

International **CURE**

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Prison and Justice Assessments in Africa

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Dem. Rep. Congo Assessment

1. FAIR JUSTICE

1.1 Judicial system capability.

Judicial corruption remained pervasive, particularly among magistrates. The judicial system was funded with less than one percent of the national budget and was poorly staffed, with a very limited presence outside of Kinshasa. There were only 2,000 magistrates (judges who serve in the lowest level courts) serving the entire population (one magistrate for every 30,000 citizens), and two-thirds of them were located in Kinshasa, Matadi (Bas-Congo Province), and Lubumbashi (Katanga Province). There were fewer than 200 courts, of which approximately 50 were functioning during the year. In rural areas, where there were often no courts within a 310-mile radius, justice was administered on an ad hoc basis by any available authority, creating extraordinary opportunities for corruption and abuse of power. ^[1]

Prolonged pretrial detention, often ranging from months to years, remained a problem. Trial delays were due to factors such as judicial inefficiency, corruption, financial constraints, and staff shortages. Prison officials often held individuals after their sentences had expired due to disorganization, judicial inefficiency, or corruption. ¹

According to the UNJHRO, almost 80 percent of inmates were pretrial detainees. ¹

The Kisangani Central Prison, originally built in 1927, was in a state of disrepair when foreign diplomats visited on December 4. Of the 282 men being held, only 20 had been convicted; the rest were awaiting trial. ¹

1.2 Legal assistance to persons living in poverty.

There is a system of public defense for the indigent at the bar: lawyers called Pro Deo. There is a system of indigent defense organized by law and applied by judges, lawyers and the Department for Social Affairs. In short, the pauper explains the situation in the Social Affairs Dept., where he obtains the certificate of need. After investigation, he will present the report to the bar lawyers where he chooses a lawyer, who pleads "Pro Deo"- i.e. without requiring the fee. The judge in this case decides if it is to be free or with reduced pay or payment later if poverty is temporary. ^[2]

No functioning bail system existed, and detainees had little access to legal counsel if unable to pay. ¹

1.3 Justice for women, children, and juveniles.

Minors are those under the age of 18. They are separated from adults. There are separate houses for adults. The custody of juveniles is not for imprisonment but for rehabilitation. The minors are in the areas annexed to the prisons in all provinces.²

Near total impunity for grave violations of international humanitarian law continues, with very few perpetrators arrested and prosecuted by national authorities. In a February 2008 report, the UN special rapporteur on violence against women concluded that "due to political interference and corruption, perpetrators, especially those who belong to the State security forces, go unpunished."^[3]

There were continuing reports, including many from the UNJHRO, of rape of civilians by members of the security forces. Several of these reports concerned rape committed in the context of the conflict in the east. Other reported rapes by security forces occurred outside the conflict's context.¹

The law criminalizes rape, but the government did not effectively enforce this law, and rape was common throughout the country and especially pervasive in areas of conflict in the east. According to UNICEF, more than 1,000 women and girls were raped each month in the east. Legislation enacted in 2006 broadened the scope of the law that defines rape to include male victims, sexual slavery, sexual harassment, forced pregnancy, and other sexual crimes not previously covered by law. In addition, it raised the age of consent to 18, creating a discrepancy with the family code by exceeding the current allowable age of marriage. The minimum penalty prescribed for rape is a prison sentence of five years.¹

The country was a source and destination country for men, women, and children trafficked for forced labor and sexual exploitation. There were reports of children prostituted in brothels or by loosely organized networks, some of whom were exploited by FARDC soldiers. Women and children were reportedly trafficked to South Africa for sexual exploitation. No statistical information existed on the extent of adult or child prostitution.¹

According to a report released in November by the UN Secretary-General, there continued to be 3,500 children in the ranks of all armed groups and in a few units of government security forces in the east, with the overwhelming majority of them found in armed groups, serving as combatants, porters, spies, and sex slaves.¹

1.4 Unfair treatment by discrimination.

There is no discrimination in prisons for prisoners, except for officers in their professional life or religious. They enjoy small privileges.²

1.5 Arbitrary or severe penalties.

Police often arbitrarily arrested and detained persons without filing charges, often to extort money from family members. Authorities rarely pressed charges in a timely manner and often created contrived or overly vague charges.¹

The death penalty is not abolished in RDC. But, there is a moratorium. There are extra-judicial executions, but these are not officially known, especially in cases of abduction.²

There were several occasions during the year when members of security forces arbitrarily and summarily killed civilians, sometimes during apprehension or while holding them in custody, and often for failing to surrender their possessions, submit to rape, or perform personal services.¹

The law does not specifically criminalize torture, and during the year there were many credible reports by informed sources that security services tortured civilians, particularly detainees and prisoners, and employed other types of cruel, inhuman, and degrading punishment. There were almost no reports of government authorities taking action against members of security forces responsible for these acts.¹

In every prison there are some sentenced to death, and the number is not known. One needs to tour the country. Those sentenced to life in prison are eligible for parole, but under conditions including having

served a quarter of sentences and good behavior in prison. Life sentences are "penal servitude for life" except that one must complete formalities required by law to have a parole.²

2. PRISON SYSTEMS BASICS

2.1 Structures and alternatives.

The DRC is not a federal state but a highly decentralized unitary state.²

2.2 Physical space and separations.

On June 12, foreign diplomats visited the Kinshasa Penitentiary and Reeducation Center (CPRK), which had a capacity of 1,500 but held 4,400 detainees and prisoners, almost 400 more than a year earlier.¹

Prisoners are separated by age and sex.²

Larger prisons sometimes had separate facilities for women and juveniles, but others generally did not. Male prisoners raped other prisoners, including men, women, and children. Prison officials held pretrial detainees together with convicted prisoners and treated both groups the same. They generally held individuals detained on state security grounds in special sections. Government security services often clandestinely transferred such prisoners to secret prisons. Civilian and military prisons and detention facilities held both soldiers and civilians.¹

Temporary holding cells in some prisons were extremely small for the number of prisoners they held. Many had no windows, lights, electricity, running water, or toilet facilities.¹

2.3 Pretrial services and process.

There are pretrial detainees. The detainees and convicts are kept together. Detention exists when the judicial authority is concerned for the flight of the individual or social revenge. They may be temporarily placed under house arrest.²

2.4 Standards.

There is a law that regulates the prisons in DRC. It is applied, but we must strengthen the capacity of prison staff. There is no independent agency to monitor prisons and their prisoners. There are NGOs assisting the Congolese State. However, the idea of creating an organization to observe prisons fell on deaf ears.²

3. PROTECTION OF INCARCERATED PERSONS

3.1 Grievances.

There are rules that govern the behavior of prisoners, which also specify their rights and obligations. These rules are applied by prison staff, who organize outreach sessions. Prisoners who are not (legally) deprived of their civil rights may file a complaint with the prison director who is a judicial police officer.²

3.2 Abuse of incarcerated persons.

All abusive, inhumane and degrading treatments are prohibited in prison. Directors of prisons are taught the International Standards and Minimum Rules on the handling of abuse. However, abuses of these rules are not lacking, and the standards are not met. Penalties are specified for cases of misconduct, in which case the rules are applied.²

3.3 Sexual security.

Women in prison are protected. They are also separated from the men. It is also prohibited to practicing sexual violence on women prisoners or those detained. However, abuses of the rules are not lacking in this kind of thing.²

3.4 Correctional Officers.

From time to time, the prison staff is trained on what to do, as well as on human rights in général.

However, this training is not sufficient to date.²

4. HEALTH SERVICES FOR INCARCERATED PERSONS

4.1 Health Care.

In some prisons, there are health-care dispensaries. For serious cases, sick detainees and sick prisoners are transferred to hospitals in the state. Sanitation is lacking in most prisons. Water is also deficient. Prisoners are relieved when it rains.²

In all prisons except the Kinshasa Penitentiary and Reeducation Center (CPRK), the government had not provided food for many years--prisoners' friends and families provided the only available food and necessities. Malnutrition was widespread. Some prisoners starved to death. Prison staff often forced family members of prisoners to pay bribes for the right to bring food to prisoners.¹

During the year many prisoners died due to neglect. For example, the UNJHRO reported in February that over a two-month period, 21 prisoners died from malnutrition or dysentery in prisons in Uvira, Bunia, and Mbuji-Mayi.¹

4.2 Women-Care.

It is rare for a gynecologist to see women in prison. If needed, they are transferred to hospitals in the state.²

4.3 Mental Illness and Addictions.

The Congolese criminal law does not criminalize the mentally ill. Since it can happen while the person is in prison, the patient is then transferred to hospitals in the State. It is often the case that the family takes care of sick prisoners.²

5. RESTORATIVE PRACTICES

5.1 Rehabilitation Programs.

In many prisons there are no rehabilitation programs. In general, the prisons are not equipped for this. Sometimes, prisoners being released are more dangerous than before. The law provides for a program of rehabilitation for prisoners as they exit the prison, but in practice this does not happen.²

5.2 Reentry Programs.

Parole is given for good behavior, provided they have served at least a quarter of the particular sentence.²

There is no assistance program for those going into prison or who are in prison or who leave prison. NGOs are called to do so, but they do not, for lack of funding.²

6. SOCIAL RIGHTS OF INCARCERATED PERSONS

6.1 Voting.

Those awaiting trial have the right to vote unless they are deprived of this right in the decision of the judge who sentenced them. Voting arrangements are made to enable those who are in prison and who have the right to vote. A polling station can be opened in prison rather than taking prisoners to the city with a risk of escape.²

6.2 Visitation.

Prisoners are entitled to visits by family, lawyers and NGOs. There is no public transportation for access to prisons. Everyone goes according their own means. In our prisons there are no internet cafés. Nevertheless, in some prisons inmates can send mail or call their family by telephone, but with the permission of the prison guard who monitors all the texts therein. However, in practice this is very rare, whether by phone or e-mail, except when an inmate communicates with his lawyer.²

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- [¹] U.S. Human Rights 2008 Country Reports, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118995.htm>
- [²] Denis Koua, Director of the D. R. of Congo Chapter of International CURE.
- [³] Human Rights Watch, World Report, 2009, <http://www.hrw.org/en/node/79181>