

## When contextual experts get together... Collective research into irregular incarceration at Makala Central Prison (Kinshasa)



### Introduction

Makala Central Prison (PCM) is notorious for its overcrowding: at the time of the collective research at the end of January 2023, there were around 14,500 inmates for a capacity of 1,500, according to the Makala Central Prison Department. Moreover, according to the [Bill Clinton Foundation](#), less than 20% of this population would actually be sentenced, notably because of the time required to bring a case before the competent court and because of the many detentions that have become irregular. At the heart of these numerous irregularities are the physical documents that serve as evidence of the legality of incarceration (in other words, court files): absence of physical files on incarcerated persons, non-receipt of court documents at the prison registry, loss of court documents, non-transmission of file elements by the public prosecutor's office, failure to classify documents, and so on. The irregularity of detentions has the *de facto* consequence of prolonging the duration of the detainees' incarceration, for a period that may even go beyond the penal servitude incurred or pronounced at first instance.

The Congolese authorities, national NGOs and international institutions have repeatedly [denounced](#) the many "irregular" detentions in this prison. In recent years, the Ministry of Justice has taken a number of steps to remedy these irregularities,

sometimes with the support of technical and financial partners (UNDP, EU, MONUSCO, Avocats Sans Frontières, etc.). A programme to revive prison statistics, including an alert system for irregular detentions, has begun to be put in place. Prison registrars have been trained to digitize judicial files, and operations to verify legal detention permits are regularly organized by the Ministry or the judiciary. These measures have however not solved the problem of irregular imprisonment in Congolese prisons in general, and at Makala in particular.

### Collective action research

Against this backdrop, the first collective research project on "monitoring the judicial files of people held in Makala Central Prison" was carried out with a group of researchers from the School of Criminology at the University of Kinshasa, the Catholic University of Congo and the University of Antwerp. The research took place on 30 and 31 January 2024. Our approach was based on the [ECRIS](#) (Enquête Collective Rapide d'Identification des Conflits et des Groupes Stratégiques) method developed by Thomas Bierschenk and Jean-Pierre Olivier de Sardan in the mid-1990s. ECRIS is presented as a method with an "elective affinity" to a conception of social reality as a complex set of arenas in

which strategic groups are articulated around specific issues. An important hypothesis is that the various people involved in the decision-making process act according to a situated rationality, that makes sense from their point of view<sup>1</sup>.

Accordingly, an engagement with a variety of strategic groups would allow to reconstruct (in a rapid and necessarily provisional manner) a social problem and identify subsequent avenues for research to make it more intelligible. Specifically, this collective research phase provided for an opportunity to build a transpositional perspective, based on the experiences, professional routines and practical norms of those involved in the justice and prison systems.

In this case, however, this collective research phase became an action-research: Unlike traditional ECRIS approaches, which generally only mobilize researchers, this collective research was the work of actors-cum-researchers: Most participants were involved both as justice professionals and as 'contextual experts', in search of new knowledge about the follow-up of court cases. Thus, the collective research mobilized the main actors present in the chain of decision-making about a detainee, namely: public prosecutors, deputy public prosecutors, judicial and prison clerks, secretaries of public prosecutor's offices and prison management officers. Alongside researchers from the organising universities, these actors-researchers established a common understanding of the *general economy* of "monitoring prisoners' legal files". Around thirty participants met for two days and examined the ways of doing, thinking, proceeding, negotiating, corrupting, creating and solving the problems that emerge when monitoring prisoners' case files.

Concretely, the participants were divided into five discussion groups on the first day and the task of each of these groups was to identify the various bottlenecks in judicial files and the ways and means of resolving them. Each group was made up of at least one magistrate, one prison officer, one clerk or secretary from the public prosecutor's office and one researcher. On the second day, the five groups went out into the field to talk to the public prosecutor in Matete and Gombe respectively, a former prisoner and the Director of the Prison Administration. Afterwards, all the participants met to share their mutual understanding of the realities on the ground and, to use their own words, to formulate "recommendations".

## What can we learn from this action-research experience?

In this brief we will not review the results of the analysis of the prison system itself, but rather focus on the lessons that can be drawn from this particular ECRIS experience, where research was combined more with action than in other circumstances.

### A gathering of contextual experts

<sup>1</sup> Here, too, we are following the principle of [epistemic equity](#), i.e. that collective research allows a (partial and momentary) obliteration of hierarchies and social inequalities between participants, allowing greater visibility of (day-to-day, rather stifled) positionalities.

From a theoretical point of view, this collective research has highlighted the role and place of what Jean-Pierre Olivier de Sardan refers to as "[contextual experts](#)". According to this author, there are three fundamental characteristics that set them apart: familiarity with the subject, critical capacity and willingness to resolve difficulties. Contextual experts are distinguished, among other things, by their commitment to improving public service and their willingness to [negotiate statehood](#) taking into account the room for manoeuvre of their interlocutors. The contextual experts brought together for this research helped us to understand the day-to-day difficulties in the judicial and prison chain, to identify the recurring bottlenecks in the follow-up of legal cases and the possibilities for resolving them. Everyone's points of view was cross-referenced, questioned and/or supplemented by other sources of information from the various participants, and it allowed to identify the soft spots, or areas of uncertainty in the decision-making process about the files of detainees.

The collective research allowed for the monitoring of legal cases as a process that can lead to both irregularity and regularisation of detention, and mapped the official and unofficial players involved in this monitoring. The diversity of the groups of actors present made it possible to bring together the experiences and share the knowledge of all the actors, in order to construct a more global and diversified idea of this theme.

### ECRIS as an open moment

This collective research made it possible to break down the trajectories of cases into several sequences, corresponding to a legal phase during which professionals must intervene, intervene or are likely to intervene, allowing a legal case to follow its official trajectory or to be "blocked" or "unblocked". Within each sequence, multiple bottlenecks that obstruct processing have been identified: the issuing or communication of court documents between the various judicial and penitentiary players, the time taken to fix files and the archiving of court files. Actors belonging to different departments or administrations are involved in the production and circulation of a legal document evidencing the imprisonment or release of a prisoner. The [areas of uncertainty](#) multiply as official and unofficial players become involved in the follow-up. Prison registrars and lawyers are not always able to obtain or locate crucial documents such as releases from detention and committal orders. Magistrates are not always in the habit of checking whether documents have been forwarded to the prison by the secretaries of the public prosecutor's office. The manual management and routing of files by these legal professionals does not always facilitate the circulation of documents. Inattention errors, losses and omissions from registers can occur both at prosecution level and within the prison administration.

The difficulties experienced by some actors in acting on the ground of others show that their real [room for manoeuvre](#), or the aspects of judicial administration that they know and can control, reduces

## Denis Augustin Samnick

Institute of Development Policy,  
University of Antwerp  
[denisaugustin.  
samnick@uantwerpen.be](mailto:denisaugustin.samnick@uantwerpen.be)

## Sara Liwerant

UNIKIN, DRC

## Tom De Herdt

Institute of Development Policy,  
University of Antwerp

## Albert Malukisa Nkuku

Université Catholique du Congo, DRC

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Institute of Development Policy  
University of Antwerp  
[iob@uantwerpen.be](mailto:iob@uantwerpen.be)  
+32 3 265 57 70

[uantwerp.be/iob](http://uantwerp.be/iob)

the scope of their influence over the entire judicial chain. Several participants in the seminar called for the intervention of the judicial hierarchy (public prosecutors, the Conseil Supérieur de la Magistrature, the Minister of Justice) in order to facilitate the verification of legal detention documents in police and prison offices. Without coordination and clarification of the roles and functions of each, the multiplicity of players involved in monitoring cases does not always lead to concerted public action, but rather gives the image of a [bureaucratic fragmentation](#) and the hierarchy of the justice system does not always have control over it.

This context illustrates the added value of the ECRIS contribution: by creating an “[open moment](#)”, where actors who are differently situated within the judicial chain can enter into interaction with those with whom they do not have direct professional routines. This open moment enables them to examine all the practices that link and separate them. However, this openness also raises the question of how this ‘fine-tuning’ can become a moment that transforms the practices themselves.

### Action-oriented research with unexpected operational effects

This collective research has had unexpected outcomes, producing concrete results in the field.

On the one hand, the participants made a point of identifying practical solutions to be implemented during each judicial sequence. Secondly, during the conversations, the public prosecutors and some of the court clerks took over the legal cases under their jurisdiction in order to regularize them. This practical involvement led to the release of around 370 detainees imprisoned for petty theft, and without legal title to detention (detainees who had served the sentence handed down at first instance but were still imprisoned because they had lodged an appeal, release of detainees who had already served their sentence). Finally, the personal involvement of the judicial hierarchy made it possible to extend the effects of this collective research beyond the workshop. The exchange of information during the workshop led some participants to establish “informal” coordination, such as that between a prison clerk and a Public Prosecutor so that the latter could be informed of judicial problems within the prison, or another Public Prosecutor visited the prison to work with a clerk on the release of prisoners incarcerated for minor offences. More than 277 people were released as part of this concerted effort. The same mass releases were recorded for convicted prisoners at the Gombe public prosecutor’s office. Nearly a hundred releases ordered by the Gombe Public Prosecutor were recorded. In April 2024, the Commission responsible for decongesting Congolese prisons released 1,700 detainees from Makala and the Ndolo military prison. Following these releases, the court clerks at Makala central prison contacted the seminar organizers to thank them for the impact of the collective research. They strongly encourage the organizers to continue implementing such initiatives.

As an outcome of this collective research, a small group continued their informal exchanges so that the irregularity of certain incarcerations could lead to the release of these prisoners. In addition, action was taken to reduce prison overcrowding, and some prosecutors introduced a weekly day for magistrates to visit the prison. Beyond this, new opportunities were also created for other rounds of collective action research.