

PROMOTING PRE-TRIAL JUSTICE IN AFRICA



Promoting Pre-trial Justice in Africa *Newsletter 7*

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Editorial

CSPRI-PPJA is currently conducting research on women in pre-trial detention in Africa. A survey of PPJA subscribers last year found that "women in detention" was one of the most sought after topics of information. The PPJA research on women in pre-trial detention will incorporate analysis of existing data and literature.

PPJA researcher Dignité Bwiza has conducted fieldwork in the Democratic Republic of Congo. She has been told that some women are held for crimes which the authorities know the detained women did not commit - because it is precisely because the authorities suspect the women's partners, that they are being held. Bwiza's full report will be available in the next [CSPRI Newsletter](#), while a preview of some of her findings is reported on in this newsletter.

Both Burundi and Angola have emerged relatively recently from civil war. Their criminal justice systems and prisons are slowly reforming. Conditions of detention and access to justice are a challenge in both countries. This newsletter covers conditions of detention at a prison in Burundi, and the expansion of access to legal assistance for pre-trial detainees in Angola.

Burundi's Mpimba Prison in Bujumbura, recently visited by a CSPRI delegation, is among the prisons exhibiting problems relating to conditions of detention. Gwénaëlle Dereymaeker reports on what the delegation found at Mpimba.

In Angola, there are few lawyers and fewer still who are prepared to wait for payment or work for free to represent those held in pre-trial detention. The expansion of legal assistance to impoverished detainees in Angola, through increased access to prisons for an organisation providing legal assistance in Angola, came to the attention of CSPRI-PPJA during a training week held in Luanda. Jean Redpath and Tina Lorzio report on the expansion of legal assistance in Angola.

The wearing of prison uniforms by remand detainees is controversial, because a prison uniform signals guilt. In South Africa a uniform for remand detainees is being piloted, partly due to hygiene issues arising from long-term remand detention. The introduction of uniforms is yet another indicator that prisons in South Africa are increasingly forced by long-term remand periods to treat those on remand in much the same way as they treat convicted inmates.

Jean Redpath
PPJA Researcher

Women in pre-trial detention

Women are held in pre-trial detention across Africa, but there is a lack of information regarding the reasons for their detention. CSPRI-PPJA's research on women in pre-trial detention seeks to identify the reasons for pre-trial detention of women and to understand the links with poverty, outdated offences, superstitions, gender inequality and other factors.

The extent to which women are affected by pre-trial detention tends to be under-counted in "snapshot" data. In most countries in Africa, fewer than 5% of the people held in pre-trial detention in prisons on any day are women. However admissions data – which counts the number of people *entering* pre-trial detention – shows somewhat higher proportions of women. For example, the OSISA Malawi Pretrial Audit found that the proportion of women admitted to police detention in Malawi is approximately 12%. The Malawi Audit also found that at Mzuzu, in the north of Malawi, women comprised 20% of all homicide remand detainees in prison.

Available information suggests women in detention may be detained on offences with links to poverty, such as prostitution. Anecdotal evidence also suggests that in some countries female homicide remandees may be the victim of superstitions related to witchcraft. The failure of justice systems to acknowledge in the pre-trial phase defences such as self-defence, in contexts where women suffer domestic abuse, has also been flagged.

Preliminary research in the Democratic Republic of Congo (DRC) has suggested a further reason for the "pre-trial" detention of women. Article 17(b) of the DRC Constitution of 2006 states "*no one may be prosecuted, arrested, detained or sentenced for acts committed by others.*" Yet PPJA researcher, Dignité Bwiza, in her fieldwork in the Ituri District in the north-east of the country, has heard evidence from people held in police cells and from lawyers that women are arrested and detained for offences perpetrated by their male partners in order to force their male partners to "give themselves up". She explains: "During criminal investigations, if the police are not able to arrest the accused, the current practice is to put the accused's wife (legally married or de facto) under provisional arrest. This serves as an incentive to force the accused to surrender to the police. These women are kept in detention until their husbands or partners surrender or are caught. Unfortunately the tactic has proven to be effective because accused persons tend to surrender to the police when they hear about the arrest of their wives or partners. However, in other cases male partners do not surrender or are not caught. This leads to prolonged and illegal pre-trial detention of women for offences perpetrated by their male partners."

An article by Bwiza discussing the situation of women in pre-trial detention in the DRC, including other reasons for their detention, the conditions of their detention and the relevant law in the DRC, will be available in the forthcoming [CSPRI Newsletter](#). CSPRI-PPJA's research on women in pre-trial detention will incorporate analysis of the data pertaining to women arising out of various pre-trial audits and the data currently being collected in research on the socio-economic impact of pre-trial detention. Understanding the reasons for the detention of women may point to initiatives which reduce the extent of women's detention.

Jean Redpath

This article draws from a report compiled by Dignité Bwiza.

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Conditions at Mpimba Prison of concern

In November 2013, a CSPRI delegation visited Bujumbura's Mpimba Central Prison. Conditions of detention at Mpimba prison are dire, and appear to be caused by a combination of factors including overcrowding and a lack of state resources.

Mpimba prison is one of 11 official prisons in Burundi. In November 2013, Mpimba, with an official capacity of 800, holds 2240 prisoners. Overcrowding is not the only problem. Contrary to international standards, different categories of prisoner are not separated inside Mpimba prison. Children and adults, remand detainees and sentenced prisoners all share the same space. Although women are allocated a separate section, the access gate to the female section is not locked or guarded. The pregnancies which occur at Mpimba among female detainees are "consensual", officials said.



Order and discipline inside Mpimba prison is the responsibility of selected prisoners, referred to as the *Capita* and *Généraux* (Heads and Generals). The CSPRI delegation was told by prison officials that these are older inmates appointed by the prison authorities for their “moral standing”. There is a clear hierarchy amongst the *Capita*, with a *Capita* in charge of each cell and a *Capita* in charge of each quarter, themselves overseen by the *Généraux*. The *Capita* and *Généraux* are responsible for the daily business of the prison: they keep the prison records, hold the keys to the cells, and manage allocation of beds and food.

All prisoners must pay a contribution to the *Capita*, called *frais de bougie* (see [PPJA Newsletter 3](#)). The amount of money that a prisoner is able to pay determines in which cell he or she will be detained and the extent of services he or she can access.

The *Généraux* meet with prison authorities every morning to inform them of the situation inside the prison. Ultimately, the *Capita* and *Généraux* are in charge of security and complaints. If an inmate wishes to complain, he or she must inform his or her cell *Capita*, who will then inform his or her superior, who will in turn inform his or her superior. During the visit, prison authorities informed the CSPRI delegation that they seldom receive complaints. This suggests all complaints are dealt with by the *Capita* and *Généraux*, and might

not easily be brought to the attention of prison authorities or the *Commission Nationale Indépendante des Droits de l'Homme* (National Independent Human Rights Commission), international organisations and national NGOs, who visit the prison on a regular basis.

The CSPRI delegation could not clearly assess whether the prison authorities have accurate data on the number of remand detainees in the prison (let alone in which cells they are detained), when they are due for a court appearance, or whether their period of remand detention has already exceeded the maximum sentence they could incur for the offence they were charged with. The length of remand detention can be extremely long, sometimes years, and without a lawyer informing judicial authorities of an individual's case, many detainees appear to be “lost in the system”. During the CSPRI visit, several detainees informed members of the delegation that they have already been detained for several years without appearing in court. It appears that bottlenecks, lengthy remand periods and many other issues are dealt with on an individual basis rather than addressing systemic issues.

Burundi's prisons are severely overcrowded. In February 2013, the prison population stood at 6477, for a capacity of 4050, according to the World Prison Brief of which, 60% are awaiting trial. The President of Burundi pardoned about a quarter of the prison population in June 2012 (in March 2012 Mpimba held 3376 people), but civil society organisations say that prisons are filling up quickly again.

Despite the relatively small prison population, it is evident that the Burundian criminal justice system is experiencing serious case flow management problems. As a result, suspects and sentenced prisoners are detained under conditions that amount to at least other ill treatment. The situation calls for urgent interventions by government and its partners to seek systemic solutions. CSPRI has written to the authorities in Burundi to bring the situation at Mpimba to their attention.

Gwénaëlle Dereymaeker

CSPRI visited Burundi as part of the Article 5 Initiative, to conduct a consultative workshop on the prevention and eradication of torture and other ill-treatment in Burundi.

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Legal assistance for detainees in Angola

Despite legal reforms to the Angolan criminal justice system since the end of the decades-long Angolan civil war, implementation of reforms is slow. In particular, the right to legal representation is seldom a reality in Angola. Associação Mãos Livres provides legal assistance to detainees in Angola, and by agreement with the government, now has access to prisons in order to assist detainees.

CSPRI- PPJA visited Associação Mãos Livres in November 2013 to assist with the design of a pre-trial audit for Angola ([read an article on planning the audit here](#)). The Association, founded by David Mendes and Salvatore Freire in 2000, consists of lawyers and journalists and has observer status at the African Commission. The organisation's main function is to assist people who cannot afford to pay lawyers, in both civil and criminal matters. Currently Mãos Livres has 2 senior lawyers, 18 trainee lawyers, 2 journalists and 25 paralegals.

Since 2000, Mãos Livres has assisted between ten and fifteen thousand people per year. In the past the Association assisted detainees after being approached by family members of detainees. Now the Association has reached an informal agreement with the Ministry of the Interior, which is responsible for prisons, so that it is allowed full access to prisons in nine of Angola's eighteen provinces, being Luanda, Huambo, Kwanza Sul, Benguela, Muchico, Huila, Cunene, Cabinda and Lunda Sul provinces. It also has focal points in Bengo, Bié, Kwanza Norte, Malange and Lunda Norte.

Article 63(e) of the Angolan Constitution recognises the right of a detained person to choose a "judicial defender" (*defensor judicial*). This seldom happens. There is no legal aid institute to assist detained people in Angola who cannot afford to pay a lawyer. Angolan law mandates that the Angolan Bar Association provide free legal aid to impoverished citizens needing legal defence. The Angolan Bar Association receives government funds for this role, from which they must also pay court fees. Following each judgement, the court then pays legal fees directly to the attorneys. Thus lawyers only receive payment after the case is concluded and not in advance. Adding to this procedural challenge, the total number of lawyers in the country (fewer than 600) is insufficient to meet the legal needs of defendants, and the majority of the country's lawyers are based in Luanda. These factors have resulted in legal defence of impoverished detainees being very uncommon. Consequently it is hoped that Mãos Livres' expanded access to prison will go some way to expanding legal assistance to impoverished detainees.



The situation of the poor in detention is particularly compromised, because even family and friends wishing to visit persons detained in prisons must, in addition to bringing food for the detainee, pay a fee for the privilege of visiting the detainee.

Angola's long civil war has created a culture within the prison system wherein every inmate is viewed as a political enemy and is treated accordingly. Conditions are inhumane and prisons are overcrowded. As of March 2013, approximately 19,000 prisoners were being held in prisons designed to accommodate 12,000. Harsh punishment is dealt out regularly, including physical assaults which sometimes lead to death. There is currently no formal system for recording or reporting the causes of these deaths or the official number of deaths while in custody. Although Angolan law specifies that children in conflict with the law must be held in re-education centres for minors, these re-education centres currently do not exist in Angola. Consequently, minors are held in the same cells as adults.

New prisons have been built in Luanda Province and other provinces to ameliorate the overcrowding situation, which will to some extent ameliorate conditions of detention in these areas. However in the long term the overcrowding situation, and conditions of detention, can only be improved if laws are implemented and the different institutions do their work effectively and efficiently and with due regard to rights. Of particular concern is that the police still tend to 'arrest to investigate'.

Participants in the audit discussions noted how the Angolan Penal and Criminal Procedure Codes, which go back to colonial times, are part of the problem in the Angola criminal justice system. While criminal justice legislative reform was first mooted in 2000, some new laws are still waiting to be passed in Parliament.

Jean Redpath and Tina Lorizzo

This article is based on a report prepared by Tina Lorizzo.

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Uniform piloted for remand detainees in South Africa

At the end of 2013 South Africa piloted the use of a prison uniform for remand detainees in South Africa. Previously uniforms were not worn because a uniform is thought to signal a detainee's guilt. Security concerns and the needs of detainees appear however to have prompted the state to provide uniforms.

The Mthatha Remand Detention Centre is being used for the testing phase of the remand detainee uniform, which is to be "implemented nationally in the second quarter of the 2014/2015 financial year," according to Deputy Minister Ngoako Ramatlhodi who spoke at the launch of the uniforms in Mthatha.

The new remand detainee uniform is yellow and emblazoned with circled, black-printed words: "Remand Detainee". More than 800 remand detainees at the Mthatha Remand Detainee Centre have been issued with their sets of the uniform.

"In the past, remand detainees wore private clothes, which made it difficult to distinguish them from visitors and contractors. This meant an increased security risk and consequent stricter rules to prevent escapes and other security incidents," said the Deputy Minister. Escapes from correctional centres are rare in South Africa, with only 43 occurring during 2012, for example. "The inability to immediately identify who is an inmate and who is a contractor or a visitor is a great risk factor within remand detention facilities. The uniform is therefore of a bright and distinct colour that cannot be confused with private clothes," the Deputy Minister said.

The Deputy Minister further indicated that the wearing of uniform was meant to deal with the problem of remand detainees entering a correctional facility with only one set of clothes or inappropriate clothes that could become dirty and unhygienic as the detainees remain longer and longer within a correctional facility. "The uniform will allow for all detainees to be adequately clothed regardless of their financial capability," the Minister said. Indeed remand detainees do appear to be enduring longer and longer in detention in correctional facilities in South Africa. The proportion of remand detainees in custody on any particular day now comprises more than half of remand detainees, whereas 10 years ago the proportion on remand for more than three months was less than half.

It is intended that the uniforms will not be worn during court appearances. An opposition Member of Parliament, James Selfe said: "We insist only that none of them makes a court appearance, or is seen wearing the uniform in public. That would infringe on their right to being innocent until proved guilty." It is unclear the process which will be followed to ensure that remand detainees wearing uniforms get their own clothes back in time for court appearances.



Jean Redpath

This article is based on an article published by the South African Department of Correctional Services

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