



MONUSCO

The United Nations Organization Stabilization
Mission in the Democratic Republic of the Congo



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OFFICE OF THE HIGH COMMISSIONER

**REPORT OF THE UNITED NATIONS JOINT HUMAN RIGHTS OFFICE
(MONUSCO-OHCHR) ON DEATHS IN DETENTION CENTRES
IN THE DEMOCRATIC REPUBLIC OF CONGO**

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List of acronyms

ANR	National Intelligence Agency
DRC	Democratic Republic of the Congo
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICRC	International Committee of the Red Cross
MONUC	United Nations Organisation Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights
UNJHRO	United Nations Joint Human Rights Office
WHO	World Health Organisation

Summary

The phenomenon of deaths in detention centres in the Democratic Republic of the Congo (DRC) is considered to be a priority theme by the United Nations Joint Human Rights Office (UNJHRO) due to its seriousness and scale. Between 2004 and 2005, the Human Rights Division (HRD) of the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC) published three reports on conditions of detention in the prisons and holding cells of the DRC. Each report presented a worrying picture of conditions of detention in the country and set out recommendations for the government. Despite this, deaths in detention continue to be of concern, and the data which the UNJHRO has gathered, working closely with other elements of the UN mission in the DRC (MONUSCO), are alarming. They show that 211 deaths in detention were documented as human rights violations between January 2010 and December 2012.

The causes of these deaths are many, but are mainly linked to the conditions of detention, the lack or indeed absence of provision for the basic needs of detainees, and also the weakness of prison institutions which are rarely required to be accountable to detainees or to the authorities. Detention centres in the DRC are generally overcrowded, and conditions of hygiene in them are deplorable. Furthermore, supplies of food and medicines are largely inadequate due, in particular, to the small budget allocated to the prison service and the fact that it is poorly managed. Often, detainees whose conditions require more specialized or intensive care are transferred to health centres too late. The simple fact of being deprived of one's liberty may, in practice, lead to reduced life expectancy given how high the risks are of dying of hunger or disease in detention centres.

Insofar as the Congolese Government is not taking adequate measures to meet the most basic needs of detainees, the result of which is a high number of deaths in detention centres, it is violating its international human rights commitments and is consequently liable. State authorities are responsible for guaranteeing and upholding the fundamental right to life of people who are deprived of their liberty.

This report, which falls within the mandate of the UNJHRO, assesses the situation with regard to the deaths in detention centres recorded by this office between January 2010 and December 2012 and analyses the relevant legislation and the main causes of this alarming phenomenon. By means of this report, the UNJHRO is hoping to draw attention to this particularly worrying problem and is proposing measures to improve conditions of detention in order to reduce the number of deaths in detention centres in the DRC.

The establishment of a new government has created a genuine opportunity, which must be grasped in order to improve the deplorable situation which has existed for a long time in detention centres in the DRC. The government has already taken practical measures to remedy the situation, including the suspension of high-ranking officials suspected of corruption, and has spoken out strongly in favour of greater transparency and accountability in the management of the budget allocated to the prison system. The

international community should grasp this opportunity by supporting the government's efforts to reform the prison system and improve conditions of detention.

I. Introduction

1. This report on deaths in detention centres in the Democratic Republic of the Congo (DRC) covers the period from January 2010 to December 2012. This phenomenon is a serious and complex problem which has existed in the DRC for a very long time and affects the fundamental right to life of people who are deprived of their liberty by the State and who, as a result, are under its jurisdiction, oversight and responsibility. Poor conditions of detention are the cause of numerous deaths: between April 2004 and October 2005, the MONUC Human Rights Division¹ published three reports on conditions of detention in the prisons and holding cells of the DRC². These reports provided a very worrying assessment and concluded that the relevant national and international standards were not being complied with. In particular, the “*Report on detention in the prisons and holding cells of the DRC*” published in April 2004 depicted a prison system characterised by overcrowding and malnutrition.
2. Eight years on, despite the recommendations made in these reports to the Congolese authorities, the situation in detention centres is still of concern. Despite constant efforts, particularly by Congolese civil society and international actors, conditions of detention in the prisons and holding cells of the DRC have deteriorated further still, and very little significant progress in complying with the relevant national and international standards has been recorded. Significant deficiencies continue to be observed, particularly with regard to nutrition, hygiene and health, and the issue of deaths in detention is still extremely worrying. Indeed, 211 deaths were identified by the UNJHRO as human rights violations between January 2010 and December 2012.
3. In this scope and in line with the mandate of the UNJHRO, particularly to analyse the human rights situation, investigate human rights violations and publish its conclusions³, the drafting of this report, which assesses the situation concerning deaths in detention in the DRC since January 2010, has been initiated. By setting out in detail the seriousness of the problem, its context and structural causes, this report seeks to bring about changes in the institutions and in the practices, in order to

¹ On 1 February 2008, the Human Rights Division (HRD) of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Democratic Republic of Congo (DRC) were merged, forming the United Nations Joint Human Rights Office (UNJHRO) in the DRC, which operates in accordance with their respective mandates.

² “*Report on detention in the prisons and holding cells of the DRC*” published in April 2004, accessible on line <http://monuc.unmissions.org/LinkClick.aspx?fileticket=t6PfodBpF9M%3d&tabid=4104&mid=3998>; “*Special report on malnutrition in prisons*” published in December 2004, accessible on line <http://monuc.unmissions.org/LinkClick.aspx?fileticket=ojTorY1zS9U%3d&tabid=4104&mid=3998>; “*Report on conditions of detention in the prisons and holding cells of the DRC*” published in October 2005, accessible on line; <http://monuc.unmissions.org/LinkClick.aspx?fileticket=AleZwMmHh0Q%3d&tabid=4104&mid=3998>.

³ See Resolutions 1756 of 15 May 2007, 1794 of 21 December 2007, 1856 of 22 December 2008, 1906 of 23 December 2009, 1925 of 28 May 2011 and 2053 of 27 June 2012. See also the *Memorandum of understanding on the establishment of a human rights office in Kinshasa* between the Government of the Republic of Zaire and the UN through its representative, the High Commissioner for Human Rights, signed on 21 August 1996 in Geneva, which establishes the mandate of the OHCHR-DRC.

promote the reform of the prison system through a series of recommendations aimed at the government and other actors involved in the issue.

II. Methodology

4. This report has been prepared on the basis of information gathered by the human rights officers of the UNJHRO, particularly during visits to detention centres⁴, working with other MONUSCO components, as well as on the basis of data collected from UNJHRO partner non-governmental organisations (NGOs) working in the field of human rights and from the prison service, between January 2010 and December 2012.
5. The figures used in this report were recorded in the holding cells and prisons visited regularly by UNJHRO human rights officers, and were obtained from prison records, during exchanges with the authorities and officers of the prisons and holding cells, or were notified by UNJHRO partners. The UNJHRO only includes in its statistics those deaths in detention which are confirmed as human rights violations, meaning that the detainees died following poor treatment, malnutrition or a lack of appropriate medical care, and therefore as a result of the direct action or negligence of the State or of its officers.
6. As the UNJHRO was not able to visit certain detention centres due to logistical or security constraints, this report is not comprehensive. Furthermore, UNJHRO human rights officers are regularly refused access to certain detention centres, particularly those under the supervision of the National Intelligence Agency (ANR), the Republican Guard and, in some cases, the Military Intelligence Branch, in violation of United Nations Security Council resolutions⁵. The number of deaths in detention which are human rights violations might therefore be a lot higher than the statistics indicated in this report. Nevertheless, although incomplete, the data gathered do give a clear and worrying insight into the situation with regard to deaths in detention centres in the DRC.

III. Legal framework

7. The protective framework for detainees in the DRC is made up of international, regional and national standards. These prohibit any detention in inhuman conditions, and prevent the violation of the most fundamental right of detainees, namely the right to life. It should first be noted that Article 215 of the Congolese Constitution recognises the supremacy of international law, which means that any national

⁴ In this report, the expression “*detention centres*” is used in a broad sense to encompass the institutions visited by the human rights officers of the UNJHRO, which include the holding cells of the Congolese National Police (PNC) and of various security services, such as the National Intelligence Agency (ANR), the detention centres under the control of the Armed Forces of the Democratic Republic of Congo (FADRC), as well as prisons and short-stay prisons, as defined in Ordinance 344 of 17 September 1965 on the prison system. It should be noted that prisons fall under the responsibility of the Ministry of Justice and Human Rights, while holding cells, although under the control of the latter, are under the responsibility of the Ministry of Interior.

⁵ See footnote 3.

provision contrary to the international treaties ratified by the DRC should be rendered ineffectual.

A. International standards

8. Several binding international instruments ratified by the DRC relating to the theme which is the subject of this report should be mentioned:

- the African Charter on Human and Peoples' Rights, ratified by the DRC in July 1987, states in Article 4 that "*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right*". Article 5 prohibits torture and cruel, inhuman or degrading punishment and treatment in particular. Finally, Article 16 states that "*Every individual shall have the right to enjoy the best attainable state of physical and mental health*";
- the International Covenant on Economic, Social and Cultural Rights, to which the DRC has been a party since 1 November 1976, recognises in its Articles 11 and 12 respectively, "*the fundamental right of everyone to be free from hunger*" and "*to the enjoyment of the highest attainable standard of physical and mental health*";
- the International Covenant on Civil and Political Rights, to which the DRC has been a party since 1 November 1976, states in Article 6 that "*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life*", and states in Article 7 that torture and cruel, inhuman or degrading treatment or punishment are prohibited. Article 10 states that "*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*". In its General Comment No. 21, the Human Rights Committee points out that "*Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held*"⁶;
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the DRC on 18 March 1996, expressly prohibits torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, on 23 September 2010, the Government of the DRC ratified the Optional Protocol to the Convention against Torture, which provides for the establishment of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This Subcommittee on Prevention has a mandate to visit all the detention centres in the States Parties and to assist and advise States

⁶ General Comment No. 21, para. 2 (Available at [http://ccprcentre.org/doc/ICCPR/GeneralComments/HRI.GEN.1.Rev.9\(Vol.I\)_\(GC21\)_en.pdf](http://ccprcentre.org/doc/ICCPR/GeneralComments/HRI.GEN.1.Rev.9(Vol.I)_(GC21)_en.pdf)).

Parties and the national preventive mechanisms, which should be established by the States Parties in accordance with the Protocol. It is important to note that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in his report, which was presented to the Human Rights Council on 9 February 2010⁷, that when detainees are deprived of their rights to food, water and health care and are kept in conditions of hygiene not consistent with human dignity, these conditions of detention are equivalent to cruel, inhuman or degrading treatment or punishment;

- Article 3 Common to the four Geneva Conventions of 12 August 1949, which applies to armed conflicts not of an international character, states, in particular, that: “[...] *those placed hors de combat by [...] detention [...] shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture [...]*”.
9. Furthermore, several texts adopted by the United Nations and the African Union lay down minimum acceptable conditions of detention applicable to all categories of prisoners: military or civilian, untried or convicted, or individuals subject to a detention order or an educational measure ordered by a judge. Notably, these include:
- the *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, approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (hereinafter referred to as the “Minimum Rules”);
 - the *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, adopted by the United Nations General Assembly in its resolution 46/173 of 9 December 1988;
 - the *Basic Principles for the Treatment of Prisoners*, adopted by the General Assembly in its resolution 45/111 of 14 December 1990;
 - the *Kampala Declaration on Prison Conditions in Africa*, noted by the Economic and Social Council in its resolution 1997/36 of 21 July 1997;

⁷ Annex to the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: “*Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*” presented at the 13th session of the Human Rights Council on 9 February 2010. Available in English only: http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf.

- the *Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa*, adopted by the African Commission on Human and Peoples' Rights in its resolution 64(XXXIV)03 of 20 November 2003;
 - the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by the General Assembly in its resolution 45/113 of 14 December 1990.
10. The aim of the rules set out in these texts is to ensure that all prisoners are treated with the respect due to their inherent dignity and value as human beings, without any distinction based on race, colour, sex, language, religion, political or other opinion, nationality or social origin, wealth, birth or status. *The Standard Minimum Rules for the Treatment of Detainees* lay down specific principles applicable to detention centres, particularly in relation to detainees' hygiene, access to medical services, food, discipline and punishment. The 6th principle of the *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment* expressly condemns torture and other cruel, inhuman or degrading treatment or punishment.
11. These rules represent the minimum conditions which States are expected to adhere to. Despite not being contained in mandatory instruments, these standards are a benchmark in international law with regard to detainees' rights. Most of them reflect customary law concerning detention and, as such, are binding on States. Furthermore, their implementation would ensure compliance with the aforementioned conventions, which are themselves mandatory.

B. National legislation

12. Under Congolese legislation, detainees' rights are enshrined in the Constitution of 18 February 2006. Article 16 of the Constitution states that "*The individual is sacred. The State has the obligation to respect and protect him/her. All persons have the right to life, physical integrity and to the free development of their personality, while respecting the law, public order, the rights of others and public morality*". In addition, Article 18 of the Constitution specifies that "*any detainee must benefit from a treatment which preserves his/her life, physical and mental health as well as his/her dignity*".
13. Two texts govern prison institutions in the DRC, namely Ordinance 344 of 17 September 1965 on the prison system, and Decree 87-025 of 31 March 1987 on judicial organisation which establishes prison institution management committees. Among other considerations, Ordinance 344 provides for the administration of prison institutions and establishes the regime for prisoners, particularly with regard to hygiene, medical care and food.
14. Up to a certain point, national legislation complies with the Minimum Rules for the Treatment of Prisoners. However, it does not provide for some of the important measures recommended by them. For example, except for the requirement of sanitary facilities, Ordinance 344 does not provide any details about accommodation for detainees, unlike the Minimum Rules, which specify the standards which detention

facilities should meet in terms of lighting, surface area, air space, heating and ventilation. Furthermore, Ordinance 344 specifies that each prison institution should have one or more nurses, and that a doctor should visit the institution either on a daily basis or several times a week, depending on the prison population.

15. Furthermore, Article 8 of Ordinance 344 provides for the possibility to keep people temporarily in detention centres which are not specified in advance, and which are consequently free from any oversight. In addition, Ordinance 344 does not define what a “*Camp de Détention*” is. When it comes to the status of personnel too, the Minimum Rules recommend that prison staff should be “professionalized”⁸, which is not the case in the DRC.
16. Another problem is the lack of clear regulations concerning the respective functions of the central government and the provinces in the administration of the prison system. According to Ordinance 344, which dates back to the time when the power was centralised and the provinces had no legal status, the administrative supervision of prisons is ensured by the Ministry of Justice through the penitentiary inspectorate. However, the 2006 Constitution gives the central government and provinces⁹ concurrent jurisdiction in the administration of *maisons d’arrêt*, correctional institutions and prisons, without, however, specifying the prerogatives and limitations of each. Theoretically, this provision renders Part 1 of Ordinance 344 obsolete. With regard to decentralisation, there are indeed problems due, in particular, to the absence of clear implementing texts of the Constitution. However, the Ministry of Justice is one of the executive ministries which are not decentralised, and the prison service remains, in theory, under the responsibility of the central government. Therefore, the provinces should contribute to the financial management, and this only for prisons at the district and territorial levels. However, there is no text which formally provides for a clear separation of responsibilities between central and provincial authorities.
17. The implementation of national legislation is also problematic. Besides the problems outlined in the next section, political and administrative authorities show a general lack of commitment to, and oversight of, the prison service. Whereas Articles 24 and 25 of Ordinance 344 provide for quarterly prison inspections by the provincial inspector responsible for the management and the inspection of prisons and by the provincial governors, such inspections, which could promote better prison management, are rarely carried out. The system should be structured around 10 provincial inspectorates under a central inspectorate, which is itself under the direct authority of the Ministry of Justice. In strictly organisational terms, the system could operate adequately with the structure provided for by Ordinance 344.

⁸ According to Article 46(3) of the Minimum Rules, “*personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.*”

⁹ Art. 203 of the Constitution of 18 February 2006.

C. Liability of the Congolese government and its officers

18. The State is responsible for the implementation of and compliance with all of the standards relating to conditions of detention. If it does not comply with the commitments it has signed up to in the various international treaties, it may be held liable internationally. It may also be held accountable for the actions of prison agents in charge of the surveillance of detainees. In this case, it may be a matter of administrative liability which, in fact, represents a breach due to a malfunction of the prison service attributable either to an identifiable officer, or an institutional breach, in which case the public service as a whole is considered to have malfunctioned. The State is therefore required to provide compensation for the harm caused to the prisoner. We can also consider cases of civil liability, which may lead to a call for damages by victims or relatives of victims, when an action (misconduct, carelessness or negligence) by the State or an officer assigned to the prison service causes harm to a prisoner¹⁰. The third type of liability which may be incurred is criminal liability against the officer concerned or the prison service managers as a result of an action which contravenes criminal law (rape, assault and battery, murder, etc.) or liability for omission in those cases where there was a duty to act. The three types of liability may be incurred at the same time.

IV. Major causes of deaths in detention

19. Deaths in detention in the DRC are largely due to poor conditions of detention. The main factors which will be examined in greater detail in this section are as follows: prison overcrowding, malnutrition, absence or lack of appropriate medical care, and the insufficiency of budgets allocated to prisons, combined with the lack of transparency in how funds intended for detention centres are managed.
20. Between January 2010 and December 2012, UNJHRO human rights officers documented a total of 211 deaths in detention during visits to holding cells and prisons in the DRC, of which 54 deaths occurred in 2010, 56 in 2011 and 101 in 2012. These figures show that the number of deaths in detention almost doubled in 2012 compared with the data gathered for the previous two years. This increase in deaths in detention in 2012 could be linked to the payment of state subsidies for feeding prisoners which reportedly became increasingly irregular during the first half of 2012. Out of this total number of 211 deaths, 84 detainees reportedly died from malnutrition, 103 due to lack of appropriate care by the authorities and 24 as a result of ill-treatment. The actual figures might be higher, but these numbers only take into account deaths in detention which could be confirmed as having resulted from human rights violations.

¹⁰ In this regard, see the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution 60/147 adopted by the General Assembly on 16 December 2005, and more specifically Principle VII: “Remedies for gross violations of international human rights law [...] include the victim’s right to the following as provided for under international law: [...] (b) Adequate, effective and prompt reparation for harm suffered [...]”.

21. The cases of detainees dying as a result of acts of torture or ill-treatment inflicted by State agents are extremely worrying. More than 10% of the deaths recorded by the UNJHRO between January 2010 and December 2012 in the prisons and holding cells visited come under this category. As an example, a man who was arrested for drug trafficking and imprisoned in the holding cells of the Congolese National Police (PNC) in Tshela, Bas-Congo province, died in the night of 5 to 6 June 2012 following ill-treatment whilst in detention. A Rwandan boy suspected of being part of the *March 23 Movement (M23)* also died in August 2012 following acts of torture while he was being held in detention by FARDC soldiers in Goma. It is the responsibility of the authorities not to endanger the life or physical integrity of detainees, as stated in the international texts¹¹.
22. It is also important to bear in mind a more general characteristic of the prison system in the DRC, which has an influence on all of the aforementioned causes. This system is, in fact, characterised by an absence of effective organisational structures at central, provincial, district and territorial level, particularly by an absence of authority, responsibility and control. As a result, the prison system is often left to self-management, carried out by insufficient and “non-professionalized” personnel. Taking simultaneous action in relation to these causes would be one of the most effective ways of significantly reducing the number of deaths in detention.

A. Prison overcrowding

23. The overcrowding which is prevalent in detention centres in the DRC contributes to the high number of deaths in detention. In fact, the main detention centres host a number of detainees significantly higher than their capacity. Most detention centres, mainly prisons, were built decades ago, and their capacities have remained the same whilst the number of detainees has continued to rise¹². The occupancy rate in Makala Central Prison in Kinshasa is more than 400%¹³, and the rate in Goma Central Prison is close to 800%¹⁴.
24. Prison overcrowding leads to promiscuity which is detrimental to detainees and directly affects their sanitary and dietary conditions. Yet, Articles 9 to 14 of the Minimum Rules clearly stipulate that prisoners should have adequate living space

¹¹ Articles 2 and 4 of the ACHPR, Article 7 of the ICCPR, Article 2 of the Convention against Torture and common Article 3 of the four Geneva Conventions of 12 August 1949.

¹² However, there is also a problem when it comes to the distribution of the prison population. In fact, while we refer to overcrowding in some central prisons, in the entire province of Maniema, for example, which is the size of Tunisia, there are approximately 250 detainees and a sparse network of courts (five operational courts). In Equateur, Mbandaka central prison, built in 1930 and originally designed to house 1,500 detainees, only held around one hundred on 1 September 2012 because of the advanced state of dilapidation of the prison. Furthermore, according to MONUSCO estimates, the overall prison population of the DRC is around 20,000 detainees, which is actually one of Africa’s lowest incarceration rates per 100,000 inhabitants.

¹³ The official name of the prison is the *Centre pénitentiaire de rééducation de Kinshasa*.

¹⁴ On 30 September 2012, Makala Central Prison held 6,078 detainees, despite its capacity being 1,500 detainees. On the same date, Goma Central Prison held 1,208 detainees, despite its actual capacity being 150 detainees.

with sufficient ventilation and light to enable them to remain in good health. In some detention centres, the availability of fresh air, lighting and ventilation is also insufficient, resulting in the deaths of some detainees. In recent years, the UNJHRO has documented several cases of death in detention as a result of suffocation due to adjacent and overcrowded detention spaces. For example, in the night of 12 to 13 February 2010, in the province of Kasai Occidental, three detainees of Tshikapa Urban prison died of suffocation, and three others had to go through re-animation. That night, a total of 191 people were held in an unventilated cell measuring 77 m².

25. Furthermore, judicial authorities systematically resort to pre-trial detention, which goes against Article 17 of the Constitution, which states that “ *Individual liberty is guaranteed. It is the rule, detention is the exception*”. Yet, judges systematically opt for pre-trial detention in the case of individuals charged with minor crimes, as they are punishable with sentences of less than six months’ imprisonment¹⁵. This situation, which reverses the order of priority of the principle of liberty and the exception of pre-trial detention, serves to increase the prison population. Furthermore, pre-charge and pre-trial detention legal periods are often disregarded, notably due to miscellaneous problems in the judicial system, which is lacking human and material resources. To give a specific example, MONUSCO observed that, on 3 October 2012, Bunia district prison, which has one of the highest prison occupancy rates in the DRC¹⁶, had a prison population of 1,018 detainees, around 80% of whom had not been tried. Similarly, on 30 September 2012, two thirds of the 6,078 detainees in Makala central prison in Kinshasa had not been tried.

B. Malnutrition in prisons

26. Between January 2010 and December 2012, two fifths of deaths were due to malnutrition. The situation is of particular concern in the province of Kasai Occidental where, between January and September 2012, nine detainees in Kananga central prison and 12 in Tshikapa prison died from the effects of malnutrition. In October 2012, Makala central prison experienced food shortages for approximately three weeks, and three detainees died from the effects of malnutrition during this period.
27. Yet Article 61 of Ordinance 344 on the prison system states that detainees should be put on a diet which corresponds as much as possible to their normal food intake, and that is sufficient in terms of quality and quantity to keep the prisoner in perfect physical condition. According to Article 62 of Ordinance 344, detainees should receive three meals a day. However, the reality is quite different. Food rations in Congolese prisons are limited to one meal a day at best. Given these conditions,

¹⁵ Article 27 of the Code of Criminal Procedure states that when the applicable penalty is less than 6 months’ imprisonment and more than seven days, the accused can only be placed in pre-trial detention “*if there is reason to fear that the accused is a flight risk, if his or her identity is not known or in doubt or if, in the light of serious and exceptional circumstances, pre-trial detention is called for in a compelling fashion in the interests of public safety*”. However, Article 28 of the Code of Criminal Procedure states that “*Pre-trial detention is an exceptional measure*”.

¹⁶ More than 460% on 3 October 2012.

detainees in several establishments rely exclusively on their relatives, NGOs, churches or charities and the ICRC for food. Civil society is thus trying to make up for the deficiencies of the State, which is not meeting its obligations.

28. The causes of malnutrition in detention centres are many and different in nature. First of all, budgets allocated to prisons, while not void, are totally inadequate to ensure their appropriate functioning. In several prisons, the State has stopped paying for food for detainees for long periods. For example, in Orientale province, no prison of Ituri district receives a State grant for food. In the prisons of Aru and Mahagi, detainees' families provide them with meals, because Aru prison has received only one food contribution from the State since the beginning of 2012, namely on 12 September 2012. Furthermore, in several prisons in the DRC, varying proportions of stocks of food or other products allocated to detainees, for example tools and seeds supplied to cultivate plots of land, are misappropriated by prison staff.
29. With the help of a nutritionist, the ICRC, which constantly monitors cases of malnutrition in some of the prisons in the DRC, has calculated the daily food ration that a prisoner needs. This amounts to 500-600 grams per person, which costs roughly USD 1 per prisoner per day. This dietary intake corresponds specifically to salt, cassava or maize flour or rice, beans, palm oil and vegetables making up a ration of 2,232 calories per prisoner per day. Multiplying this ration by the actual number of detainees would give the budget needed to cover each prison's food requirements.

C. Absence or lack of health care for detainees

30. Congolese legislation as a whole complies with international standards concerning access to medical care, if you take into consideration the obligations which have been transposed at the national level. In particular, Article 54 of Ordinance 344 states that a doctor should visit the various prison institutions either on a daily basis or once or more often each week, depending on the prison population, and that each institution should have one or more nurses. However, Ordinance 344 contains no provision concerning supplies of medicines. Furthermore, international standards as a whole are much more demanding¹⁷.
31. Yet, in practice, detainees do not have access to the health services they need. Furthermore, the deplorable conditions in detention centres in the DRC favour the spread of diseases. Besides malnutrition, lack of medical care is the major cause of deaths in detention documented by the UNJHRO between January 2010 and December 2012, with a total of 103 deaths due to violations of detainees' right to life

¹⁷ As mentioned above, and in line with Article 22, paragraph 1, of the *Standard Minimum Rules for the Treatment of Detainees*, a doctor should preferably always be present in every prison. However, given the widespread difficulties in accessing health care throughout the country, it may not be possible to implement this recommendation in all prisons today. The current situation nevertheless calls for major changes. These rules also give doctors much wider responsibilities, enabling them in particular to give the prison service advice about food, detainees' hygiene and the sanitary facilities, lighting and ventilation of the institution (Article 26 of the *Standard Minimum Rules for the Treatment of Detainees*).

attributable to the authorities. Doctors do not make daily visits to prisons and only visit in emergency cases. Therefore, they are continually unable to ensure that the condition of sick detainees is followed up on properly. Prison infirmaries are also generally lacking in medicines, and there are insufficient numbers of medical staff to look after sick detainees. Consequently, detainees who become ill with common ailments frequently end up in a critical condition. Some diseases, such as tuberculosis, malaria and typhoid, are often caused or aggravated by the lack of hygiene, malnutrition and poor conditions of detention. When it comes to other diseases, including incurable ones such as HIV/AIDS, the lack of treatment makes the condition of detainees worse and leads to an increase in mortality rates.

32. The UNJHRO has recorded several cases of death in prisons during the period covered by this report, concerning seriously ill detainees who did not receive the medical treatment needed in the required timescale. To give one example, in the province of Kasai Oriental, during a six month period between 21 October 2011 and 21 April 2012, ten detainees died as a result of various illnesses in Mwene-Ditu urban prison in the district of Kabinda given the absence of adequate medical care.
33. Transferring detainees who require medical care which cannot be provided in detention centres also poses a problem, despite the fact that the transfer procedure laid down by Article 60 of Ordinance 344 is simple and just requires the authorisation of a doctor¹⁸. In the case of a prisoner who has not yet been convicted, a person in pre-trial detention or a suspect, the judicial authority and the inspector with territorial jurisdiction in charge of the direction of the section dealing with the inspection of prisons must be informed about it. Yet, in practice, transfers often happen at a late stage, when the patient is already in a critical condition, or else they are refused by prison staff due to fear of escapes. Even though some transfers do lead to escapes, this is not a valid reason for refusing detainees the right to receive treatment. It is the responsibility of the State to ensure that appropriate security measures are put in place to avoid such incidents. To give some examples of deaths in detention as a result of a lack of treatment, a prisoner died in Kananga central prison on 27 January 2012, after having waited for two days, without treatment, to be taken to a hospital. Similarly, on 7 March 2012, a prisoner in pre-trial detention died during his transfer from the prison of Uvira to a medical facility. In Goma on 1 August 2012, Sadoke Kikunda Mayele, who was the only defendant in the case of the mass rapes in Walikale¹⁹, died as a result of medical complications and delays in being transferred to a hospital, which had been requested by the prison doctor. Following the defendant's death, the prison's inmates sent a memorandum to the provincial authorities denouncing the negligence and corruption in the prison system and calling for action to be taken against those responsible, for improvements in

¹⁸ According to Article 60 of Ordinance 344, “if the doctor considers that, due to the gravity or nature of the illness, it is not possible to provide treatment in the prison [...] the person shall be taken to the nearest medical or hospital facility”.

¹⁹ See the *Final report of the fact-finding mission of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed by a coalition of armed groups along the Kibua-Mpofi axis in Walikale territory, North Kivu, from 30 July to 2 August 2010*, published on 6 July 2011.

transfer procedures for sick detainees and for the implementation of appropriate measures to deal with overcrowding in the prison.

D. Inadequacy of the budget allocated to prisons and management problems

34. The allocation of the budget to prisons and its current management pose a number of problems in the DRC. The lack of transparency and the absence of accountability mechanisms, either at the central or the provincial level, are extremely worrying and prevent the effective operation of the prison system, already hampered by extremely limited resources.
35. Firstly, it should be pointed out that, in recent years, the government's budget policy on the prison system appears to be deficient and inconsistent to say the least. An examination of the proportion allocated to the prison service in the Finance Act establishing the State budget for 2009, 2010 and 2011²⁰ shows that only 11 central prisons and three detention camps receive a regular budget²¹. It therefore appears that district, urban and territorial prisons as well as annexes to prisons and other detention camps²² have no budget allocation and, in the best case scenario, receive money from the State (at central or provincial level) in a sporadic fashion. In 2012, for example, the provincial government of Maniema allocated the monthly sum of USD 2,000 to Kindu prison to cover detainees' needs and address the fact that the prisons' budget allocation of the central government had not reached Kindu. However, the territorial prisons in Maniema receive no grant due to the fact that the provincial government in Kindu lacks the resources.
36. Secondly, the prison budget should be determined according to the prison population. However, between 2009 and 2011, except for the prison of Makala, which received higher sums, the central prisons mentioned in the state budgets all received the same amount to feed their detainees, regardless of the average prison population, which differs significantly from one institution to the other²³. Consequently, the central prison of Bukavu, which has a capacity of 500 detainees and had an actual prison population of more than 1,505 detainees on 1 October 2012, received exactly the same food budget for its detainees as, for example, the central

²⁰ Version of the Finance Act dated June 2010. See below for more details about this subject.

²¹ The central prisons of Matadi, Bandundu, Mbandaka, Kisangani, Kasapa (in Lubumbashi), Mbuji-Mayi, Bukavu, Goma, Kindu, Kananga and Makala (in Kinshasa), and the detention camps of Luzumu (Bas-Congo province), Buluo (Katanga province) and Osio (Orientale province). Luzumu detention camp in the province of Bas-Congo, which closed in 1998, featured in the 2009, 2010 and 2011 budgets. This budget is allocated to supply detainees with food and water, and should therefore not be used for other purposes.

²² According to the official figures given by the authorities in 2009, there are 222 prison institutions in the DRC, namely 11 central prisons located in the provincial capitals, 2 detention camps (plus 8 others which are not in operation), 9 urban prisons, 25 district prisons in the district capitals, 124 territorial prisons in the territorial capitals and 52 ancillary prisons in certain prisons.

²³ In addition, the amounts allocated have fluctuated considerably each year: all of the central prisons (except for Makala Prison) and the three detention camps were each allocated a budget of CDF 3,230,425 in 2008, CDF 6,960,000 in 2009 and CDF 2,000,261 in 2010. These variations could only be justified by a significant reduction in the prison population or the development of prison farms which operate adequately, which is not the case in reality.

prisons of Mbandaka and Matadi, despite the latter having a capacity of 150 detainees and an actual prison population of 457 detainees on 1 October 2012. So, in practice, detainees' food rations are allocated according to the budget available and not according to the population. It is therefore unsurprising that this budget is not sufficient to cover the prison population's food requirements.

37. Another problem relating to the allocation of the budget has also arisen since the adoption of the 2011 Finance Act. In fact, contrary to the initial version dated June 2010, the final version of the budget adopted for 2011 no longer provides details about the amounts allocated to certain institutions as it previously did, simply giving an overall amount under the entry "*Prison services*". This change has resulted in an even greater lack of transparency for the prison authorities, who no longer have any clear budget heading indication to follow in the use of resources.
38. Moreover, even in the Finance Acts from 2009 to 2011, which detailed the budget items in the credit assignment, the purchase of medicines and other equipment required for detainees' medical treatment was not part of the budget. Prison directors therefore take this sum informally out of the food budget.
39. As well as the more general problem of the meagre national prison budget and its breakdown, the actual allocation of such budgets also proves problematic. In fact, even though they are mentioned in the Finance Act, many prisons do not receive the budgets which are theoretically allocated to them, or receive them with significant delays sometimes of up to six months. The companies contracted to supply food to prisons are paid by the treasury extremely late, and consequently refuse to honour their part of the contract. The detainees are evidently the first to suffer from these delays because they are generally not fed by the state during these periods.
40. Prisons with smaller populations are also affected due to corruption of administrators. For example, during a joint visit with the Deputy Minister for Human Rights in August 2012 to the prison of Mbandaka, which has a population of approximately 100 detainees, it was observed that the available quantities of food and medicines were insufficient to meet the needs of detainees, despite the fact that the provincial prison system had just received funds from Kinshasa to cover several months in arrears. The amounts allocated to this prison should have been sufficient to cover the monthly expenditure incurred to cover these living expenses.

V. Measures taken to combat deaths in detention

41. Various actors are involved in a number of projects to combat deaths in detention and improve overall conditions of detention. However, it would be advisable to adopt a more global and better coordinated approach, particularly under the supervision of the authorities, in order for a comprehensive approach to be ensured, for any action carried out to have more impact on detainees' conditions and for appropriate follow-up measures to be put in place.

A. Measures taken by the Congolese Government

42. In 2006, the Ministry of Justice and Human Rights launched a reform of the prison system which has not, to date, been concluded, even though some progress has been observed in this area. This reform, which aims at improving the organisation of the prison system, would undoubtedly have a positive impact on the deplorable conditions of detention in detention centres of the DRC. In the new government's 2012-2016 action plan, two areas of institutional reform include a reference on humanising prison conditions and modernising the prison system, i.e. reforming the judicial system and promoting human rights. However, strong political will and proper supervision by the authorities are needed if any reform designed to introduce tangible changes in the prison system in the DRC is to be successful.
43. Several initiatives to ensure a better management of the prison system and to improve the conditions of detainees are currently underway. On 28 January 2013, a decree on the establishment, organization and functioning of local management committees of central provincial prisons and detention camps' budget²⁴ was enacted. This text provides for the establishment of a mechanism to ensure transparency in the management of funds allocated for feeding detainees. In addition, in collaboration with the Ministry of Public Health, the Ministry of Justice and Human Rights is finalizing a strategic plan to improve health in prisons. It is also worth noting a project on prison statistics which is currently underway and which will include an early warning system for unlawful detention.
44. In addition, since July 2012, the Deputy Minister for Human Rights has been on a national tour that had amongst its main objectives, to assess the status of detention centres and to identify short-term and longer-term solutions to the problems observed. Notably, audits are also being carried out regarding the management of the funds allocated to the prisons which were intended for running costs and to feed detainees. Civil servants working in the prison sector, including several prison directors²⁵, as well as senior civil servants in the central government²⁶, have been arrested on suspicion of misappropriation of funds, and investigations have been launched by the authorities. On 1 February 2013, the *Tribunal de grande instance* of Mbandaka in Equateur province sentenced the acting director of Mbandaka central prison to two years' forced labour and ordered him to pay CDF 7,000,000 for misappropriation of public funds. He had been arrested on 30 August 2012 during the deputy Minister's visit to Equateur. These measures are extremely encouraging, but are still isolated cases and will be inadequate without a system of effective management and regular inspections of detention centres.
45. Another example of tangible measures being taken by the authorities is the rehabilitation of the Angenga military prison in Lisala, which is being finalized at the time of drafting of this report. In addition, as a result of an initiative of the

²⁴ *Arrêté d'organisation judiciaire n°029/CAB/MIN/J&DH/2013 du 28 janvier 2013.*

²⁵ Including those of Mbuji-Mayi, Mbandaka, Kisangani and Mahagi prisons and of Osio detention camp.

²⁶ Including the Secretary-General for Justice and the director of prison services.

Ministry of Justice and Human Rights, several prisons are benefiting from a programme of distribution of pieces of equipment such as spades, hoes, generators and cleaning appliances, which are aimed at improving conditions of detention.

B. Measures taken by national and international actors

46. For several years, a number of national and international actors have played a crucial role in supporting people deprived of their liberty, thus making a considerable contribution to reducing the rate of mortality in detention, which might have been – otherwise - much higher. The examples listed below are not a comprehensive list of the actions undertaken, and special mention should be made to the valuable work of local NGOs, churches and other charities which, for decades, have been the only source of support available to detainees when the State does not meet its obligations in full. The organisations which strive to make up for the deficiencies of the prison system are filling a gap by discharging obligations which are the responsibility of the state. However, these isolated measures do not address the system's intrinsic problems and cannot be considered as long-term solutions.
47. Several international actors are also helping to improve conditions of detention, with or without the support of MONUSCO, providing food, medicine and so on. For example, the Food and Agriculture Organisation of the United Nations (FAO) donates seed kits and tools to several prisons for all the detainees. The World Health Organisation (WHO), among others, supplies medicines to a large number of the country's prisons. ICRC provides daily food aid to several of the country's prisons²⁷ and provides nationwide support for malnourished detainees.
48. In Equateur province, UNDP has received significant financial support for prisons' rehabilitation, given that their state of disrepair has facilitated successive mass escapes²⁸. In the scope of a project financed by the Spanish Cooperation, UNDP has implemented the construction of three watchtowers and the partial rehabilitation of the administrative building, the infirmary, four cells in the soldiers' quarters and 52 cells, and the construction of a dining hall and 12 toilets in the prison of Mbandaka, as well as the total rehabilitation of the prison of Gemena. In the province of Kasai Occidental, the European Union Justice Reform Support Programme (JRSP) has enabled the establishment of a rehabilitation and construction project for the prisons of Kananga and Tshikapa.
49. In Maniema, USAID is working with judicial authorities to arrange mobile court hearings every Friday. The aim of this activity is to deal with the backlog of cases of

²⁷ In 2012, the ICRC provided daily nutritional aid to all the detainees in the following prisons: Mbanza-Ngungu district prison (Bas-Congo) and Bunia district prison (Orientale province), and temporarily suspended its aid in the following prisons, which received an *ad hoc* allocation of funds from the Ministry of Justice and Human Rights: Matadi central prison (Bas-Congo), Kisangani central prison (Orientale province), Osio detention camp (Orientale province) and Mbuji-Mayi Central Prison (Eastern Kasai). In 2012, an average of 3,800 detainees per month benefited from ICRC food aid.

²⁸ For example, 63 detainees escaped from the prisons of Mbandaka, Gemena and Gbadolite just in the period between June and August 2012.

detainees awaiting trial and to release those who have been acquitted, in order to reduce prison overcrowding.

C. Measures taken by the MONUSCO

50. A number of initiatives are being carried out by the various sections of MONUSCO, either directly in detention centres or in the form of recommendations to the authorities.
51. In particular, MONUSCO is implementing projects to rehabilitate prisons or make them self-sufficient for food through agricultural projects. To give just one example among many, the UNJHRO is, in particular, supporting the rehabilitation of part of the prison of Kalehe in the province of South Kivu, which was in an advanced state of disrepair, as part of a project funded by the Canadian International Development Agency (CIDA). This has improved the conditions of detention, strengthened the security of the prison and reduced overcrowding at the central prison of Bukavu, where a number of detainees convicted for sex crimes were detained instead of being held in Kalehe. MONUSCO carried out a project to rehabilitate a building at Kananga prison for use as a joinery workshop, with the particular aim of enabling the prison to be financially self-sufficient and of preparing detainees for reintegration into society. This project was completed in May 2011, and the rehabilitated building placed at the disposal of the prison along with the wood and other supplies needed to begin activities. Activities are continuing but, unfortunately, are not actually making the prison self-sufficient. In Equateur, MONUSCO is funding the construction of new holding cells for the Court House in Mbandaka, for which work began on 30 August 2012.
52. Technical support is also being provided in certain specific fields. For example, the Correction Advisory Unit of MONUSCO, working closely with the Ministry of Justice and Human Rights, the Ministry of Health, ICRC, WHO and other international partners, organized a workshop in Kinshasa, from 2 to 4 July 2012, on the issue of integrating prison health into public health. This event was in preparation for a national workshop which is being organised with the aim of examining strategies and a draft national action plan to manage and improve prison health, as part of a holistic approach.
53. MONUSCO is also assisting judicial authorities with arranging mobile court hearings to reduce the judicial backlog and, consequently, reduce prison overcrowding. For example, in Kasai Occidental, the *Tribunal de grande instance* of Luebo, with the support of MONUSCO, held mobile hearings in Tshikapa between 26 and 30 July 2010. By the end of these hearings, 109 detainees were convicted and 75 released on the grounds that they had already served their sentences. In Ituri district, Orientale province, a meeting was held with the authorities on 14 September 2012 to look into irregularities observed with regard to the detention of several detainees. As a result of joint advocacy carried out by various components of MONUSCO working with the UNDP in particular, 28 detainees left prison on 22 September 2012 after having been given a release order. Clearly this list is not

comprehensive, and MONUSCO is also continuing to support its provincial partners in processing the cases of detainees liable for release on parole throughout the country.

54. On the other hand, in several cases, the failure to take certain realities into account has resulted in the partial failure of several projects launched by MONUSCO or other international actors. Many of the donations received in the framework of various projects have been embezzled by prison authorities, which rarely have to report to the government on the utilization of donations intended for their prisons, given the lack of monitoring and inspections. For example, MONUC supported the construction of an extension of Kananga prison in March 2010. During a visit to the prison after the construction, the UNJHRO noted that just two or three detainees were being housed in the new extension, while a number of detainees were still in the old section which did not have a roof. An investigation revealed that the detainees in the extension were paying the prison director between USD 300 and 500 per month for the privilege to stay there.

VI. Conclusions and recommendations

55. In view of the findings described in this report, the phenomenon of deaths in detention is still extremely worrying across the DRC, and the authorities should adopt measures as soon as possible to halt this phenomenon. Conditions in detention centres have not improved since the publication of MONUC's reports in 2004 and 2005, despite the many recommendations addressed to the Government of the DRC and, more specifically, to the prison system. On the contrary, conditions have actually deteriorated and are still characterised by overcrowding, malnutrition and a lack of medical care. The situation is made worse by the meagre budget allocated to the prison service, management problems and the lack of transparency of the service. Recent tangible actions undertaken by the authorities showed that there is a window of opportunity to work together with the Congolese Government to reform the entire prison system.

Recommendations

56. The UNJHRO is recommending that the following measures be taken as soon as possible by the Government of the DRC, with the support of various actors concerned, in order to improve conditions of detention, ensure respect for the rights of people deprived of their liberty and reduce the number of deaths in detention. It should be noted that the present government is already implementing some of the below recommendations:
- Implement a national strategy to coordinate the efforts of national and international actors and donors in order to ensure the consistency of actions to improve conditions of detention throughout the country;
 - Ensure the implementation of the Optional Protocol to the Convention against Torture and, in accordance with this Protocol, and with the assistance of the

Subcommittee on Prevention set up by the Protocol, create national mechanisms to prevent torture which are independent from the government, including a prisons observatory, in order to ensure that national and international standards are applied, propose measures to address violations and constitute a consultative framework for all prison stakeholders;

- Amend Ordinance 344 so that it complies with the relevant international standards and prepare and adopt implementing texts to facilitate its application and clarify the respective roles of the central government and the provincial governments in managing the prison service;
- Ensure that a general system of supervision for all detention facilities is in place and operates effectively, particularly through inspections, as already laid down by Congolese law;
- Establish an adequate global budget for the prison service, including a clear and precise allocation for all detention institutions according to their population and actual requirements;
- Ensure that measures are taken to bring conditions of detention centres in line with the provisions of international human rights texts, including the Minimum Rules, particularly those referring to the separation of different categories of detainees according to their gender, age, criminal record, the reason for their detention and the necessities of their treatment, focusing, among other things, on placing juveniles in suitable facilities outside of prisons in order to facilitate their social and family reintegration;
- Improve control over the legality of detentions in order to reduce overcrowding in prisons and holding cells, and encourage judges to make use of provisional release, particularly for minor offences;
- Encourage the introduction of alternative sanctions to replace imprisonment into Congolese legislation, especially for less serious offences, particularly in the context of the Criminal Code reform project underway;
- Encourage, with the assistance of competent specialists, the development of initiatives such as nationwide prison farms, since animal rearing, farming and vegetable production help prison institutions to be self-sufficient in terms of food;
- Encourage regular visits by doctors to all prisons and detention camps, organise medical visits to holding cells and allow doctors to formally advise prison directors on detainees' food intake, sanitary conditions and, more generally, about conditions of detention;
- Ensure the deployment of supervisory personnel in a sufficient number, adequately trained and paid and “professionalized” in line with the recommendations of the Minimum Rules;

- Put in place accountability mechanisms for prison staff and ensure that disciplinary and penal sanctions are taken and executed against anyone who fails to meet his or her obligations;
- Encourage judges and judicial system representatives to combat impunity in the case of prison system officials found guilty of acting in breach of the law or of failing to meet their obligations and, in particular, of putting detainees' lives at risk.
