a great many prisoners from access to sanitation, specifically those who are unable to buy the products needed. There is serious overcrowding among the prisoners in the pavilions (reminder: 0.5 m² per prisoner) and when the daily meal is being prepared. As a result, there is a strong prevalence of what are known as "maladies des mains sales" (diseases spread by "dirty hands") among prisoners (gastric and dermatological diseases). The fact that a significant portion of the prison population suffers from eczema and other skin diseases is visible to the naked eye.<sup>72</sup>

Medical experts encountered during this study report a variety of diseases in the prisons of Kongo Central: tuberculosis, typhoid, sexually transmitted diseases (STDs), and malaria, in particular.

<sup>71. 211</sup> deaths in imprisonment were documented between January 2010 and December 2012 as human rights abuses, BCNUDH (MONUSCOHCDH), Report on deaths in places of imprisonment in the Democratic Republic of the Congo, Ibid, p.4.

<sup>72.</sup> Observation on location in Matadi prison, Thursday 12 February 2015.

While some of these diseases are directly related to the lack of nutrition and the unhealthy conditions in which the prisoners live (contact with pests and parasitic insects, humidity, the poor nutritional quality of the meals, exposure to human excrement, etc.), it is difficult to establish exactly to what extent these diseases are contracted on the inside or are brought into the prison by the prisoners. It is clear, however, that they develop very rapidly within the prison.

There is no access to treatment to slow the development of diseases.73 Matadi central prison has an infirmary whose sole function is to isolate the most contagiously sick people, and which contains hardly any pharmaceutical supplies. Occasional visits by doctors take place in the prison but the doctors point out that they are useless, as the prescribed treatments are not provided to the prisoners, unless they have the means to pay for them. The prisoners in Matadi prison have, it seems, been abandoned by public health policy in Kongo Central.

Several examples illustrate the health risks that prisons pose to the rest of the population. Some observers claim that prostitutes pay visits to those prisons with the least strict security conditions. However, the extent of this phenomenon cannot be evaluated from the research data.

Furthermore, there are numerous visitors to the prison from outside. Visiting families and friends of prisoners, prisoners' lawyers, members of civil society who occasionally come to distribute items (food and clothes), and even officers (magistrats) of the Public Prosecutor's Office forced to come and hold hearings in the prison because of the lack of resources for transferring people to the courts, are therefore all exposed to a highly contagious environment.

Finally, due to the lack of facilities for the adequate treatment of prisoners on site, and in an act of desperation by the directors to limit contagion within the prison walls, transferring the most seriously ill prisoners to public hospitals has become common practice. These transfers are carried out with the limited resources that are available for the administration of prisons: for example, the capita général of Boma prison accompanies prisoners to hospital himself.

Once prisoners are hospitalised, their surveillance is no longer undertaken by the prison administration, which does not possess the resources to carry out this task. Many members of civil society report that transferred prisoners take advantage of the opportunity to escape. They claim that these escapes are sometimes encouraged by those responsible for the surveillance of prisoners who are suffering from particularly serious health problems. Civil society organisations conclude that an organised system exists which allows prisons to let their prisoners die outside the prison walls. To the deaths in imprisonment, we can therefore add deaths from imprisonment, where a death in the public arena is nonetheless a result of the disastrous conditions of imprisonment.

Thus, the lack of health care for prisoners poses a threat to society as a whole, mitigated only to the extent that the prisoners are capable of dealing with the health risks encountered in prison themselves.

<sup>73.</sup> Strict conditions for the prisoners' access to care are set out in Article 27 of Regulation No. 344 of 1965: "At least once a month, the doctor designated by the minister of the central government responsible for public health visits the central prisons, the maisons d'arrêt attached to them, and the prison camps in the territory of the town of Léopoldville. At least once a month, the doctor designated par the governor of the province visits the central prisons, district prisons, the maisons d'arrêt attached to them, and the prison camps in the territory of the province. As often as possible, and at least once per quarter, the same doctor visits the police prisons and the maisons d'arrêt attached to them in the territory of the province. The visiting doctor checks whether prisoners are receiving enough food, whether it is of sufficient quality, and whether the sanitary conditions in which they live are satisfactory.



### BOX NO. 3

### Camp Molayi of the national police

This camp, run by the Congolese National Police, physically surrounds Matadi central prison and accommodates police officers and their families. It is home to 3,600 occupants and its children go to school in facilities situated within the camp, in which there are water springs and in which the inhabitants grow agricultural products.

Matadi prison is built on a mound at the top of a hill, slightly above the camp, which is situated on the plateau. In some places, a gap of barely a few metres separates the residences of the families of the police officers from the perimeter of the prison. Some pavilions and cells look out directly onto the houses in the camp. The inhabitants of the camp frequently approached the research team during its visits to Matadi prison; they have to live with the permanent odour of human excrement.

Firstly, Matadi prison is constructed over a septic tank, the capacity of which is by far outstripped by the current population of the prison. Visible to the naked eye, and permanent according to the inhabitants, a run-off flows from the prison, through the part of the camp that overlooks the river, all the way to the banana plantations at the foot of the hill.

Secondly, the inhabitants of the camp have to live surrounded by the filth which comes from the pavilions. As explained earlier, during the long hours spent shut in the pavilions, prisoners are forced to relieve themselves on the floor of the pavilion or by throwing the contents out through the skylight. Due to the permanent stream of excrement and waste thrown into their section by the prisoners, the inhabitants have renamed this part of the camp "Ekunde" (in Lingala) or "bin".

The inhabitants of the camp, especially those whose quarters are close to the prison, have to make do with this lack of sanitation. The officer commanding the camp and police medical experts report numerous cases of diseases caused by "dirty hands" among the inhabitants, including cases of typhoid and dysentery.

Poor access to hygiene within the prison walls thus creates a situation which is hazardous for people's health and impossible to contain because of the pressure on resources and the obsolescence of the infrastructure. As illustrated by the detrimental relationship between the prison and the Molayi camp, the state of hygiene within prison walls poses a health risk for the whole of the population which is potentially in contact with prisoners.

### 1.2 | ECONOMIC AND SOCIAL LIFE

Imprisonment causes a breakdown in the prisoner's economic and social connections. The prisoner can lose a great many opportunities: employment, assets, education, social relationships, etc. Former prisoners recall feeling a sense of emptiness during their time spent in imprisonment, as there is no possibility of economic or social development (training, hobbies, work, etc.) in prison. This futility is traumatising for prisoners, who suffer more or less acutely depending on the nature of the opportunities lost and the seriousness of the offence of which they stand accused. In particular, people held for minor offences express a lot of anger about the futility and senselessness of their time in imprisonment, for themselves and for society as a whole. We can also assume that detaining the head of a household causes a loss of revenue for the rest of the family and that the prisoner's situation will also affect the economic life of the household.

In order to ensure their daily survival within the prison walls, former prisoners and prisoners' families report having to put in place economic strategies: given their vital importance, these strategies mobilise every available resource (economic, social, and cultural capital). Imprisonment thus creates a chain reaction that extends well beyond the walls of the prison.

As explained earlier, the availability of basic goods within the prison is limited: food, clothes, medical supplies, etc. Given the shortage or lack of supplies provided by the state, other methods must be found to ensure the physical survival of the prisoners. As a result, a complex system of importation

operates, based on the prisoner's social connections, in other words their ability to mobilise and obtain support from the outside. At the centre of these means of support is the prisoner's family, a prisoner's main social connection and a key part of all the survival strategies observed.74

The role of the family is crucial to the satisfaction of all the prisoner's basic needs. We will illustrate this by taking the example of food. The provision of a daily meal is a service that only exists in a few prisons in Kongo Central. In Matadi and Boma prisons, food is provided by the state. However, according to all the players interviewed, the amount provided only ensures one basic meal per day. Former prisoners report that this meal consists mainly of a watered-down starchy gruel. According to medical experts who spoke to the research team, regular consumption of this food causes serious gastric problems for the prisoners. Prisoners supplement the prison food via other sources, in a practice known as "bongolage". 75 This practice is essential for satisfying prisoners' nutritional needs and, by extension, has an impact on the state of their health. However, "bongolage" is entirely dependent on people's ability to import food or to procure it within the walls of the prison, in other words on the ability of the prisoners to mobilise resources. Aside from the group of capitas, for whom self-sufficiency within the prison walls is guaranteed by a system of taxation, prisoners have to mobilise resources on the outside through family or friends.

The importation of basic goods is, of course, partly tolerated by the administration, since forbidding it completely would amount to a death sentence for the prisoners. Nevertheless, according to former prisoners, prisoners' families, and members of civil society, while tolerance apparently exists, the importation of goods is part of the commercial system that governs life in the prisons.

A way of life and modes of survival are built up around everyday objects. Possession of the most mundane personal effects (a plate, clothes, and hygiene products) becomes essential to daily survival and anything that can be exchanged acquires a market value; what it means to possess certain objects changes according to their value within this commercial system. At the very top of the value system is the mobile telephone. Possession of such an object enables prisoners to communicate with the outside, and this communication can be used to pay for the purchase or hire of other goods or services. Other items can prove to be important assets, especially those that make it possible to develop a commercial activity (such as hairdressing, tailoring, or domestic chores).

The support provided by the family, however, encounters practices of taxation both outside and inside the walls of the prison, which increase the burden of imprisonment and destabilise the lives and survival prospects of prisoners. The prisoners' families we met, as well as numerous members of Congolese civil society<sup>76</sup>, report that the members of the national police and of the FARDC, who oversee the exterior security of the sites, charge a fee for access to the prisons. While the public authorities, in the course of the interviews that were carried out, did not directly acknowledge this practice, it is interesting to note that one member of the security services saw it as a "favour" that he had granted a family access free of charge to the place where a family member was imprisoned. In fact, during their visits to Matadi central prison, members of the research team were themselves solicited for money by the members of the FARDC on duty, without access to the site actually being made conditional on payment.

The families we encountered reported having to systematically pay members of the security services a sum amounting to between 500 and 1,000 CDF, equivalent to the price of a "sucré" in Kongo Central. Inside the prison, it is often necessary to make a payment so that the person responsible (a capita or a security guard, depending on the prison) will agree to let the prisoner out of the main courtyard. On returning to the courtyard at the end of the visit, prisoners are then searched by the capitas and a portion of any goods brought by the visitors is taken off them.

The corrupt practices of the public officials and the predation among the prisoners are very hard on the families, who are already devastated by the imprisonment of a loved one. Because the prisoner is so heavily dependent on them, the family is obliged to dedicate a significant portion, if not the entirety of its economic means (income and capital) to the support of the imprisoned family member. Several of the family members encountered confided that they had had to sell or mortgage family property, particularly land, in order to be able to pay the various charges relating to the imprisonment of a loved one.

Ensuring that the prisoner's basic needs are met, as well as taking on all the fees related to the legal proceedings (see below), pushes families into poverty. Families, united in the face of judicial

<sup>77.</sup> A "sucré" is a non-alcoholic drink. This is a term that is frequently used within corrupt practices in DR Congo as a way of expressing the amount being asked for in code.



<sup>74.</sup> Meant here in a broader sense than just the nuclear family.

<sup>75. &</sup>quot;Bongolage" is a word derived from the Lingala verb "kobongola" meaning "to transform". In the context of imprisonment, it designates the process by which prisoners supplement the meals provided by the prison administration via their own means. 76. Marie-France Cros, Dans l'enfer des prisons congolaises, Lalibre.be, 5 February 2006.

measures that have nothing to do with them, develop extensive strategies for the raising of funds to cope with the imprisonment of a loved one; they have to appeal to family and social networks that go well beyond the nuclear family. Given the system of horizontal solidarity that exists in the Congolese context, we can assume that imprisoning people entails large-scale consequences for the economic life of households.

Given this situation, a fundamental observation can be made about the need for physical proximity between prisoners and their families. The court ruling which places a person in one or other of the prisons or detention centres in Kongo Central directly affects the prisoner's living conditions and chances of survival in imprisonment. The research team was able to observe the tragic situation of people who are estranged from their families, who endure the most extreme conditions in imprisonment. Having never possessed much in the way of resources on the outside, these people have to resort to the sale of their most essential items (some prisoners spend their days in their underwear, having traded their clothes) or, in some alleged but unverified cases, their bodies (prostitution) to ensure their survival. Thus, imprisonment entails a degradation of human dignity that can lead to death.

This situation raises fundamental questions about the prison's place within legitimate methods of punishment in Congolese society. There is not one legal text that permits the judicial authorities to condemn, or pre-emptively expose, a person to starvation, disease, or violence at the hands of a private group. The judicial system not only acts as the main determining factor in the size of the prison population but also as a factor in the conditions encountered by prisoners.

# 2. THE PROFIT-MAKING NATURE OF THE PRE-TRIAL JUDICIAL PROCESS

The observations made in the course of this study reveal a series of illegitimate practices on the part of officials with authority within the judicial system. Drawing on the accounts of former prisoners, prisoners' families, and various people involved with the justice system in Kongo Central, we will now attempt to trace the stages of the judicial process that a person must go through when suspected by the judicial authorities of involvement in an offence.

### 2.1 BEHAVIOUR OF THE OFFICERS OF THE POLICE JUDICIAIRE

In the front line of criminal proceedings is the officer of the *police judiciaire* (OPJ). According to one civil society activist, there is "far too great a discrepancy between the OPJs' socio-economic situation and their power over other citizens." In that context, numerous cases have been reported of OPJs using their legal powers arbitrarily.

First of all, the code of criminal procedure (CPP, Code de procédure pénale) dictates that the OPJs are responsible for "recording offences" (CPP, Article 2). This grants them some room for manoeuvre in the classification of offences, which they are alleged to use to their own advantage.

As reported by a partner of the *police judiciaire* in DR Congo, OPJs underrate some offences so as to avoid the involvement of the public prosecutors in the procedure and rate others more highly in order to bring them under their remit. For example, a case of rape can be classified as an indecent assault and a simple theft can become a conspiracy.<sup>78</sup>

If the offence in question falls within the remit of the OPJ, the OPJ's mission is to collect "the accusations, complaints, and reports relating to these offences" (CPP, Article 2). To that end, the OPJ can go to meet the alleged culprit or use the "mandat d'amener" (a kind of arrest warrant) procedure (CPP, Article 5) to compel the alleged culprit to appear. Former prisoners, lawyers, and activists in civil society unanimously assert that, in the vast majority of known cases, a visit or

summons from an OPJ leads to a financial transaction with the alleged culprit. For one thing, OPJs can make use of their powers of physical coercion over alleged culprits (CPP, Article 4)79 to force them to remain within the police station or local police station. What's more, the OPJ can make release from confinement conditional on a payment in cash or in kind by the prisoner. People we encountered who are involved in civil society and international organisations stated that this release on condition of payment is operated systematically by OPJs and thus constitutes a large-scale practice of corruption.80

It is worth noting that not every financial transaction necessarily involves corruption, as Congolese law provides for a procedure called a "settlement fine" (amende transactionnelle) (CPP, Article 9), which is subject to conditions that theoretically limit it to certain offences.<sup>81</sup> Nonetheless, for a payment to be defined as a settlement fine, formalities must be observed: for example, it must be deposited in the public finances. However, the payments reported in the context of collecting data for this study are informal in nature and are made directly to the OPJ, so it is clear that they represent corrupt practice.

We can therefore conclude that there is a link between the criminal proceedings pursued by OPJs and the pursuit of their own private interests. While the notion of private interests is a complex one to pin down, 82 the pursuit of economic gain is the most prominent factor in the actions of the OPJs. The organised and systematic nature of this pursuit of interests indicates that the misuse of criminal proceedings is an element in a commercial system. These abuses have severe consequences for people who, completely arbitrarily, can spend long stretches of time in police cells or be referred to the Public Prosecutor. The link between the pursuit of private interests and the deprivation of liberty gives the actions of the OPJ a decisive influence, which affects every part of the judicial process that can send a person to prison.

This perverse system is clearly widespread in the judicial system of Kongo Central, as similar examples are reported at each step of the judicial process. A commercial process can be observed at each stage of the prisoner's progress, as illustrated by the personal account presented below.

### BOX NO. 4

### Personal account of a former prisoner of Boma urban prison83

"I work as a cameraman. On my way back from a job, I went to get telephone credit from a retailer in my neighbourhood. When I arrived home, I realised that the vendor hadn't transferred the credit that I had paid him for, so I went back to see him. We argued and ended up coming to blows.

The police intervened and brought me to the local police station in Boma. I was then put in a cell with other people who had been arrested. The senior police officer asked me for 30,000 CDF in exchange for my release. I was able to inform my boss, who is involved in voluntary activities in defence of human rights. When my boss arrived, he offered to pay the 30,000 CDF but asked for an official receipt for the payment of the sum. The police officer was angered by my boss's request and decided to have me transferred to the municipal police station.

I spent a day and a night in the police cell before an officer [magistrat] of the Public Prosecutor's Office came to check on me because he had been contacted by my boss. He told me that, for 80,000 CDF, I could be released immediately and he would look into getting my case dropped. I refused the offer because it was too much money and I was transferred to Boma urban prison.

After four days, the Public Prosecutor finally agreed to my release in exchange for a bail payment of 25,000 CDF. I never heard anything more about proceedings against me."

<sup>83.</sup> This testimonial was collected on Saturday 28 February at Boma by the research team. Originally recounted in Lingala, the testimonial was translated into French by the person who recorded it in its original language.



<sup>79.</sup> Article 4 of the CPP: "If the infraction is punishable by at least six months of penal servitude or if there is a real danger that the accused will flee, or if the identity of the accused is unknown or in doubt, the officers of the police judiciaire may, having arrested the person in question, take them into

custody and immediately bring them before the relevant judicial authority, if there are genuine indications of guilt".

80. The international NGO Transparency International defines corruption as "an abuse of entrusted power for private gain": www. transparency.org/ what-is-corruption#define.

<sup>81.</sup> According to the CPP, this fine is a measure that OPJs can impose for "any offence within their jurisdiction"; it must not exceed the "maximum fine that can be imposed, increased, where relevant, by the supplements provided for by law" and can be imposed only in "circumstances in which jurisdiction of the judgement would be limited to the imposition of a fine or, where relevant, confiscation."

<sup>82.</sup> It may be in the private interests of the OPJ to follow legal procedure, or to misuse the criminal proceedings for other purposes, such as gaining social recognition or obeying a misbehaving hierarchy.

## 2.2 BEHAVIOUR OF OFFICERS (MAGISTRATS) OF THE OFFICE OF THE PUBLIC PROSECUTOR

The testimonies collected, like this person's story, demonstrate that those working in the judicial system systematically use their powers of physical coercion as an element in commercial transactions.

The officials of the Public Prosecutor's office (OMPs) play a key role in imprisoning people. They decide whether people are deprived of liberty while awaiting judgement and oversee the legality of people being remanded in pre-trial custody. <sup>84</sup> In particular, the OMPs have the power to issue mandats d'arrêt provisoire (MAP) (provisional arrest warrants, CPP, Article 28), authorising them to hold a person in pre-trial custody. The MAP procedure is, accordingly, crucial in the administration of justice because it takes away a person's normal right to freedom and initiates a situation of pre-trial imprisonment which, according to the law, should only be used in exceptional cases. Various accounts, however, suggest that the MAP can be an economic weapon in the hands of the OMP.

On the one hand, all independent observers (civil society, international organisations, and lawyers) of justice in Kongo Central report a systematic use of the MAP, and thus the deprivation of liberty, against people suspected of committing an offence. On the other hand, the accounts collected indicate a widespread tendency on the part of the OMP to solicit payments from people who are "mappés" or subject to a MAP. It should be noted that at this stage in the legal process, suspects can still be asked to pay a settlement fine, according to the law. The OMPs encountered (see Annexe 1) admit, moreover, that they favour measures for the "compensation of victims" ("désintéressement des victimes"), rather than the pursuit of criminal proceedings for minor offences.

In practice, various factors suggest that the transactions between people subject to a MAP and the OMP do not follow the procedures established by Congolese law. For one thing, just like at the level of the OPJ, there is much confusion about the nature of the payments made to the OMP. Accounts by lawyers, members of civil society, former prisoners, and prisoners' families indicate that this payment is made face-to-face, with no official certifying documents. What's more, the payment of the amount, presented as a settlement fine, seems to depend on a prisoner's means rather than on the nature of the offence. Extremely varied amounts are reported by former prisoners and others involved for similar offences (between 50 and 1,200 US dollars for similar offences).

These factors form the basis of a possible economic strategy underlying the issuing of a MAP, and thus, the deprivation of liberty by the OMP. Civil society activists and some lawyers in Kongo Central consider the issuing of a MAP to be a turning point in the process of imprisonment, after which a payment will be necessary to obtain a person's release. We can therefore consider the issuing of the MAP to be the institutional trigger (as opposed to the arbitrary use of physical coercion by the OPJ) for a commercial process in which a person's private resources will directly determine the likelihood and the conditions of their imprisonment.

The testimonies we gathered indicate that this transaction can take different forms and produce different effects. After the MAP has been issued, the prisoner must legally be brought before a judge who decides whether they are to be remanded in pre-trial custody or released on bail while awaiting trial and judgement according to the provisions of the CPP (CPP, Article 28). In particular, the judge can, if the legal conditions permit, grant a person's interim release in exchange for a bail payment meant to guarantee the attendance of the accused during the various stages of the procedure.<sup>85</sup>

While, in theory, all of these decisions should be based on a consideration of the details of the case and of the procedures applying to the case in question, bail payments are systematically applied by the officers (magistrats) of the Public Prosecutor's office as a condition of pre-trial release, according to accounts by people who are not part of the judicial system. It is worth noting here that not one of the former prisoners or family members of prisoners encountered was able to report a pre-trial release being granted without a sum of money being paid. It is not always clear whether the payment of the sum in these cases represented a settlement fine or a bail payment. Nonetheless, several decisive factors can be observed.

<sup>84.</sup> Article 28 of Regulation No. 344 of 17 September 1965 on the prison system: "At the start of every month, an officer of the relevant public prosecutor's office visits the central prisons, the district prisons, the maisons d'arrêt attached to them, and the prison camps. In the course of his travels, he visits the police prisons within his jurisdiction and the maisons d'arrêt attached to them. He checks the register of admissions and the register of inmates and verifies that no person arrested is being held for longer than is necessary to bring them before the competent judicial authority for a hearing. He also checks that the prisoner's personal file is being properly kept."
85. Article 32 of the CPP: "While authorising placement in pre-trial custody or its extension, the judge may, at the request of the accused, order the

<sup>85.</sup> Article 32 of the CPP: "While authorising placement in pre-trial custody or its extension, the judge may, at the request of the accused, order the accused to be released on bail nonetheless, on the condition that the accused deposits with the court clerk, as a security, a sum of money intended to guarantee the attendance of the accused at every stage of the procedure and the implementation of a sentence of imprisonment as soon as required. Release on bail will be granted on condition that the accused does not cause any disruption to the hearings and does not engage in any conduct that will cause scandal."

To start with, as with the settlement fine payed to the OMP, the bail procedure is employed in a subjective way, to say the least, by the officers (magistrats) of the Public Prosecutor's office. In fact, the amounts reported in the accounts fluctuate, demonstrating that the calculation of the amount is arbitrary, as is the appropriateness of the bail payment. People who present guarantees of appearance (work, family, etc.) are asked for very large bail payments (up to 1,200 US dollars in a case of professional litigation), while other people can pay relatively modest sums for offences of a similar nature.

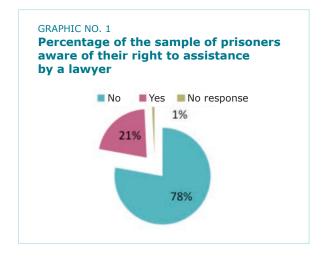
According to these accounts, a bail payment can produce different effects. In some cases reported by former prisoners, the payment of the sum requested quite simply put an end to the criminal proceedings against the people in question, without any further steps being taken. In other cases, the payment of the amount led to the granting of a simple lifting of the remand, which is not the same thing as release on bail.86 On the other hand, none of the former prisoners encountered were later able to recover the sum paid as bail to the *magistrat*. Lawyers report that there is a systematic difference between the amount negotiated with the magistrat and the amount recorded on the official bail receipt issued on behalf of the public finances.

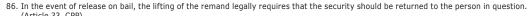
Evidently, there is a clear difference between the effects that bail has in practice and the effects provided for in Congolese law. The differences in these effects reveal a systematic perversion of criminal proceedings. The connection between the payment of a sum of money and the supplying of a legal document providing for the release or continued freedom of the person in question demonstrates a misuse of legal powers, on the part of the officers of the Public Prosecutor's office, in the pursuit of private interests, in other words a corrupt practice.

### 2.3 CONSEQUENCES FOR THE JUSTICE SYSTEM

In practice, the economic aspects of pre-trial freedom can displace legal principles (the presumption of innocence and the exceptional nature of pre-trial custody) in the activities of those working in the sector. Predatory behaviour by those working in the judicial system takes place in relation to those held in pre-trial custody, who have very limited ability to resist abusive demands made by the authorities.

The person held on remand often faces criminal proceedings alone. As shown in the graphic below, only 21% of prisoners who participate in ASF awareness-raising sessions are aware of their right to a lawyer.87





<sup>87.</sup> See Box 2 for details on how this data was collected.



And yet, the right to the assistance of a lawyer is crucial to people's capacity to defend themselves against criminal proceedings. The widespread lack of knowledge of this right among prisoners is evidence of their vulnerability when facing the authorities of the judicial system. This ignorance encourages a veritable system of competition between the various players involved in pre-trial custody.

First of all, the experiences of custody reported show that there is a tendency for officials from the Office of the Public Prosecutor (OMPs) to be omnipresent during the pre-trial phase. Former prisoners, whose cases, it should be noted, were handled by a lawyer, claim that they were contacted directly by OMPs or by officers of the Public Prosecutor's Office to negotiate a payment in return for their freedom in advance of the trial. For example, several former prisoners and others with experience of the Boma prison reported frequent visits by a particular OMP to the prison. During his visits, the OMP would speak in private with certain prisoners, who called him "maître" (a term used in French to address lawyers). According to the lawyers spoken to, this OMP offers prisoners a service of drafting applications for release on bail.88 This direct competition with lawyers is apparently not unique to the OMP in question, as independent observers of the sector have reported similar practices by prison governors. These examples suggest that there is competition between those with different occupations in the justice system when it comes to offering services to prisoners.

Over and above their anecdotal nature, these examples also show that OMPs try to establish direct links with people in pre-trial custody. At the very least, these links cause confusion between the roles and responsibilities of those working in the judicial process and must give rise to worries about prisoners' right to a defence, as in some cases they are being advised by an official of the public body they are facing.

Moreover, the financial transactions reported earlier turn pre-trial custody into an economic asset for those working in the sector. Those people, with roles that are varied and that are not known to prisoners, offer them a variety of solutions and strategies for obtaining their freedom before the trial. The judicial system thus becomes a veritable market of imprisonment; it is clear that this trading seriously damages the functioning of the system.

For one thing, the added value of legal advice (more particularly, a lawyer) is seriously brought into question, as the invocation of the law is not necessarily the most effective method of obtaining release. According to the testimony of lawyers and of prisoners' families, the lawyer can become a kind of intermediary in financial transactions between the officers of the Public Prosecutor's office and prisoners (negotiating the amounts and methods of payment), which explains the practices mentioned above whereby officers of the Public Prosecutor's office aim to discourage the use of a lawyer. Some lawyers report having to reluctantly alter the nature of their assistance to the prisoner and provide a fund-raising service.89 Lawyers in DR Congo carry out their work under oath and are regulated by a code of ethics which includes the principles of the dignity of the profession and the independence of the relationship with the client. Acting as a financial intermediary does not comply with these principles, and can also reduce the added value of the lawyer's profession in the eyes of those subject to the courts' jurisdiction and of the officers of the Public Prosecutor's office.

Prisoners, moreover, can be put in a position where they have to choose between obtaining their freedom at a price from public officials (OPJs, OMPs, and officers of the Public Prosecutor's office) and a defence strategy based on an invocation of their rights in law. If they choose the first option, prisoners who have the means can immediately obtain their freedom and even have the charges brought against them dropped. If they choose the second option, prisoners can only hope for release before the trial after a certain amount of time in detention (at least, the time specified by the MAP) and criminal proceedings will continue until the judgement. To sum up: this situation creates a conflict between trust in the effectiveness of legal processes and rational choices on the part of prisoners and their families; former prisoners and the families of prisoners encountered state unambiguously that, given the actual practical possibilities, they would opt for the prisoner's immediate release.

Over and above this dilemma surrounding the prisoner's defence strategy, a widespread situation of financial transactions can be observed at every level of the administration of justice in Kongo Central. In this situation, effectiveness and procedure are always in conflict, as following correct procedure is counterproductive in terms of effectiveness.

For example, the practice of applying "frais administratifs" (administrative fees) is encountered with each actor in the judicial process.90 These fees consist of a "motivation"91 for the person charged with carrying out a legal task, as these officials depend on this misuse of their professional role to make a living. One established practice is that when a person who is summoned presents themselves before the Public Prosecutor, he/she is expected to pay a sum of about 5,000 CDF to the official of the police judiciaire (agent de police judiciaire or APJ, an administrative official of the Office of the Public Prosecutor<sup>92</sup>) who issued the summons. Some lawyers who advised their clients not to pay this amount report that they received negative remarks from OMPs. While there are many testimonies about these kinds of practices, it should be noted that the language used aims to weaken any moral or legal condemnation. The people who were spoken to use terms like "motivation" or "tracasseries administratives" (administrative hassles) when discussing practices that are known to be corrupt. These terms present these violations as commonplace or even normal conduct. The almost unanimous use of these terms both minimises the responsibility of those involved and indicates widespread acceptance of the practices they refer to.

Financial transactions at the various stages of the procedure are a phenomenon that has been partly internalised by those involved. This systematic confusion between private interests and the administration of justice is so widespread in practice that there is a limit to what an individual can do. On the whole, it would be a risky long-term career strategy for a lawyer based in Kongo Central to systematically oppose corrupt practices. This would have a damaging effect on a lawyer's ability to maintain professional networks and by extension on his or her capacity to "gagner des affaires" (win cases).

There are, nonetheless, some obstacles to this pattern of financial transactions at the different stages of the procedure. First of all, in some cases, due to the publicity surrounding them, the status of the people involved, or the social stigma attached to them, the judicial authorities may be restricted in their decisions about whether or not people are to be released. Furthermore, there are, of necessity, some exceptions to the practices described above, thanks to the integrity of certain professionals in the justice system. The phenomenon, finally, is known to the senior judicial authorities in Kongo Central and some cases of legal action taken against offending officials were in fact reported in the course of this study, in particular by the military prosecutor of Matadi.

Nonetheless, this perversion of criminal proceedings shapes the experiences of imprisonment reported in different jurisdictions in Kongo Central. Understood as the mindset of those working in the system, this perversion provides a framework for analysis that makes it possible to make sense of the accounts of former prisoners, prisoners' families, and others encountered in the course of this study. This analysis, taking all the accounts into consideration, reveals the prevalence of the private rationale (here, socio-economic in nature) of the individuals responsible for taking criminal proceedings over the legal rationale expected of a professional in the justice system of a state governed by the rule of law. Those who are responsible for criminal proceedings use their legal powers for their own private profit and thus systematically engage in corrupt practices.

The judicial system functions according to its own logic, which creates material inequality between citizens facing criminal proceedings. The prison population, accordingly, is not the result of a neutral process, but of necessity reflects the distortions of the judicial process that determine which people are imprisoned and which people are not. As seen in the profile of the prison population of the prisons of Matadi and Boma, it seems that the poorest groups in the general population, that is to say, those least capable of engaging with the system of financial transactions in relation to criminal proceedings, make up the majority of the prison population.

<sup>92.</sup> Group discussions with lawyers of the Barreau de Matadi (Matadi Bar Association), Boma, Saturday 28 February 2015 and Matadi, Tuesday 3 March



<sup>90.</sup> Group discussions with lawyers of the Barreau de Matadi (Matadi Bar Association), Boma, Saturday 28 February 2015 and Matadi, Tuesday 3 March

<sup>91. &</sup>quot;Motivation" is a term frequently used by all those spoken to, including officials of the administration, to refer, in veiled terms, to the corruption of



## CONCLUSION

Given the level of public supervision of prisons in Kongo Central, fundamental questions arise as to the capacity of those prisons to play a useful role for society (of neutralising, dissuading, and rehabilitating).

In fact, material conditions in the prisons of Kongo Central cast doubt on the very idea of segregating prisoners, as nothing at all is done to aid their rehabilitation. In the absence of any way of measuring the function of dissuasion, prison is reduced to its punitive role alone, devoid of any social perspective. Those people involved in running the prison system who are concerned with its proper functioning and about prisoners' conditions are in no position to offer any solutions. Specifically, prison directors are working with prisoners whose basic needs are not met and they have only limited resources at their disposal for accomplishing their mission (in terms of budget, human resources, and channels for raising problems). With no chance of resolving this situation, which for them is a daily reality, governors have to find solutions themselves to ensure the survival of the prisoners, at the risk of becoming personally responsible.<sup>93</sup>

This failure in the administration of prisons and detention centres brings the legitimacy of this type of punishment into question, since imprisonment in this situation is of a cruel and discriminatory nature, in contradiction with Congolese law. The people in question are excluded from economic and social life, often without even having been found guilty. Court rulings have consequences extending well beyond the legal domain, as in the choice of prison or remand facility, which directly affects prisoners' living conditions and their chances of survival within the prison walls, by deciding the distance between them and their families.

Furthermore, decisions about the section of the population that has to suffer the effects of this punishment are not made in a neutral fashion. Both when it rules on the detention of people before their trials and when it imposes sentences, the judicial system imposes its own distortions on the composition of the prison population. So the workings of the judicial system can work against the principle of equality before the law for all citizens. Thus, the pursuit of their own private interests by those responsible for criminal proceedings shapes the prison population according to considerations that are, to a great extent, economic.

This confused situation creates inequality on two levels when it comes to imprisonment: a person's economic and social capital determine both the conditions of their experience within the prison walls and the likelihood that they will one day find themselves within those walls.





# List of the players interviewed

Organisation	Location	Date of interview
Representative of the Association des femmes avocates du Congo (Association of Women Lawyers)	Kinshasa	Tuesday 10 February 2015
Official of the Central Prison in Matadi		Thursday 12 February 2015
Representative of the Programme d'appui à la réforme de la Justice	Matadi	Friday 13 February 2015
Representative of the Programme d'appui à la réforme de la Justice	Matadi	Friday 13 February 2015
Official of the Justice Ministry	Matadi	Monday 16 February 2015
Representative of the Provincial Government	Matadi	Tuesday 17 February 2015
Official of the Justice Ministry	Matadi	Tuesday 17 February 2015
Representative of the Fraternité Prison NGO	Matadi	Wednesday 18 February 2015
Representative of the Association congolaise pour la promotion des humains	Matadi	Wednesday 18 February 2015
Coordination de la société civile	Matadi	Wednesday 18 February 2015
Official of the prison service	Matadi	Monday 23 February 2015
Representative of the Barreau de Matadi (Matadi Bar Association)	Matadi	Monday 23 February 2015
Representative of the Réseau des femmes pour le développement	Matadi	Monday 23 February 2015
Representative of Nouvelle dynamique jeunesse femmes	Matadi	Monday 23 February 2015
Official of the Central Prison in Matadi	Matadi	Tuesday 24 February 2015
Representative of the Association internationale des droits de l'Homme	Matadi	Wednesday 25 February 2015
Judge (magistrat) of the Office of the Public Prosecutor, TGI	Matadi	Wednesday 25 February 2015
Judge (magistrat) of the Tribunal pour enfants (Children's Court)	Matadi	Wednesday 25 February 2015
Judge (magistrat) of the Tribunal de paix	Matadi	Wednesday 25 February 2015
Judge (magistrat) of the TGI	Matadi	Wednesday 25 February 2015
Member of the Police Nationale	Matadi	Wednesday 25 February 2015
Judge (magistrat) of the Office of the Public Prosecutor at the Matadi Appeal Court	Boma	Thursday 26 February 2015
Judge (magistrat) of the Office of the Public Prosecutor at the TGI in Boma	Boma	Thursday 26 February 2015
Official of the Prison urbaine in Boma	Boma	Thursday 26 February 2015
Official of the Prison urbaine in Boma	Boma	Thursday 26 February 2015
Representative of the Ambassade chrétienne pour la paix au Congo	Boma	Vendredi 27 février 2015
Forum pour la démocratie et les droits de l'Homme	Boma	Friday 27 February 2015
Official at Boma town hall	Boma	Friday 27 February 2015
Representative of the Commission diocésaine Justice et Paix (Diocesan Commission for Justice and Peace)	Boma	Friday 27 February 2015
Representative of the Centre de regroupement, d'encadrement et de récupération des orphelins (Centre for the relocation, supervision, and recovery of orphans)	Boma	Sunday 1 March 2015
Official of the Police nationale Centre de santé du camp Molayi (Molayi Camp health centre)	Matadi	Monday 2 March 2015
Official at the Central Prison in Matadi	Matadi	Monday 2 March 2015
Inspecteur of the FARDC	Matadi	Monday 2 March 2015

### **ANNEXE 2:**

# Questionnaire for key players

- 1. In your view, what is the purpose of a prison?
- 2. How would you describe the conditions of imprisonment?
- 3. What are the causes of those conditions?
- 4. Are those conditions the same for everyone? Why?
- What are you/your organisation doing to change this situation?
- 6. What would be your priority steps for positive change?
- In your view, who is the key player for a positive change? 7.
- 8. Is this player fulfilling his or her duties?
- 9. In the short or medium term, what opportunities do you see for positive change?





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